



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

## **North Ayrshire Council Terms and Conditions 1 (NAC TC1) Conditions of Contract for the Purchase of Goods**

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

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## 1. Definitions

In these conditions:

“Contract” means any formal Contract entered into between the Supplier 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 Purchasers staff appointed for the purposes of overseeing the Contract, monitoring the performance of the Supplier 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;

“Goods” or “Goods Specification” means the document forming part of the procurement process which sets out the Purchaser’s requirements and objectives of each stage of the provision of the Goods;

“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 Contract by or on behalf of the Supplier;

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

“Party” means the Supplier and Purchaser respectively;

“Parties” means the Supplier and Purchaser 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 Goods are to be delivered or installed, 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;

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

“Purchaser” means North Ayrshire Council;

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

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

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

“Supplier Representative” or “Supplier Representatives” or “Supplier’s Representatives” means all persons engaged by the Supplier in the performance of its obligations under the Contract including but not limited to:

- its Staff
- its agents, suppliers and carriers; and
- any sub-contractors of the Supplier (whether approved under Condition 21 (Assignment and Sub-Contracting) or otherwise).

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

“Working Day” or “Working Days” means a day on which the Purchaser 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 Goods**

- 2.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any modification thereto.
- 2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or by-laws from time to time in force.
- 2.3 The Goods shall be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

### **3. The Price**

- 3.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for Goods received.
- 3.2 The Purchaser will not be liable to pay for any Goods unless it is specified in a Purchase Order signed by the Contract Administrator.
- 3.3 The price of the Goods shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed by the Purchaser in writing before the execution of the Contract.
- 3.4 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Contract.
- 3.5 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.6 The Supplier shall be obliged to accept payment by means of BACS (Banks Automated Clearing Service) or Procurement Card.

### **4. Security and Access to the Purchaser's Premises**

- 4.1 Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 4.2 The Supplier must comply with the Purchaser's controls, procedures and policies concerning security and access to the relevant Purchaser's premises and any such modifications to those controls, procedures and policies or replacement controls, procedures and policies as are notified to the Supplier from time to time.
- 4.3 The Supplier must notify the Purchaser of any matter or other change in circumstances which might adversely affect future security and access to the Purchaser's premises.
- 4.4 At the Purchaser's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with

the Contract and giving such other particulars as the Purchaser may reasonably request.

- 4.5 The Supplier must ensure that any individual Supplier Representative entering the Purchaser's premises complies with any controls, procedures and policies, if applicable, for obtaining access. The Supplier acknowledges that the Purchaser has the right to deny entry to any individual that does not comply with the Purchaser's controls, procedures, and policies concerning security and access.
- 4.6 In accordance with the Purchaser's controls, procedures and policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Supplier Representatives for the purposes of meetings.
- 4.7 The Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Supplier Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 4.8 The Purchaser will provide advice and assistance acting reasonably to the Supplier to facilitate the Supplier's compliance with this Condition 4.
- 4.9 All decisions of the Purchaser under this Condition are final and conclusive.
- 4.10 Breach of this Condition 4 by the Supplier is a material breach for the purposes of Condition 17.2 (Termination).

## **5. Delivery**

- 5.1 The Goods shall be delivered to the place(s) named in the Contract. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall indemnify the Purchaser in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of their sub-contractors.
- 5.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with the reasonable requirements of the Purchaser.
- 5.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at the Purchaser's option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Purchaser's other rights and remedies.

## **6. Property and Risk**

- 6.1 Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8 hereof) pass to the Purchaser at the time of delivery.

## 7. Damage in Transit

- 7.1 On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:
- (a) in the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;
  - (b) in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within ten (10) days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

## 8. Inspection, Rejection and Guarantee

- 8.1 The Supplier shall permit the Purchaser or the Purchaser's authorised representatives to make any inspections or tests they may reasonably require, and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.
- 8.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (without prejudice to the Purchaser's other rights and remedies) either:
- (a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or
  - (b) to obtain a refund from the Supplier in respect of the Goods concerned.
- 8.3 The guarantee period applicable to the Goods shall be twelve (12) months from putting into service or eighteen (18) months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within thirty (30) days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.
- 8.4 Any Goods rejected or returned by the Purchaser as described in paragraphs 8.2 or 8.3 shall be returned to the Supplier at the Supplier's risk and expense.

## 9. Labelling and Packaging

- 9.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Contract or Purchase Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.
- 9.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within ten (10) days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.
- 9.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

## **10. Corrupt Gifts or Payments**

- 10.1 The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

## **11. Intellectual Property Rights**

- 11.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by the Supplier on behalf of the Purchaser for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract are hereby assigned to and shall vest in the Purchaser absolutely.
- 11.2 Any material, including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, furnished to or made available to the Supplier by or as directed by the Purchaser shall remain the property of the Purchaser.
- 11.3 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.
- 11.4 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Goods or otherwise performing its obligations under the Contract. The Supplier shall indemnify the Purchaser against all actions, claims, demands, losses,



charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 11.4.

- 11.5 The Supplier shall, at the request of the Purchaser, provide the Purchaser with a complete and up-to-date copy of all electronically stored data and all other information necessary to ensure that the Purchaser can continue to use the electronically stored data so provided by the Supplier; all to the reasonable satisfaction of the Purchaser.
- 11.6 Electronically stored data shall mean data however stored on a computer storage medium, and shall include data stored in conventional files, databases and computer aided design files, and which contain relevant design information. The Supplier shall store all data on a suitable medium in either its native format or in a neutral file format to suit the Purchasers requirements.
- 11.7 The Purchaser reserves the right to verify and validate any information contained within the electronically stored data within one (1) year from completion of the Contract. The Supplier shall remedy at their own expense any defects or inadequacies discovered during the said one (1) year and notified by the Purchaser to the Supplier and such defects or inadequacies shall be remedied within fourteen (14) Working Days of receipt of such notification.
- 11.8 The Supplier shall not have the right to use any reports, or other materials referred to in Condition 11.1 without the prior written consent of the Purchaser and then only upon such terms as may be imposed in connection therewith, except for information which is in the public domain.
- 11.9 The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising.

## **12. Health and Safety**

- 12.1 The Supplier shall perform the Contract in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Contract is being performed (whether such persons are in the vicinity of the said place at the time when the Goods are being delivered or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of the Contract of the type supplied to the Purchaser, whether specifically or generally. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.
- 12.2. The Supplier must notify the Purchaser immediately of any risks to health or safety which are identified or arise during the Contract including, but not limited to, any known misuse or abuse of any Goods provided
- 12.3. Notwithstanding Condition 4 (Security and Access to the Purchaser's Premises) of this Contract the Supplier shall comply with any health and safety measures implemented by the Purchaser in respect of the Purchaser's premises when accessing and/or occupying the Purchaser's premises, and shall notify the Purchaser immediately of any

incident(s) which causes or is likely to cause any personal injury or damage to property when accessing and/or occupying the Purchaser's premises.

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

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

### **13. Indemnity and Insurance**

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

13.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser or any agent) the indemnity contained in Condition 13.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser.

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

13.4 The Supplier 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) Products liability insurance, to the value of at least ten million pounds (£10,000,000) sterling in the aggregate in the policy period, for the duration of the Contract.

(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 Supplier's name, or (where there is no fleet but rather the Supplier permits employees to use their personal vehicles for business purposes), a letter signed by a person of appropriate authority, confirming that the

Supplier has ongoing arrangements in place to ensure their employees' vehicles are appropriately insured and maintained.

- 13.5 The policy or policies of insurance referred to in Condition 13.4 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.
- 13.6 The Supplier shall establish a robust internal process to receive and process any insurance claims intimated to it, the detail of which process will be made available to the Purchaser on request.
- 13.7 In the event that a claim is intimated to the Supplier, the Supplier shall immediately acknowledge receipt of such claim to the claimant, investigate the facts and process the claim with its insurance company to the Purchaser's satisfaction. If required by the Purchaser, the Supplier shall provide any information required on the nature of the claim or the manner in which it is being processed, having in mind that the Purchaser's name cannot be brought into disrepute.

#### **14. Equality**

- 14.1 The Supplier undertakes that it has and shall comply with all statutory requirements in respect of ensuring equal opportunity in employment and has not and shall not unlawfully discriminate either directly or indirectly on such grounds as race, 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 Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Acts 2006 and 2010, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Human Rights Act 1998 or other relevant or equivalent legislation, and any statutory modification or re-enactment thereof. The Supplier shall take all reasonable steps to secure the observance of this Condition 16 by all employees and representatives of the Supplier.

#### **15. Blacklisting**

- 15.1 The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.
- 15.2 Suppliers 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.

#### **16. Data Protection**

- 16.1 The Data Schedule will define the data relationship and dependent on this either paragraph 16.2 or 16.3 shall be applicable. Where there are aspects of duality within the relationship then both paragraphs 16.2 and 16.3 shall apply.
- 16.2 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be processed in connection with the Goods under this Contract.

For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller

- 16.3 Notwithstanding Clause 16.2, the parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Laws in respect of the Personal Data described in Schedule 1 as being under Joint Control. In respect of Personal Data under Joint Control, Clauses 16.1 to 16.16 (under exception of 16.3) will not apply and the Parties agree to put in place a Data Sharing and Processing Contract (Controller to Controller)
- 16.4 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 16 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 16.5 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Goods, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 16.6 The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 16.7 The Supplier must:
- 16.7.1 agree and comply with the terms of the data processing provisions set out in the Schedule (Data Protection);
- 16.7.2 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the United Kingdom unless required to do so by any legal or regulatory requirement to which the Supplier is subject; in which case the Supplier must inform the Purchaser of that legal or regulatory requirement (unless prohibited from doing so by law) before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;
- 16.7.3 subject to Condition 16.7.2 only Process or otherwise transfer any Personal Data in or to any country outside the United Kingdom in accordance with the Data Protection Laws and with the Purchaser's prior written consent and subject to a security risk assessment being undertaken;
- 16.7.4 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
- (a) are aware of and comply with the Supplier's duties under this Condition
  - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;

- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

16.7.5 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.

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

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

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

16.11 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of Processing, reporting requirements for Data Breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. These obligations include:

- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the Processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.

- (b) notifying a Data Breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Data Breach;

- (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
- (d) supporting the Purchaser with preparation of a data protection impact assessment; and
- (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

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

16.13 The Supplier must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Condition 16;
- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 16 and contribute as is reasonable to those audits and inspections;
- (c) inform the Purchaser if in its opinion an instruction from the Purchaser infringes any obligation under the Data Protection Laws.

16.14 Parties acknowledge that the inspecting Party will use reasonable endeavours to carry out any audit or inspection under Condition 16.13 (b) with minimum disruption to the Supplier's day to day business.

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

16.16 If requested, the Supplier must make such records referred to in Condition 16.15 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

## **17. Termination**

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

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or

- (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this 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 Supplier to be wound up as an unregistered company; or
- (c) where the Supplier 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.

17.2 On the occurrence of any of the events described in Condition 17.1 or, if the Supplier 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 Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect, or at such later date as the Purchaser may specify. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Goods 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 Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Goods have been supplied in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

17.3 Notwithstanding Conditions 17.1 and 17.2 and without prejudice to any other rights the Purchaser may have under the Contract or otherwise in Law, the Purchaser shall be entitled to terminate the Contract immediately (or at such later date as the Purchaser may specify) by notice in writing to the Supplier, 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 Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the Purchaser's obligations under The Public Contracts (Scotland) Regulations 2015 as amended by The Public Procurement etc. (Scotland) Amendment (EU Exit) Regulations 2020, Directive 2014/24/EU of the European Parliament, and any statutory modifications thereof.

- (d) the Supplier fails to provide or complete delivery of the Goods or any portion thereof within the timescales specified in the Contract or where not so specified in the Purchase Order; or
- (e) the Supplier fails to deliver the Goods or any portion thereof in accordance with the Key Performance Indicators, and if such failure is capable of remedy the Supplier fails to remedy such failure within thirty (30) days of being required by the Purchaser in writing to do so; or
- (f) the Supplier suspends performance of the Goods or commits any other act from which an intention to abandon the Contract can be reasonably inferred, of which the Purchaser shall be the sole judge; or
- (g) the Supplier fails to comply in the performance of the Goods 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 Supplier operates the Contract without insurance cover as required under Condition 13 (Indemnity and Insurance); or
- (i) the Supplier fails to supply information required by the Purchaser in terms of Condition 3 (the Price); or
- (j) the Supplier, or any person employed by the Supplier or acting on behalf of the Supplier (whether with or without the knowledge of the Supplier), 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 Purchaser 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 Purchaser or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Purchaser, or in relation to any contract with the Purchaser the Supplier 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;
- (k) the Supplier 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 Supplier fails to remedy such failure within thirty (30) days of being required by the Purchaser in writing to do so;
- (l) Without prejudice to any other of the Purchaser's rights, in the event the Contract is terminated under this Condition 17.3, by whatever means, the Purchaser shall be entitled to enter into another contract with a third party to carry out, deliver and complete the Goods and the Supplier shall be liable for the Purchaser's proper and reasonable losses, expenses, costs and charges in connection thereof. The Purchaser shall be entitled to recover said losses, expenses, costs and charges from the Supplier in accordance with Condition 18 (Recovery of Sums Due).

17.4 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. On the expiration of the said notice period the Contract shall in all respects cease and terminate.

- 17.5 The Supplier shall give notice to the Purchaser as soon as reasonably practicable if the Supplier is unable permanently or temporarily to meet any of the conditions of the Contract, or to observe or perform any of its obligations under the conditions of the Contract.
- 17.6 Termination under Conditions 17.2, 17.3, or 17.4, shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 22 (Audit) and 11 (Intellectual Property Rights).

## **18.Recovery of Sums Due**

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

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

- 19.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions.
- 19.2 Where the Purchaser has consented to the placing of any Sub-Contract(s), the Purchaser reserves the right to obtain and keep copies of any Sub-Contract(s) from the Supplier, and the Supplier shall send copies of any Sub-Contract(s) to the Purchaser immediately at the Purchasers request.
- 19.3 Where the Purchaser has consented to the placing of any Sub-Contract, and the Supplier enters into a Sub-Contract, the Supplier must ensure that provisions are included which:
- 19.3.1 requires payment to be made of all sums due by the Supplier 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 Purchaser has made payment to the Supplier in respect of the Goods, or any part of the Goods, and the sub-contractor's invoice relates to such Goods then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;
- 19.3.2 notifies the sub-contractor that the Sub-Contract forms part of a larger Contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor, to the Purchaser;
- 19.3.3 provides the Supplier with a right to terminate the Sub-Contract if the relevant sub-contractor fails to comply in the performance of its Contract with any legal obligations in

the fields of environmental, social or employment law, or if any of the termination events specified in Condition 17.3 occur;

- 19.3.4 requires the sub-contractor to include provisions having the same effect as Conditions 19.3.1, 19.3.2, and 19.3.3 above in any Sub-Contract it awards; and
- 19.3.5 in the same terms as that set out in this Condition 19.3 (including for the avoidance of doubt this Condition 19.3.5) subject only to modification to refer to the correct designation of the equivalent Party as the Supplier, sub-contractor and sub-sub-contractor as the case may be.
- 19.4 Suppliers to the Purchaser are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Senior Manager (Corporate Procurement), 2nd Floor East, Cunninghame House, Irvine KA12 8EE or via email to [procurement@north-ayrshire.gov.uk](mailto:procurement@north-ayrshire.gov.uk).
- 19.5 Any breach of this Condition 19 by the Supplier is a material breach for the purposes of Condition 17.2 (Termination).

## 20. Notices

- 20.1 Any notice to be given from one Party to the other under the Contract shall be valid only if it is made in writing
- 20.2 Further any such notice which is to be given by either Party to the other, except for the purpose of court proceedings, shall be given by email or physical letter sent by hand or by a signed for special delivery postal service (for example, Royal Mail Signed For or Royal Mail Special Delivery Guaranteed). Such notices shall be addressed to the Supplier or to the Purchaser in the following manner –
  - 20.2.1 For the Supplier – to the address shown on the Purchase Order, or to such other address as the Party may by notice to the other have substituted therefor in accordance with this Condition.
  - 20.2.2 For the Purchaser – addressed to Senior Manager (Corporate Procurement), 2<sup>nd</sup> Floor East, Cunninghame House, Irvine KA12 8EE or via email to [procurement@north-ayrshire.gov.uk](mailto:procurement@north-ayrshire.gov.uk), or to such other address as the Party may by notice to the other have substituted therefor in accordance with this Condition.
- 20.3 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 20.2.
- 20.4 Where a notice is delivered by a signed for special delivery postal service, provided that it is not returned as undelivered, it shall be deemed to have been given at the earlier of: two (2) Working Days after the day on which the letter was posted, or acknowledgement of receipt of such a letter by the Supplier or the Purchaser.
- 20.5 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.

- 20.6 The Supplier shall advise the Purchaser, as soon as practicable and in any event no later than seven (7) days after any change, of a change of address for service by sending a notice in accordance with this Condition.
- 20.7 The Purchaser may change its address for service by sending a notice in accordance with this Condition.
- 20.8 The Purchaser shall not be responsible for any failure to intimate or delay in intimation arising out of or in consequence of the Supplier's omitting to advise the Purchaser of a change of the Supplier's address under this Condition.

## **21. Compliance with the Law etc.**

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

## **22. Audit**

- 22.1 The Supplier shall keep and maintain until the date falling seven (7) years after the date of expiry of the Contract or any period of extension, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Purchaser, and all payments made by the Purchaser. The Supplier shall on request afford the Purchaser such access to those records as may be requested by the Purchaser in connection with the Contract.
- 22.2 The provisions of this Condition 22 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **23. Dispute Resolutio**

- 23.1 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.
- 23.2 In the event of any dispute of an emergency nature arising out of or in connection with the Contract between the Parties the Purchaser shall be entitled to demand that the Supplier attempts in good faith and in a spirit of mutual trust and co-operation to resolve the dispute within any timescale as the Purchaser considers reasonable in the circumstances and the Supplier must comply. The Purchaser shall be the sole judge of what disputes are of an emergency nature.
- 23.3 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.

23.4 Any arbitration under Condition 23.2 is subject to the Arbitration (Scotland) Act 2010.

23.5 Nothing in this Condition 23 shall:

23.5.1 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

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

## **24. Headings**

24.1 The headings to Conditions shall not affect their interpretation.

## **25. Governing Law**

25.1 These Conditions shall be governed by and construed in accordance with Scots law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

## **26. Force Majeure**

26.1 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.

26.2 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.

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

26.4 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.

## **27. Public Access to Information**

- 27.1 No term of this Contract, whether express or implied, shall preclude the Purchaser from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this 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 Purchaser shall have due regard to the commercial interests of the Supplier but without prejudice to its duty to discharge its obligations under the 2002 Act or the EIRS. The interpretation of the Acts by the Purchaser, and any exemptions therein, will be final and conclusive subject only to any decision or binding ruling on the matter made by the courts. The Supplier will facilitate compliance by the Purchaser, with its obligations under the 2002 Act and the EIRS and comply with any requests from the Purchaser, for that purpose.

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

- 28.1 If the Supplier’s company name changes during the Contract but their company registration remains the same, the Supplier will be required to provide a copy of their “Certificate of Incorporation on Change of Name” at the earliest opportunity.
- 28.2 Where the company registration number changes the Supplier must inform the Purchaser immediately of any changes.
- 28.3 Where there is a change to any of the following the Purchaser reserves the right to terminate the Contract with immediate effect:
- Location of service
  - Management structure
  - Staff providing the service
  - Operational policies and procedures
- 28.4 Subject to the above the Purchaser reserves the right to consider continuing the Contract with the new company provided that the company:
- (a) Meets any pre-qualification and minimum conditions that were applied when the original Contract was awarded.
  - (b) scores at least the same scores for the quality criteria that were applied at the procurement evaluation stage.
  - (c) Signs a Deed of Novation confirming that they accept all contractual obligations and liabilities contained within the contract.

## **29. Modification of Contract**

- 29.1 The Purchaser may order any modification to any part of the Goods that for any other reason shall in the Purchaser's opinion be desirable. Any such modification will be made in accordance with this Condition 29, and shall include but not be limited to the following:-
- 29.1.1 To provide additional Goods, as the Purchaser may require;
  - 29.1.2 To omit or to cease to provide the Goods or any part thereof for such period as the Purchaser may require;
  - 29.1.3 To make alterations and substitutions to the Goods Specification, and to provide goods in accordance with the Goods Specification as so modified;
  - 29.1.4 To make changes in quality, form, character, kind, timing, method or sequence of the Goods.
- 29.2 Where the Purchaser is considering a modification to the Goods, it shall notify the Supplier in writing. Within the timescale stipulated by the Purchaser in said notification, the Supplier 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 Goods will result in additional costs to the Purchaser (as can be reasonably demonstrated by the Supplier to the Purchaser) or a saving to the Purchaser, such sum shall be agreed between the Parties in advance. Failing such agreement, the Purchaser (acting reasonably) shall be entitled to determine the appropriate sum attributable to the modification and shall notify the Supplier accordingly.
- 29.3 The Purchaser shall confirm the proposed modification by issuing a modification letter to the Supplier. Immediately upon receipt of the modification letter from the Purchaser the Supplier shall be bound by, and shall forthwith carry out, the terms of that letter.

## **30. Advertising**

- 30.1 The Supplier shall not use the North Ayrshire Council logo without the prior written consent of the Purchaser.
- 30.2 The Supplier shall not disclose any details relating to Contract performance and operations with the Purchaser to any other Party without the prior written consent of the Purchaser
- 30.3 The Supplier shall not communicate in any form with the media, or make any publication or announcement, on any matter concerning the operation, involvement in or performance of the Contract, without the prior written consent of the Purchaser.

## **31. Confidentiality**

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

- 31.2 All information related to the Contract will be treated as commercial in confidence by the parties except that the Supplier or Purchaser or both may disclose any information as required by law or judicial order to be disclosed.
- 31.3 The Supplier shall at all times comply with the Purchaser's "IT and Cyber Security Policy" ("the Policy") and it is the Supplier's responsibility to ensure that the Supplier and the Supplier's Representatives are familiar with and comply with the Policy as well as with any of the Purchaser's related security standards, guidelines and procedures in relation to the Policy. The Policy can be obtained on request by contacting the Purchaser's ICT Security Team by email at [cybersecurityteam@north-ayrshire.gov.uk](mailto:cybersecurityteam@north-ayrshire.gov.uk).
- 31.4 The provisions of this Condition 31 shall apply during the continuance of this Contract and after its termination howsoever arising.

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

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

### **33.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

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

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

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

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

The obligations and rights of the Purchaser as the Data Controller are set out in Condition 16 of the Contract.