



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

North Ayrshire Council Terms and Conditions 3 (NAC TC3) Conditions of Contract for Consultancy Services (Other than Work 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 North Ayrshire Council;

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

“Contract” means any formal Contract entered into between the Consultant and North Ayrshire Council. The documents that form part of the Contract include, but are not limited to, the invitation to quote/tender (including any and all associated schedules), any clarification sought as part of the procurement process, these terms and conditions and the award letter;

“Contract Administrator” means the member of the Clients staff appointed for the purposes of overseeing the Contract, monitoring the performance of the Consultant and ensuring that the standards 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;

“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 Consultant under the same or similar circumstances;

“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 Project by or on behalf of the Consultant;

“Key Performance Indicators” means the performance measures detailed within the Contract which the Consultant must adhere to;

“Party” means the Consultant and Client respectively;

“Parties” means the Consultant and Client collectively;

“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 Project are to be performed, as specified in the Contract;

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

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

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

“Project Specification” means the document forming part of the procurement process which sets out the Client’s requirements and objectives of each stage of the delivery of the Project;

“Purchase Order” means the document setting out the Client's requirements for the Contract;

“Sub-Contract” means a Contract between two or more Consultants 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;

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

“Consultant Representative” or “Consultant Representatives” or “Consultant’s Representatives” means all persons engaged by the Consultant 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 Consultant (whether approved under Condition 18 (Assignment and Sub-Contracting) or otherwise).

“Staff” means any persons employed by the Consultant, and any persons employed by a third party but working for and under the control of the Consultant, who are or may be at any time concerned with the Project or any part of them;

“Working Day” or “Working Days” means a day on which the Client is open to the general public; and

“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.

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 their 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 controls, procedures and policies concerning security and access to the relevant Client's premises and any such modifications to those controls, procedures and policies or replacement controls, procedures and 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 complies with any controls, procedures and policies, if applicable, for obtaining access. The Consultant acknowledges that the Client has the right to deny entry to any individual that does not comply with the Client's controls, procedures, and policies concerning security and access.
- 4.6 In accordance with the Client's controls, procedures and policies concerning visitor access, entry to the Client's premises may be granted to individual Consultant Representatives for the purposes of meetings.
- 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 will provide advice and assistance acting reasonably to the Consultant to facilitate the Consultant's compliance with this Condition.
- 4.9 All decisions of the Client under this Condition are final and conclusive.
- 4.10 Breach of this Condition by the Consultant is a material breach for the purposes of Condition 15.2 (Termination).

5. Modification of Contract

- 5.1 The Client may order any modification to any part of the Project that for any other reason shall in the Client's opinion be desirable. Any such modification will be made in accordance with this Condition 5, and shall include but not be limited to the following:-
 - 5.1.1 To perform additional services in relation to the Project, as the Client may require;
 - 5.1.2 To omit or to cease to perform the Project, or any part thereof for such period as the Client may require;

- 5.1.3 To make alterations and substitutions to the Project Specification, and to perform the Project in accordance with the Project Specification as so modified;
- 5.1.4 To make changes in quality, form, character, kind, timing, method or sequence of the Project.
- 5.2 Where the Client is considering a modification to the Project, it shall notify the Consultant in writing. Within the timescale stipulated by the Client in said notification, the Consultant shall confirm in writing the effect, if any, the modification shall have on the Contract, including any effect on prices. Where an omission, addition or modification of the Project will result in additional costs to the Client (as can be reasonably demonstrated by the Consultant to the Client) or a saving to the Client, such sum shall be agreed between the Parties in advance. Failing such agreement, the Client (acting reasonably) shall be entitled to determine the appropriate sum attributable to the modification and shall notify the Consultant accordingly.
- 5.3 The Client shall confirm the proposed modification by issuing a modification letter to the Consultant. Immediately upon receipt of the modification letter from the Client the Consultant shall be bound by, and shall forthwith carry out, the terms of that letter.

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 services forming part of the Project 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.

7. Audit

- 7.1 The Consultant 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 Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Consultant shall on request afford the Client such access to those records as may be requested by the Client in connection with the Contract.
- 7.2 The provisions of this Condition 7, shall apply during the continuance of this Contract and after its termination howsoever arising.

8. Corrupt Gifts or Payments

- 8.1 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 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 Consultant by or as directed by the Client shall remain the property of the Client.
- 9.3 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.
- 9.4 The Consultant must not infringe any Intellectual Property Rights of any third party in providing the Project 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 Client may suffer or incur as a result of or in connection with any breach of this Condition 9.4.
- 9.5 The Consultant shall, at the request of the Client, provide the Client with a complete and up-to-date copy of all electronically stored data and all other information necessary to ensure that the Client can continue to use the electronically stored data so provided by the Consultant; all to the reasonable satisfaction of the Client.
- 9.6 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 Consultant shall store all data on a suitable medium in either its native format or in a neutral file format to suit the Client's requirements.
- 9.7 The Client reserves the right to verify and validate any information contained within the electronically stored data within one (1) year from completion of the Project. The Consultant shall remedy at their own expense any defects or inadequacies discovered during the said one (1) year and notified by the Client to the Consultant and such defects or inadequacies shall be remedied within fourteen (14) Working Days of receipt of such notification.
- 9.8 The Consultant shall not have the right to use any reports, or other materials referred to in Condition 9.1 without the prior written consent of the Client and then only upon such terms as may be imposed in connection therewith, except for information which is in the public domain.

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

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, to the value of at least ten million pounds (£10,000,000) sterling in respect of any one event and unlimited in the period, for the duration of the Contract, unless exempt under the Employers' Liability (Compulsory Insurance) Act 1969.
 - (b) 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, for the duration of the Contract.
 - (c) Professional indemnity insurance, to the value of at least five million pounds (£5,000,000) sterling in the aggregate in the policy period, for the duration of the Contract, plus a period of 6 years following completion of the whole of the Project or earlier termination.
 - (d) 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 Consultant's name, or (where there is no fleet but rather the Consultant permits employees to use their personal vehicles for business purposes), a letter signed by a person of appropriate authority, confirming that the Consultant has ongoing arrangements in place to ensure their employees' vehicles are appropriately insured and maintained

- 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. Equality

- 11.1 The Consultant 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, colour, 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 Consultant 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 Consultant shall take all reasonable steps to secure the observance of this Condition 11 by all employees and representatives of the Consultant.

12. Blacklisting

- 12.1 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. Breach of this Condition is a material default which shall entitle the Client to terminate the Contract.
- 12.2 Consultants sub-contracting, assigning or novating any part of the Contract must impose the same conditions on any sub-contractor or party to whom such a part of the Contract is novated or assigned.

13. Confidentialit

- 13.1 The Consultant shall keep secret and not disclose and shall procure that the Consultant's Representatives 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 Condition.
- 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.

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 Project 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 Condition 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, Conditions 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 Project, 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 United Kingdom unless required to do so by any legal or regulatory requirement to which the Consultant is subject; in which case the Consultant must inform the Client 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 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 United Kingdom in accordance with the Data Protection Laws and 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 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 Consultant shall not engage a sub-contractor to carry out Processing in connection with the Project 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 of the UK GDPR, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Personal Data as soon as is possible but in any event within three (3) business days of receipt of the request or any other period as agreed in writing with the Data Controller from time to time.

14.11 Taking into account the nature of the Processing and the information available, the 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 UK GDPR. These obligations include:

- 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.
- notifying a Data Breach to the Client without undue delay and in any event no later than 24 hours after becoming aware of a Data Breach;
- assisting the Client with communication of a Personal Data Breach to a Data Subject;
- supporting the Client with preparation of a data protection impact assessment; and
- supporting the Client with regard to prior consultation of the Supervisory Authority.

14.12 At the end of the Project 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 storage of the Personal Data is required by law.

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 Project or otherwise on behalf of the Client containing the information set out in Article 30(2) of the UK 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 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 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 the firm or 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 of dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) 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 Condition 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 thirty (30) 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, or at such later date as the Client may specify. Thereupon, without prejudice to any other of the Client's rights, the Client may complete the Project or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Client) all materials, plant and equipment on the Premises belonging to the Consultant, and the Client shall not be liable to make any further payment to the Consultant until the Project has been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Consultant the costs thereof incurred by the Client (including the Client's own costs). If the total cost to the Client exceeds the amount (if any) due to the Consultant, the difference shall be recoverable by the Client from the Consultant.

15.3 Notwithstanding Conditions 15.1 and 15.2 and without prejudice to any other rights the Client may have under the Contract or otherwise in Law, the Client shall be entitled to terminate the Contract immediately (or at such later date as the Client may specify) by notice in writing to the Consultant, 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; or
- (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 Client's obligations under The Public Contracts (Scotland) Regulations 2015 as amended by The Public Procurement etc. (Scotland) Amendment (EU Exit) Regulations 2020, Directive 2014/24/EU of the European Parliament, and any statutory modifications thereof; or
- (d) the Consultant fails to provide or complete delivery of the Project or any portion thereof within the timescales specified in the Contract or where not so specified in the Purchase Order; or
- (e) the Consultant fails to deliver the Project or any portion thereof in accordance with the Key Performance Indicators, and if such failure is capable of remedy the Consultant fails to remedy such failure within thirty (30) days of being required by the Client in writing to do so; or
- (f) the Consultant suspends performance of the Project or commits any other act from which an intention to abandon the Contract can be reasonably inferred, of which the Client shall be the sole judge; or
- (g) the Consultant fails to comply in the performance of the Project 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; or
- (h) the Consultant operates the Project without insurance cover as required under Condition 10 (Indemnity and Insurance); or
- (i) the Consultant fails to supply information required by the Client in terms of Condition 6 (Fees and Expenses); or
- (j) the Consultant, or any person employed by the Consultant or acting on behalf of the Consultant (whether with or without the knowledge of the Consultant), having offered, paid or given, directly or indirectly, any gift in money or in any other form to any member, employee or agent of the Client as an inducement or reward for doing or forbearing to do or for having forborne to do any action in relation to the obtaining or execution of the Contract or any other contract with the Client or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Client, or in relation to any Contract with the Client the Consultant or any person employed by him or acting on his behalf has committed an offence under the Bribery Act 2010 or the Prevention of Corruption Acts 1889 to 1916 or having paid or offered any fee or reward contrary to Section 68 of the Local Government (Scotland) Act 1973; or
- (k) the Consultant fails to conform to the terms and conditions of the Contract or fails to observe or perform any of its obligations under the Contract, and if such failure is capable of remedy the Consultant fails to remedy such failure within thirty (30) days of being required by the Client in writing to do so; or
- (l) Without prejudice to any other of the Client's rights, in the event the Contract is terminated under this Condition 15.3, by whatever means, the Client shall be entitled to enter into another Contract with a third party to carry out, deliver and complete the Project and the Consultant shall be liable for the Client's proper and reasonable

losses, expenses, costs and charges in connection thereof. The Client shall be entitled to recover said losses, expenses, costs and charges from the Consultant in accordance with Condition 17 (Recovery of Sums Due).

- 15.4 Notwithstanding any other rights under the Contract or otherwise in law, either Party shall be entitled to terminate this Contract by giving to the other Party not less than thirty (30) days' notice in writing 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.
- 15.5 The Consultant shall give notice to the Client as soon as reasonably practicable if the Consultant 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 conditions of the Contract.
- 15.6 Termination under Conditions 15.2, 15.3, or 15.4, 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) and 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 15.4, 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

- 17.1 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. Assignment 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-Contract(s), the Client reserves the right to obtain and keep copies of any Sub-Contract(s) from the Consultant, and the

Consultant shall send copies of any Sub-Contract(s) to the Client immediately at the Client's request.

- 18.3 Where the Client has consented to the placing of any Sub-Contract, and the Consultant enters into a Sub-Contract, the Consultant must ensure that provisions are 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 thirty (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 the Project, or any part of the Project, and the sub-contractor's invoice relates to such Project 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;
 - 18.3.3 provides the Consultant 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 Condition 15.3 occur;
 - 18.3.4 requires the sub-contractor to include provisions having the same effect as Conditions 18.3.1, 18.3.2, and 18.3.3 above in any Sub-Contract it awards; and
 - 18.3.5 in the same terms as that set out in this Condition 18.3 (including for the avoidance of doubt this Condition 18.3.5) subject only to modification to refer to the correct designation of the equivalent party as the Consultant, sub-contractor and sub-sub-contractor as the case may be.
- 18.4 Consultants 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), 2nd Floor East, Cunninghame House, Irvine KA12 8EE or via email to procurement@north-ayrshire.gov.uk.
- 18.5 Any breach of this Condition 18 by the Consultant is a material breach for the purposes of Condition 15.2 (Termination).

19. Notices

- 19.1 Any notice to be given from one Party to the other under the Contract shall be valid only if it is made in writing.
- 19.2 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 Consultant or to the Client in the following manner –

- 19.2.1. For the Consultant – 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 Condition.
- 19.2.2. For the Client – addressed to Senior Manager (Corporate Procurement), 2nd Floor East, 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 Condition.
- 19.3. 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 Condition 19.2.
- 19.4. Where a notice is delivered by a signed for special delivery postal service, provided that it is not returned as undelivered, it shall be deemed to have been given at the earlier of: two (2) Working Days after the day on which the letter was posted, or acknowledgement of receipt of such a letter by the Consultant or the Client.
- 19.5. 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.
- 19.6. The Consultant shall advise the Client, as soon as practicable and in any event no later than seven (7) days after any change, of a change of address for service by sending a notice in accordance with this Condition.
- 19.7. The Client may change its address for service by sending a notice in accordance with this Condition.
- 19.8. The Client shall not be responsible for any failure to intimate or delay in intimation arising out of or in consequence of the Consultant's omitting to advise the Client of a change of the Consultant's address under this Condition.

20. Status of Contract

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

21. Compliance with the Law etc.

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

22. Dispute Resolution

- 22.1 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 twenty (20) Working Days of either Party notifying the other of the dispute.

- 22.2 In the event of any dispute of an emergency nature arising out of or in connection with the Contract between the Parties the Client shall be entitled to demand that the Consultant attempts in good faith and in a spirit of mutual trust and co-operation to resolve the dispute within any timescale as the Client considers reasonable in the circumstances and the Consultant must comply. The Client shall be the sole judge of what disputes are of an emergency nature.
- 22.3 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 fourteen (14) days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 22.4 Any arbitration under Condition 22.2 is subject to the Arbitration (Scotland) Act 2010.
- 22.5 Nothing in this Condition 22 shall:
- 22.5.1 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 Condition; nor
- 22.5.2 diminish the Parties to the Contract's responsibilities in respect of contract administration.

23. Headings

- 23.1 The headings to Conditions shall not affect their interpretation.

24. Governing Law

- 24.1 These Conditions shall be governed by and construed in accordance with Scottish 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

- 25.1 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.

- 25.2 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.
- 25.3 Both Parties agree to use their best efforts to ensure that, during any period when a Force Majeure Event exists, the Project are provided to the fullest extent practicable.
- 25.4 For the purposes of the Contract the expression "Force Majeure Event" shall mean any cause hindering the performance by a Party of its obligations, arising directly from acts, events or omissions beyond its reasonable control, including (but not limited to) fire, flood, or any disaster, epidemic, pandemic, war or civil unrest. Any act, event or omission will only be considered a Force Majeure Event if: (i) it's effects could not have been avoided or overcome by the affected Party, acting reasonably; and (ii) it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its agents or employees.

26. Public Access to Information

- 26.1 No term of this Contract, whether express or implied, shall preclude the Client from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this Condition as the "2002 Act") or the Environmental Information (Scotland) Regulations 2004 (referred to in this condition as "the EIRS") or both any information held relating to the Contract. In exercising its obligations under the 2002 Act and the EIRS, the Client shall have due regard to the commercial interests of the Consultant but without prejudice to its duty to discharge its obligations under the 2002 Act or the EIRS. The interpretation of the Acts by the Client, 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 Consultant will facilitate compliance by the Client, with its obligations under the 2002 Act and the EIRS and comply with any requests from the Client, for that purpose.

27. Change of Name/Contract Novation

- 27.1 If the Consultant's company name changes during the Contract but their company registration remains the same, the Consultant will be required to provide a copy of their "Certificate of Incorporation on Change of Name" at the earliest opportunity.
- 27.2 Where the company registration number changes the Consultant must inform the Client immediately of any changes.
- 27.3 Where there is a change to any of the following the Client reserves the right to terminate the Contract with immediate effect:
- Location of Service/Project
 - Management structure
 - Staff providing the Service/Project

- Operational policies and procedures

27.4 Subject to the above the Client 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.

28. Advertising

28.1 The Consultant shall not use the North Ayrshire Council logo without the prior written consent of the Client.

28.2 The Consultant shall not disclose any details relating to Contract performance and operations with the Client to any other party without the prior written consent of the Client.

28.3 The Consultant 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 Client.

29. Counter-Terrorism Prevent Duty

29.1 The Consultant shall throughout the period of the Contract assist the Client 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 Client.

30. 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 Condition 14 of the Contract.