

# Corporate Procurement Service

## Standard Terms and Conditions of Contract for the Purchase of Services

### Document Reference Number

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## CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

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.

### 1

### DEFINITIONS

In these Conditions the following terms have the following meanings:

<i>"Contract"</i>	means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these conditions and other documents (or parts thereof) specified in the Purchase Order;
<i>"Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Request"</i>	have the meanings given in the Data Protection Laws;
<i>"Data Protection Laws"</i>	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 GDPR;
<i>"GDPR"</i>	means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC;
<i>'Good Industry Practice'</i>	means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances.
<i>"Intellectual Property Rights"</i>	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 in connection with this Contract by or on behalf of the Supplier;
<i>"Personal Data"</i>	has the meaning given in the Data Protection Laws;
<i>"Premises"</i>	means the location where the service (delivery or installation) is performed, as specified in the Purchase Order;
<i>"Processing"</i>	has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

"Purchaser"	means on behalf of The Scottish Borders Council, constituted under the Local Government etc. (Scotland) Act 1994 and having their Headquarters at Newtown Saint Boswells, Melrose, TD6 0SA;
"Purchase Order"	means the document setting out the Purchaser's requirements for the Contract;
"Schedule"	means a schedule annexed to and forming part of these Conditions; and
"Services"	means the services to be provided as specified in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;
"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"	means all persons engaged by the Supplier in the performance of its obligations under the Contract including: its employees and workers (including persons employed by a third party but working for and under the control of the Supplier); its agents, suppliers, and carriers; and any sub-contractors of the Supplier (whether approved under Condition 9 (Assignment and sub-contracting) or otherwise).

<b>2</b>	<b>CHANGE TO CONTRACT REQUIREMENTS</b>
2.1	The Purchaser may order any variation to any part of the Services that for any other reason shall in the Purchaser's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method, or sequence of the Services.
2.2	Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 (two) working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
2.3	Where any such variation of the Services made in accordance with Conditions 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

<b>3</b>	<b>INSPECTION OF PREMISES AND NATURE OF SERVICES</b>
3.1	The Supplier is deemed to have inspected the Premises before contracting award so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.

3.2	The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for the purpose of Condition 3.1.
<b>4</b>	<b>SECURITY AND ACCESS TO COUNCIL PREMISES</b>
4.1	Where any access to the Purchaser's Premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with any reasonable requirements of any relevant security policy or requirement of the Purchaser.
4.2	Access to any of the Purchaser's Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the delivery of service concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.
4.3	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.
4.4	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 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.
4.6	<p>The Purchaser shall have the power at any time during the progress of the Services to order in writing:</p> <ul style="list-style-type: none"> <li>a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious, or not in accordance with the Contract;</li> <li>b) the substitution of proper and suitable materials;</li> <li>c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of material or workmanship, is not in the opinion of the Purchaser in accordance with the Contract.</li> </ul> <p>The Supplier shall comply forthwith with the terms of any such order.</p>
4.7	On completion of the Contract the Supplier shall remove the Supplier's plant, equipment, and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.
4.8	Breach of this Condition 4 by the Supplier is a material breach for the purposes of the Condition 28 (Termination).
4.9	If cyber security requirements apply to this Contract:
4.9.1	Then these are set out in a Schedule Part 2 (Cyber Security Requirements) to this Contract; and
4.9.2	in that case the Supplier shall comply with the provisions of Schedule Part 2 (Cyber Security Requirements) and this Condition 4 shall not apply where the Contract does not include a Schedule Part 2 (Cyber Security Requirements).

<b>5</b>	<b>SUPPLIERS STATUS</b>
5.1	<p>In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:</p> <p>a) the Supplier shall not (and shall ensure that the Supplier's agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser; and</p> <p>b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff or agents.</p>

<b>6</b>	<b>PAYMENT</b>
6.1	Unless otherwise stated in the Contract, an electronic payment via BACS will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
6.2	In this Condition 6, 'invoice' includes an electronic invoice meeting all requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.
6.3	Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
6.4	Notwithstanding Condition 9 (Assignment and Sub-contracting) of this Contract, the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 29 (Recovery of Sums Due) of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.
6.5	Invoices from Suppliers without a valid Purchase Order (PO) number, other than the categories recognised by the Purchaser as an exception (utilities, business rates, passenger transport and any other exceptions approved by the Purchaser's Chief Financial Officer), will not be processed or paid until a valid PO number is quoted by the supplier.
6.6	The Purchaser reserves the right to request that invoices are submitted electronically.

<b>7</b>	<b>SUPPLIER'S PERSONNEL</b>
7.1	Where the Supplier provides Services to the Purchaser and these Services are performed on Premises, the Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier 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 performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition 7

	with another suitably qualified person and ensure that any pass issued to the person removed is surrendered .
7.2	If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
7.3	The decision of the Purchaser 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 performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition 7.
7.4	The Supplier shall bear the cost of any notice, instruction, or decision of the Purchaser under this Condition 7.
7.5	Subject to Condition 7.8 the Supplier shall not engage for the purposes of the Contract any employee, agent, or sub-contractor who has previously been in the employment of the Purchaser, and who left that said employment under an Early Retirement or Voluntary Severance scheme.
7.6	Subject to Condition 7.8 the Supplier confirms that none of its directors have left the employment of the Purchaser under an Early Retirement or Voluntary Severance scheme.
7.7	Subject to this Condition 7.8 where the Supplier is an individual or sole trader he confirms that he has not left the employment of the Purchaser under an Early Retirement or Voluntary Severance scheme.
7.8	Where the Supplier, one of the Supplier's directors, or an employee, agent, or sub-contractor whom the Supplier proposes to engage was previously in the employment of the Purchaser, and that employment was in a professional area unrelated to the Contract or comprised a role substantially different to that required by the Contract, the Purchaser may at its sole discretion waive Conditions 7.5, 7.6, and 7.7.

<b>8</b>	<b>EQUALITY</b>
8.1	The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and of any statutory instrument or Code of Practice made thereunder.
8.2	The Supplier shall take all reasonable steps to secure that all servants, employees, or agents of the Supplier and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition 8.1.

<b>9</b>	<b>ASSIGNATION AND SUB-CONTRACTING</b>
9.1	The Supplier shall not without the written consent of the Purchaser assign the benefit or delegate the burden of the Contract or any part thereof.
9.2	No sub-contracting by the Supplier shall in any way relieve the Supplier of any of the Supplier's responsibilities under the Contract.
9.3	Where the Supplier enters into a sub-contract it must be ensured that a provision is included which: <ul style="list-style-type: none"> <li>a) requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Goods and the sub-contractor's invoice relates to such Services then, to that extent,</li> </ul>

	<p>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;</p> <p>b) 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; and</p> <p>c) in the same terms as that set out in this Condition 9.3 (including for the avoidance of doubt this Condition 9.3(c)) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.</p>
<p>9.4</p>	<p>The Supplier shall also include in every sub-contract:</p> <p>a) a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social, or employment law or if any of the termination events (involving substantial modification of the contract, contract award despite the existence of exclusion grounds, or a serious infringement of EU legal obligations) specified in Condition 28.3 (Termination) occur; and</p> <p>b) a requirement that the sub-contractor includes a provision having the same effect as Condition 9.4(a) above in any sub-contract which it awards.</p> <p>In this Condition 9.4, '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.</p>

<p><b>10</b></p>	<p><b>MANNER OF CARRYING OUT THE SERVICES</b></p>
<p>10.1</p>	<p>The Supplier shall make no delivery of materials, plant, or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.</p>
<p>10.2</p>	<p>Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.</p>
<p>10.3</p>	<p>The Purchaser shall have the power at any time during the progress of the Services to order in writing:</p> <p>a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious, or not in accordance with the Contract;</p> <p>b) the substitution of proper and suitable materials; and/or</p> <p>c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract.</p>
<p>10.4</p>	<p>The Supplier shall forthwith comply with any order made under Condition 10.3.</p>



10.5	On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.
<b>11</b>	<b>TIME OF PERFORMANCE</b>
11.1	The Supplier shall begin performing the Services on the date stated in the Purchase Order and shall complete the Services by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.
<b>12</b>	<b>FREE-ISSUE MATERIALS</b>
12.1	Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's servants, agents, or sub-contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.
<b>13</b>	<b>AUDIT</b>
13.1	The Supplier shall keep and maintain until 2 (two) years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.
13.2	The provisions of this Condition 13 shall apply during the continuance of this Contract and after its termination howsoever arising.
<b>14</b>	<b>PROTECTING THE ENVIRONMENT</b>
14.1	Suppliers to the Purchaser are requested to satisfy themselves that no product will be supplied or used in the supply of goods or Services to the Purchaser which: will endanger the health of the consumers or others; will cause significant damage to the environment during manufacture, use, or disposal; consumes a disproportionate amount of energy during manufacture, use, or disposal; causes unnecessary waste because of over-packaging or because of an unusually short shelf life; or contains materials derived from threatened species or threatened environments.

<b>15</b>	<b>COMMUNITY BENEFITS AND LIVING WAGE</b>
15.1	The Purchaser is committed to maximising community benefits from its procurement activities. To this end the Purchaser may place a requirement on the supplier (or service provider) to deliver appropriate social, economic, and environmental benefits relating to the subject matter of the Contract.
15.2	The Purchaser supports the principles and policy requirements of Scottish Borders Council Sustainable Procurement Charter which includes a commitment to encourage all suppliers and service providers to pay employees, engaged in delivering services on behalf of the Purchaser, the current Scottish Living Wage.

<b>16</b>	<b>INTELLECTUAL PROPERTY RIGHTS</b>
16.1	All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, and 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.
16.2	Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.
16.3	The Supplier must not infringe any Intellectual Property Rights of any third party in 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 16.3.
16.4	The provisions of this Condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

<b>17</b>	<b>ACCESS TO COUNCIL INFORMATION (FREEDOM OF INFORMATION ACT 2002)</b>
17.1	Subject always to the terms of the Freedom of Information (Scotland) Act 2002 and to other statutory requirements or court order, the Supplier shall not and shall ensure that its employees do not without the written consent of the Purchaser during the period of this Contract or at any time thereafter divulge to any third party any information which comes into its or their possession in the course of providing the Contract.
17.2	The Supplier shall treat as private and confidential all and any information marked as private and confidential received from the Purchaser.
17.3	The Purchaser shall treat as private and confidential all and any information marked as private and confidential received from the Supplier (subject always to Condition 17.4).
17.4	The Purchaser is committed to meeting its responsibilities under the Freedom of Information (Scotland) Act 2002 ("FOISA") and the Environmental Information (Scotland) Regulations 2004 ("EIRs"). Accordingly, all information submitted to the Purchaser may require to be disclosed or published by the Purchaser. If the Supplier considers that specific information provided to the Purchaser is potentially exempt from disclosure under FOISA or the EIRs, the Supplier shall identify the information it considers to be exempt and the exemption or exception which applies. If the Supplier considers that disclosure of such information would substantially prejudice its commercial interests the Supplier must provide justification for its assertions and identify the period during which it wishes the information to be withheld from public disclosure. The Purchaser shall take into account the Supplier's views but is not bound by them and may in its

	absolute discretion disclose and/or publish any such information in order to comply with FOISA or the EIRs.
17.5	The Supplier shall assist and cooperate with the Purchaser to enable the Purchaser to comply with FOISA and the EIRs and shall in respect of any information it, or any sub-contractor, holds on behalf of the Purchaser provide the Purchaser with the information, if the Purchaser so requests, as soon as practicable and in any event within 5 working days of receiving the Purchaser's request.
17.6	The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOISA, the content of the Contract is not confidential information and the Supplier hereby gives its consent for the Purchaser to publish the Contract in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOISA redacted) including any changes to the Contract agreed from time to time.

<b>18</b>	<b>MEDIA DISCLOSURE</b>
18.1	In the event that any aspect of this Contract, including the termination of this Contract and any subsequent de-commissioning of a Service, becomes a matter of media speculation the Purchaser and the Supplier shall issue an agreed media release. The Supplier shall not make any statement to the media without first consulting with the Purchaser. This Condition 18 shall survive the termination of this Contract.

<b>19</b>	<b>SOCIAL MEDIA USE</b>
19.1	The Supplier shall not make any statements about any aspect of this contract without first consulting with the Purchaser. This Condition shall survive the termination of this Contract.
19.2	Suppliers including their staff and agents using social media <b>must not</b> : <ul style="list-style-type: none"> <li>a) Post comments electronically or distribute by e-mail, anything which could cause offence or that may be considered discriminatory or anything that may be considered as bullying and harassment.</li> <li>b) Post statements which are bigoted, hateful or discriminatory.</li> <li>c) Post or distribute images, video or messages that may bring the Purchaser into disrepute. For example anything that might be considered indecent, pornographic, obscene or illegal.</li> <li>d) Post or send confidential client or service user information which may breach the Data Protection Act2018 or the General Data Protection Regulation.</li> </ul>

<b>20</b>	<b>HEALTH AND SAFETY</b>
20.1	The Supplier shall perform the Services 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 Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including any Statutory Instruments, 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 services 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 20.

<b>21</b>	<b>INDEMNITY AND INSURANCE</b>
21.1	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 defect in the Services or the negligent or wrongful act or omission of the Supplier.
21.2	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 the Data Protection Laws where the breach is the direct result of the Supplier acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Supplier: <ul style="list-style-type: none"> <li>a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with the Condition 35 (Data Protection); or</li> <li>b) fails to comply with any other obligation under the Contract.</li> </ul>
21.3	Subject to Clause 21.2 the Supplier shall indemnify the Purchaser in respect of all claims, proceedings, actions, damages, fines, costs, expenses, or other liabilities which the Purchaser may incur arising out of, or in consequence of, a breach of the Data Protection Laws by the Supplier, its employees or sub-contractors.
21.4	The Supplier and any sub-contractors shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.
<b>22</b>	<b>BLACKLISTING</b>
22.1	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, or commit any breach of the Data Protection Laws by unlawfully Processing Personal Data in connection with any blacklisting activities. Breach of this condition is a material default which shall entitle the Purchaser to terminate the Contract.
<b>23</b>	<b>CORRUPT GIFTS OR PAYMENTS</b>
23.1	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.
<b>24</b>	<b>FORCE MAJEURE</b>
24.1	Neither the Purchaser nor Supplier shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the party concerned to avoid such failure or delay.

24.2	If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue.
24.3	For the purposes of this Condition 24 "Force Majeure" means any event or occurrence which is outside the control of the party and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include any industrial action occurring within the Supplier's organisation or within any sub-contractor's organisation.
24.4	Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor, or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Supplier by Force Majeure.

<b>25</b>	<b>TUPE</b>
25.1	The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Contract; and (b) transfer to another supplier on the expiry of the Contract.
25.2	<p>During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:</p> <ul style="list-style-type: none"> <li>a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law;</li> <li>b) for each person, age, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given);</li> <li>c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and</li> <li>d) details of pensions entitlements, if any.</li> </ul>
25.3	The Supplier shall permit the Purchaser to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
25.4	The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs, and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Condition 25.

25.5	In the event that the information provided by the Supplier in accordance with this Condition 25 becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser if the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.
25.6	The provisions of this Condition 25 shall apply during the continuance of this Contract and after its termination howsoever arising.

<b>26</b>	<b>NOVATION ETC.</b>
26.1	The Purchaser shall be entitled to assign, novate, delegate, or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority, private sector body, charitable, or third sector body, or any other body established under statute (the "Transferee") provided that any such assignation, novation, delegation, or other disposal shall not unreasonably increase the burden of the Supplier's obligations under this Contract.
26.2	Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Contract.
26.3	The Purchaser shall be entitled to disclose to any Transferee any confidential information of the Supplier which relates to the performance of the Contract by the Supplier. In such circumstances the Purchaser shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

<b>27</b>	<b>ACCOUNTING INFORMATION</b>
27.1	The Supplier shall provide to the council (when requested) and no later than the 31st of March in each fiscal year, such information in relation to the contract that is required for statutory accounting purposes (but not limited to just that purpose). Any data required for accounting for arrangements within the scope of International Financial Reporting Standard 16 (IFRS 16) shall be made available at the request of the council.

<b>28</b>	<b>TERMINATION</b>
28.1	Without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser shall have the right forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator, or administrator: a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his 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;

	<p>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 Conditions 28.1(a) or 28.1(c) 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</p> <p>c) where the Supplier is a company, if the company passes a resolution for winding up or 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.</p>
28.2	<p>On the occurrence of any of the events described in Condition 28.1 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 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 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.</p>
28.3	<p>The Purchaser may terminate the Contract in the event that:</p> <p>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;</p> <p>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</p> <p>c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.</p> <p>In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.</p>
28.4	<p>The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Contract with legal obligations in the fields of environmental, social, and employment law.</p>
28.5	<p>In addition to the Purchaser's rights of termination under Conditions 28.2, 28.3, or 28.4 the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than Thirty (30) days' notice to that effect.</p>
28.6	<p>Termination under Condition 28.2, 28.3, 28.4, or 28.5 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 the Conditions 16 (Intellectual Property Rights), 17 (Access to Council Information (Freedom of Information Act 2002), 35 (Data Protection), 18 (Media Disclosure), 25 (TUPE), or 13 (Audit).</p>

<b>29</b>	<b>RECOVERY OF SUMS DUE</b>
29.1	Wherever under the 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 the Contract or under any other agreement or contract with the Purchaser.
<b>30</b>	<b>HEADINGS</b>
30.1	The headings to Conditions shall not affect their interpretation.
<b>31</b>	<b>NOTICES</b>
31.1	Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted electronically resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.
<b>32</b>	<b>COMPLIANCE WITH THE LAW ETC.</b>
32.1	<p>In supplying the Services and otherwise when performing the Contract, the Supplier must comply in all respects with:</p> <ul style="list-style-type: none"> <li>a) all applicable law;</li> <li>b) any applicable requirements of regulatory bodies; and</li> <li>c) Good Industry Practice.</li> </ul> <p>In this Condition, 'Good Industry Practice' means standards, practices, methods, and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances.</p>
<b>33</b>	<b>DISPUTE RESOLUTION</b>
33.1	In the event of any dispute between the parties relating to the terms and conditions of this Contract or the provision of the supply of Services either party may serve notice on the other outlining the terms of the dispute. Such notice shall propose a time and place for a meeting between the Purchaser and the Supplier's representatives where the representatives shall attempt to resolve the dispute. The other party shall respond to such a notice within five (5) working days of receipt.



33.2	If the matter is not resolved within ten (10) working days of the service of a notice, the matter may be referred by either party to the appropriate senior officer of the Purchaser and the appropriate senior officer in the Supplier's organisation for resolution. If the dispute is not resolved within a further ten (10) working days, the matter may be referred by either party to a mutually acceptable third party whom failing a third party appointed by the President of the Law Society of Scotland on the application of either party. The decision of any such third party shall be final and binding on the Purchaser and the Supplier. The expenses of the arbitration shall be a matter for determination by the arbiter whose decision on the matter shall be final.
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<b>34</b>	<b>GOVERNING LAW</b>
34.1	These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

<b>35</b>	<b>DATA PROTECTION</b>
35.1	The Supplier acknowledges that any Personal Data described in the scope of the Schedule (Data Protection) may be Processed in connection with the Contract. For the purposes of any such Processing, the parties agree that usually the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.
35.2	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 35 are without prejudice to any obligations and duties imposed directly on the Supplier under the Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
35.3	The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
35.4	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.

35.5	<p>The Supplier must:</p> <ul style="list-style-type: none"> <li>a) Process Personal Data only as necessary in accordance with its 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 European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must, unless prohibited by that law, inform the Purchaser of that legal requirement 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;</li> <li>b) subject to Condition 35.5(a) only Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;</li> <li>c) take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representatives: <ul style="list-style-type: none"> <li>i. are aware of and comply with the Supplier's duties under this Condition;</li> <li>ii. are subject to appropriate confidentiality undertakings with the Supplier or the relevant sub-contractor;</li> <li>iii. 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</li> <li>iv. have undergone adequate training in the use, care, protection, and handling of Personal Data.</li> </ul> </li> <li>d) implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration, or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.</li> </ul>
35.6	<p>The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.</p>
35.7	<p>If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that the 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 to protect the Personal Data. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.</p>

35.8	<p>The Supplier must provide to the Purchaser reasonable assistance including such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Supplier must notify the Purchaser if it:</p> <ul style="list-style-type: none"> <li>a) receives a Data Subject Access Request (or purported Data Subject Access Request);</li> <li>b) receives a request to rectify, block, or erase any Personal Data;</li> <li>c) receives any other request, complaint, or communication relating to either party's obligations under the Data Protection Laws;</li> <li>d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data Processed under this Contract; or</li> <li>e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;</li> </ul> <p>and such notification must take place 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 Purchaser from time to time.</p>
35.9	<p>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 Personal Data, reporting requirements for data breaches, data protection impact assessments, and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:</p> <ul style="list-style-type: none"> <li>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;</li> <li>b) notifying a Personal Data breach to the Purchaser and to the Purchaser's information management team (at <a href="mailto:dataprotection@scotborders.gov.uk">dataprotection@scotborders.gov.uk</a>) without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;</li> <li>c) assisting the Purchaser with communication of a Personal Data breach to a Data Subject;</li> <li>d) supporting the Purchaser with preparation of a data protection impact assessment; and</li> <li>e) supporting the Purchaser with regard to consulting the Supervisory Authority on various data protection matters including any Personal Data breaches.</li> </ul>
35.10	<p>At the expiry or termination of the Contract the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data and provide the Purchaser with confirmation of deletion within two working days of the deletion.</p>
35.11	<p>The Supplier must:</p> <ul style="list-style-type: none"> <li>a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Condition 35;</li> <li>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 35 and contribute as is reasonable to those audits and inspections; and</li> <li>c) inform the Purchaser if, in its opinion, an instruction from the Purchaser infringes any obligation under the Data Protection Laws.</li> </ul>

35.12	The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
35.13	If requested, the Supplier must make such records referred to Condition 35.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
35.14	Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 35.13 with minimum disruption to the Supplier's day to day business.

<b>36</b>	<b>CONTRACT MANAGEMENT</b>
36.1	The Supplier shall be obligated to co-operate with the Council in its management of the contract. This may, at the sole discretion of the Council, include the requirement to communicate, submit documents, respond to questionnaires, and any other reasonable request via the SBC Supplier Network, which is the Council's online contract management platform provided by Proactis.

**SUPPLEMENTARY NOTICES - DO NOT FORM PART OF THE CONDITIONS OF CONTRACT**

<b>37</b>	<b>CONSULTATIONS, COMPLAINTS &amp; COMPLIMENTS</b>
37.1	We like praise and understand the need to complain. We know that communicating is important and enables us to listen to your suggestions and make improvements.
<a href="#">Scottish Borders Council - Comments, suggestions and compliments</a>	

<b>38</b>	<b>LATE PAYMENT OF INVOICES</b>
38.1	Suppliers to Scottish Borders Council are requested to address complaints regarding late payment of invoices to <a href="mailto:apqueries@scotborders.gov.uk">apqueries@scotborders.gov.uk</a> . This procedure is suggested as the best practical way of ensuring problems of late payment are resolved and is not intended to interfere with Suppliers' legal rights.