



THE MORAY COUNCIL

[Enter Tender Title Here]

TENDER FOR THE

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TENDER FOR

SECTION ONE INSTRUCTIONS FOR THE RETURN OF TENDER

- 1.1 The Certificate as to Non-Collusion shall be completed, signed and dated by an authorised representative of the Tenderer.
- 1.2 The Certificate as to Canvassing shall be completed, signed and dated by an authorised representative of the Tenderer.
- 1.3 The Certificate of Compliance with Conditions for Tender shall be completed, signed and dated by an authorised representative of the Tenderer.
- 1.4 The Summary Specification and Pricing Schedule(s) shall be completed by an authorised representative of the Tenderer.
- 1.5 The Application Form shall be completed, signed and dated by an authorised representative of the Tenderer.
- 1.6 The Tender Offer letter shall be completed, signed and dated by an authorised representative of the Tenderer.
- 1.7 The completed Tender Form must be enclosed and sealed within a plain envelope using the official pre-addressed label.
- 1.8 The envelope containing the completed and priced Tender Form must be returned by Registered or Recorded Delivery Post or delivered by hand to the **Chief Legal Officer, Moray Council, Council Buildings, High Street, Elgin, Moray, IV30 1BX** to arrive no later than []
Delivery by hand shall only be accepted during the hours of 09:00 and 17:00 hours, Monday to Friday, excluding Public Holidays.
- 1.9 A tender submitted by facsimile transmission or e-mail shall not be considered.
- 1.10 Tenderers are expressly directed to note that it is entirely their own responsibility to ensure that the completed and priced Tender Document is lodged in the manner described above not later than the prescribed date and time. It should be noted that the area designated for the lodgement of tender documents also serves as a public reception and tenderers are advised to allow sufficient time to cover any likely delays in receiving attention as a result of having to queue for service.
- 1.11 In the event that the completed and priced Tender Document is not returned, for any reason, by the time and to the place specified above then the Tender will **NOT** be accepted.

SECTION TWO

SPECIFICATION

- 2.1 *This section will vary depending on the goods, services or works being procured. Where the requirements are complex or technical, it is useful to use this section to specify where the requirements are mandatory or desirable which will assist in the evaluation process. This section can also be used to request further information through specific questioning. It may also be useful to break this down into relevant sections and some examples are as shown below*
- 2.2 Background - Provision of background information and details of your requirements
- 2.3 Technical – Include requirements and/or specific questions
- 2.4 Training and Documentation required
- 2.5 Implementation – This section summarises the main activities in the procurement schedule and gives target dates for the completion of each activity

Submission of tender offers by	enter date
Short listing of preferred proposals	enter date
Discussions and site visits	enter date
Submission of best and final offer	enter date
Award of Contract	enter date
Begin implementation of Contract	enter date

SECTION THREE

CONDITIONS OF CONTRACT

1. INTERPRETATION

1.1 In this Contract:

"Approval" and "Approved" refer to the written consent of The Authority's Representative.

"Authority" means the **Moray Council**, as identified in Section 1 Form of Agreement, and includes the Authority's Representative.

"Authority's Premises" means land or buildings owned or occupied by The Authority where the Services are performed.

"Authority's Property" means any property, other than heritable property, issued or made available to the Contractor by The Authority in connection with the Contract.

"Authority's Representative" means the individual authorised to act on behalf of The Authority for the purposes of the Contract.

"Commencement Date" means the date on which the Form of Agreement is signed by The Authority.

"Commencement of Full Operations" means the commencement of the Services described in Section 3 6.2 of this contract, following successful completion of setting up operations and signature of the Form of Agreement.

"Condition" means a condition within the Contract.

"Contract" means the agreement to the Conditions between The Authority and the Contractor consisting of the following Sections, which in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed:

Section 1: Agreement
Section 2: Standard Conditions
Section 3: Specification

"Contractor" means the Person named as the Contractor in Section 1: Agreement, his permitted successors and assignees.

"Contractor's Representative" means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

"Contract Period" means the period of the duration of the Contract.

"Contract Price" means the price, exclusive of Value Added Tax, payable by The Authority to the Contractor for the performance of the Services.

"Equipment"	means all equipment, materials, consumables and plant, other than Authority's Property, to be used by the Contractor in the provision of the Services.
"Intellectual Property Rights"	means patents, trade marks, service marks, design rights (whether register able or not), applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether register able or not in any country including but not limited to the United Kingdom.
"Month"	means calendar month.
"Non-disclosure items"	means items of commercial sensitivity
"Parties"	means The Authority and the Contractor as identified in Section 1: Agreement.
"Person"	where the context allows, includes a corporation or an unincorporated association.
"Personnel"	means persons directly employed by The Authority.
"Price"	means a price entered in Section 2: Specification
"Rate"	means a rate entered in Section 2: Specification
"Section"	means any reference to a section of the contract
"Services"	means the provision of supply services set out in Section 2: Specification.
"Staff"	means all persons used by the Contractor to perform the Services.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- a) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- b) the headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;
- c) references to Conditions are references to Conditions in the Section of the Contract in which they appear, unless otherwise stated;
- d) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.

- 1.3 Each Party acknowledges that he has read and agreed to the specific language of the Contract; therefore no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

2 ENTIRE AGREEMENT

- 2.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

3 GOODS AND SERVICES

- 3.1 The Goods to be provided under this Contract are detailed in the Specification to The Authority, which specification shall form part of this Contract between The Authority and the Contractor. The Contractor shall perform the Services with due care and diligence in accordance with the provisions of the Contract. Without prejudice to the terms of said Specification and the obligations contained therein the Contractor undertakes with regard to the Goods, equipment, spare parts and every other item supplied (hereinafter referred to as "the Goods") that:

- 3.2 The Goods shall:

- a) Conform as to quantity, quality and description to the details of the Contract;
- b) be new unless specified otherwise, and in all cases be of sound material and workmanship;
- c) be to the satisfaction of the Authority and shall conform in all respects with any particulars specified in this Contract and in any variations thereto;
- d) conform in all respects with the requirements of any statutes, orders, regulations, or by-laws, which may from time to time be in force;
- e) be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

- 3.3 The Authority relies upon the skill and judgement of the Contractor in the supply of the Goods and in the performance of the Contract.

- 3.4 The Contractor shall supply free of charge such samples, certificates of analysis, tests, inspection or origin as may be requested by the Authority or that are required to comply with the requirements of any statute (already or in the future to be passed) of any government department, Local Authority or other public or competent authority.

- 3.5 It is mandatory that the selected supplier provides the necessary Product Data Sheets for each supply item for which such a Sheet is required by law: e.g. the Chemicals (Hazard Information and Packaging) Regulations 2002, or such subsequent legislation as appropriate.

- 3.6 The Product Data Sheets are to be forwarded to the ordering location at the time a product item is ordered i.e. accompanying the product.

- 3.7 Products must be clearly labelled, with labels, which conform to and comply with the current and/or future requirements of the Chemicals (Hazard Information and

Packaging) Regulations 2002, or to such legislation as is current. Evidence of the appropriate labelling of relevant products will be required on request.

- 3.8 Although the Schedule specifies the required products by brand-name or equivalent, or by detailed specification, the Council is aware that there are environmentally-friendly products available and tenderers are requested to provide additional details of such products wherever it is considered appropriate. A list of the alternative products should be given, with relevant product specifications and pricing.
- 3.9 The Goods shall be delivered in accordance with the Authority's requirements. The time of delivery shall be of the essence in this Contract, and failure to deliver within the specified time agreed between the Authority and the Contractor shall enable the Authority (at the option of the Authority) to release himself from any obligation to accept and pay for the Goods, and/or to cancel all or part of the Contract, in either case without prejudice to any of his other rights or remedies

4 PROPERTY AND RISK

- 4.1 Property and Risk in the Goods shall without prejudice to any of the rights and remedies of the Authority, remain with the Contractor until the Goods are delivered and installed at the specified delivery point to the complete satisfaction of the Authority.
- 4.2 Transfer of title shall not relieve the Contractor of any of his responsibilities or obligations under the contract.
- 4.3 The risk of loss or damage to the Goods shall remain with the Contractor until title to a property in the Goods has passed to the Authority. The Risk shall be covered in accordance with the provisions of the contract relating to Indemnity and Insurance.
- 4.4 Acceptance of title shall under no circumstances be considered as an acceptance of satisfactory performance by the Contractor of his obligations under the Contract.
- 4.5 The Contractor warrants that the Goods shall be free from all encumbrances when title in the Goods passes to the Authority

5 CONTRACT PERIOD

- 5.1 The Contract shall take effect on the Commencement Date and shall expire X years after the date specified in Section 1.

6 COMMENCEMENT OF CONTRACT

- 6.1 The Authority shall authorise the Commencement of Contract upon completion of setting up operations, if the Contractor either:
- a) has complied fully with the requirements set out in the Specification relating to the Setting up Operations; or

b) has otherwise demonstrated to the satisfaction of The Authority his capacity to deliver the Services to be provided following the Commencement of Full Operations.

6.2 If The Authority has not authorised the Commencement of Full Operations in accordance with Condition 6.1 and the date specified in Document 1: Section 1: Contract Period, for this action has passed, The Authority shall have the right, after taking into account all representations made by the Contractor, either:

a) to extend the Setting up Operations for such period as may be specified by The Authority, during which period the Contractor shall correct the fault or deficiency which caused The Authority to withhold authorisation for the Commencement of Full Operations; or

b) to terminate the contract, or to terminate the provision of any part of the Services, in accordance with Condition 29.

6.3 Where The Authority has not authorised the Commencement of Full Operations on the expiry of any extension of the Setting up Operations under Condition 6.2 a). The Authority shall have the right to repeat the exercise of the options set out in Condition 6.2.

7 CONDITIONS AFFECTING PROVISION OF SERVICES

7.1 The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the means of communication with the Authority, the supply of and conditions affecting labour, and all other matters affecting the provision of the Services, subject to all such matters being discoverable by the Contractor.

8 CAPACITY TO CONTRACT

8.1 It is a Condition of this Contract that the Contractor establishes to the best of his knowledge that there is no inhibition, restriction, or prohibition, which in any way affects that capacity of the Contractor so to Contract. In the event of any such inhibition, restriction, or prohibition existing, it will be in the option of The Authority to determine the Contract and to have the Contractor indemnify in full any loss resulting to The Authority there from.

9 CONTRACTOR'S STATUS

9.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between The Authority and the Contractor.

10 STAFF

10.1 All Staff shall possess the qualifications and competence appropriate to the tasks for which they are employed.

10.2 The Contractor shall provide at all times the number of Staff required to fulfil his obligations under the Contract.

- 10.3 Unless given prior Approval, the Contractor shall make the Key Staff available for the entire period needed to fulfil their part in the provision of the Services, whilst they are employed or engaged by the Contractor.

11 CO-ORDINATION

- 11.1 The Contractor shall co-ordinate his activities in the provision of the Services with those of The Authority's personnel and other contractors engaged by The Authority.

12 PROGRESS REPORTS & MANAGEMENT INFORMATION

- 12.1 Where progress reports are required to be submitted under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.
- 12.2 The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.
- 12.3 The contractor will be expected to supply management information as detailed to the Authority to allow monitoring of expenditure and of the take-up of the different items.

The frequency of the provision of the information will be quarterly.

In addition to management data on expenditure, data relating to supply performance – in terms of orders processed in full at first attempt from receipt of order – might be required from time to time during the agreement.

Should a management information system not be in existence at the start of the agreement, the selected supplier will be expected to plan, develop and establish one, for soonest implementation within the period of the agreement.

13 INSPECTION, REJECTION AND GUARANTEE

- 13.1 The Contractor shall permit The Authority to make any inspections or tests, which may reasonably be required, and the Contractor shall afford all reasonable facilities and assistance free of charge at his premises when the Authority requires such inspections and tests. No failure to make a complaint at the time of any such inspection shall constitute a waiver by The Authority of any rights or remedies in respect of the Services.
- 13.2 The Authority may reject any of the Goods and/or Services supplied which fail to meet the requirements specified herein. If The Authority shall reject any Goods and/or Services pursuant to this Condition, then The Authority shall be entitled (without prejudice to his remedies) either:
- a) to have the Goods and/or Services concerned replaced by the Contractor with Goods and/or Services, which comply in all respects with the requirements, specified herein.
 - b) to obtain the Goods and/or Services elsewhere by entering into another contract with some other firm or person, and all reasonable losses, expenses,

costs and charges incurred by The Authority in this connection shall be a sum recoverable from the Contractor by The Authority.

Application of the Authority's rights under this Condition 13.2 shall not prejudice or affect any right of action or remedy of The Authority in respect of the premature termination of this Contract or of any preceding breach by the Contractor of any of the Conditions contained in this Contract

- 13.3 Any Goods and/or Services rejected or returned by The Authority as described in this Condition 13 shall be returned to the Contractor at the Contractor's own risk and expense.

14 PAYMENT AND VALUE ADDED TAX

- 14.1 In consideration of the provision of the Services by the Contractor in accordance with the terms of the Contract, The Authority shall pay the Contract Price, calculated in accordance with Section 3: Specification.

- 14.2 The Contractor shall submit an original invoice to the Authorities representative quoting the contract number. The invoice shall contain all appropriate references, a detailed breakdown of the Services and the appropriate Prices or Rates and shall be supported by any other documentation required by The Authority's Representative to substantiate the invoice.

- 14.3 Payment shall be made to the Contractor within 30 days of receipt by The Authority and subject to provision of the Services to the complete satisfaction of The Authority in accordance with this Contract, (at its nominated address for invoices) of the Contractor's valid original invoice.

- 14.4 Where applicable the Authority shall pay the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.

- 14.5 The Authority may, acting reasonably, reduce payment in respect of any Services, which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of The Authority.

15 RECOVERY OF SUMS DUE TO THE AUTHORITY

- 15.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to The Authority in respect of any breach of this Contract). The Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with The Authority.

- 15.2 The Authority shall give at least 10 days' notice to the Contractor of its intention to make a deduction under Condition 15.1, giving particulars of the sum to be deducted and the contract under which the payment arises from which the deduction is to be made.

15.3 Any overpayment by The Authority to the Contractor, whether of the Contract Price or of Value Added Tax, shall be a sum of money recoverable by The Authority from the Contractor.

16 RIGHT TO SET-OFF

16.1 The Authority reserves its right at Common Law to set-off against its indebtedness to the Contractor any debt owed to it by the Contractor and any liability, damage, loss, costs, charges and expenses which it has incurred in consequence of any breach by the Contractor of this Contract or any other contract with The Authority.

17 CONFIDENTIALITY

17.1 The Contractor shall take all necessary precautions to ensure that all information obtained from the Authority under or in connection with the Contract -

- a) is given only to the minimum number of Staff and then only to the extent necessary for each member of Staff's activities in the provision of the Services; and
- b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff otherwise than for the purposes of the Contract.

17.2 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of confidential information or an infringement of any Intellectual Property Rights.

17.3 The Contractor shall not use any confidential information obtained from the Authority for the solicitation of business from the Authority.

17.4 The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Contract.

17.5 The Contractor accepts that all information submitted to the Authority may need to be disclosed and/or published by the Authority. Without prejudice to the foregoing generality, the Authority may be required to disclose information in compliance with the Freedom of Information (Scotland) Act 2002, (the decisions of the Authority in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).

The Authority will not voluntarily disclose the information to any third parties ("third parties" in this context not including employees, agents or contractors of the Authority provided such employees, agents or contractors are bound not to further use or disclose the Non-disclosure Items except to the extent instructed by the Authority and as permitted in terms of this Agreement) without the prior consent of the Contractor (such consent not to be unreasonably withheld or delayed) save as permitted below.

If the Authority receives a request under Section 1 of the Freedom of Information (Scotland) Act 2002 (or, if applicable, a request under the Environmental Information (Scotland) Regulations 2004), which includes any of the Non-disclosure Items, the Authority may seek the consent of the Contractor to release some or all of the Non-disclosure Items in response to the said request and shall do so if the Authority considers it appropriate to disclose such items, whether in terms of the public interest or otherwise. If the Contractor shall fail to respond to such a request for consent within seven days of the request being made, it shall be deemed to have consented to the release of information as requested by the Authority. In all cases the Authority may, without the consent of the Contractor, disclose any of the Non-disclosure Items if the Authority (acting reasonably) is satisfied that it is in the public interest for it to do so. In reaching this conclusion the Authority shall take into account any representations made in connection with this by the Contractor but the decisions of the Authority as to what constitutes the public interest shall be final and conclusive in any dispute, difference or question arising in respect thereof.

18 PUBLICITY

- 18.1 The Contractor shall not make any public statement relating to the existence or performance of the Contract without written prior Approval. Such approval shall not be unreasonably withheld.

19 RIGHT OF AUDIT (*Service Contracts Only*)

- 19.1 The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by The Authority and all payments made by The Authority.
- 19.2 The Contractor shall grant to The Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.
- 19.3 For the purpose of:
- a) the examination and certification of The Authority's accounts; or
 - b) any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which The Authority has used its resources,

The Accounts Commissioner for Scotland may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary.

This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

20 INDEMNITY AND INSURANCE

- 20.1 The Contractor shall indemnify The Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, or loss of or damage to property, which is caused directly or indirectly by any act or omission, negligence or default of the Contractor. This Condition 20.1 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by his act or omission negligence or default, or the negligence or default of his Staff or sub-contractors, or by any circumstances within his or their control.
- 20.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of death or personal injury, or loss of or damage to property and professional indemnity. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 20.3 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force, and General Third Party Risk Insurance with a minimum indemnity of Five Million Pounds Sterling (£5,000,000) in respect of any one incident or each incident of a series of incidents arising from any one event covering all operations of the Contractor including products liability insurance (with a minimum indemnity of Five Million Pounds Sterling (£5,000,000)). The Contractor undertakes that this insurance shall not be terminated or materially altered during the Contract period without the prior approval of the Authority and understands that this approval shall not be unreasonably withheld.
- 20.4 The Contractor shall produce to The Authority's Representative, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies. For the avoidance of doubt, the Authority shall be entitled to satisfy itself of the adequacy of the Contractor's insurance and without prejudice to any other of the rights and remedies available to it shall have the right to immediately terminate the contract without financial loss to itself where it reasonably judges that the Contractor's insurance is not adequate and the Contractor refuses to undertake to obtain within a reasonable time period such insurance as shall be deemed sufficient by the Authority.

21 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 21.1 The Contractor shall not do (and warrants that in entering the Contract he has not done) any of the following (referred to in this Condition as "prohibited acts"):
- a) offer, give or agree to give to any Officer of the Crown or servant of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with The Authority, or for showing or not showing favour or disfavour to any Person in relation to this or any other contract with The Authority;

- b) enter into this or any other contract with The Authority in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to The Authority.
- 21.2 If the Contractor, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other contract with The Authority, The Authority shall be entitled:
- a) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
 - b) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - c) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.
- 21.3 In exercising its rights or remedies under this Condition, The Authority shall:
- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
 - b) give all due consideration, where appropriate, to action other than termination of the Contract, including (without limitation to):
 - i) requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
 - ii) requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.

22 UNLAWFUL DISCRIMINATION

- 22.1 Throughout the duration of this Agreement the Contractor shall, and in addition shall ensure that its sub-contractors shall: - discharge their obligations under this Agreement and (supply the Works and perform Services) in accordance with their responsibilities under the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability Discrimination Act 1995, 2004 and 2005, Anti-discrimination in employment legislation 2003, covering religion, beliefs, sexual orientation and age, Codes of practice issued by the European Commission for Combating Discrimination, Equal Opportunities Commission, and the Commission for Racial Equality, and the Disability Rights Commission, and shall in addition discharge its obligations under this Agreement and provide the services in a manner consistent with the Council policies on equal opportunities.
- 22.2 The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition 22.1.

23 HEALTH AND SAFETY

- 23.1 The Contractor shall promptly notify The Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 23.2 Whilst on The Authority's Premises, the Contractor shall comply with any health and safety measures implemented by The Authority in respect of Personnel and other Persons working on those Premises.
- 23.3 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.

24 ASSISTANCE IN LEGAL PROCEEDINGS

- 24.1 If requested to do so by The Authority's Representative, the Contractor shall co-operate fully with The Authority (including but not limited to the provision of documentation and statements from staff) in connection with any legal proceedings, Ombudsman enquiries, inquiry, arbitration or court proceedings in which The Authority may become involved, or any relevant disciplinary hearing internal to The Authority, arising out of the provision of the Services or the Contractor's presence on The Authority's Premises, and the Contractor shall give evidence in such inquiries, arbitrations, proceedings or hearings.
- 24.2 Where the Contractor or any of his staff become aware of any incident, maladministration, accident or other matter which may give rise to an Ombudsman enquiry, claim or legal proceedings in respect of the provision or failure to provide the Services, he shall notify The Authority's Representative immediately in writing. Such notification shall include all relevant information to enable The Authority's Representative to investigate the matter fully.
- 24.3 Such information provided or assistance rendered pursuant to the obligation in this Condition 24, in whatever form, shall be at no cost to The Authority.
- 24.4 Any liability, which The Authority incurs as a result of failure by the Contractor, shall be recoverable in accordance with Condition 15 Recovery of Sums Due to the Authority.

25 TRANSFER AND SUB-CONTRACTING

- 25.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval.
- 25.2 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- 25.3 The Contractor shall not use the services of self-employed individuals without prior Approval.

26 FORCE MAJEURE

26.1 For the avoidance of doubt, it is hereby expressly agreed that an Act of God or Force Majeure shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent. The following are not considered to be an Act of God : Industrial relations difficulties, and failure to supply premises, goods, materials, consumables and/or staff or similar matters for the performance of the Contract, which a prudent and diligent Contractor could have avoided with the application of foresight.

27 TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

27.1 The Authority may terminate the Contract by written notice having immediate effect if:

- a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
- b) where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- c) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

27.2 The Authority may only exercise its right under Condition 28.1 a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify The Authority immediately when any change of control occurs.

28 TERMINATION ON DEFAULT

28.1 The Authority may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:

- a) the Contractor has not remedied the default to the satisfaction of The Authority within 31 days, or such other period as may be specified by The Authority, after service of written notice specifying the default and requiring it to be remedied; or
- b) the default is not capable of remedy; or

c) the default is a fundamental breach of the Contract.

29 TERMINATION ON CHANGE IN LEGISLATION

29.1 The Authority reserves the right to terminate this contract at any time, on giving at least [3 months] prior written notice to the [Contractor], if any legislative imperative by central government requires the Authority to alter its procurement processes for the type of goods [or services] covered by this contract. No penalty shall be payable by the Authority for early termination covered by this clause.

30 LAW AND JURISDICTION

30.1. This Contract shall be governed by and interpreted in accordance with Scots Law and shall be subject to the exclusive jurisdiction of the Courts of Scotland.

SECTION 4 CONDITIONS OF TENDER

- 4.1 The Tenderer shall complete and return the complete Tender Document, in accordance with the Instructions for Return of Tender specified in the Tender Document, with all parts duly completed in the English language.
- 4.2 Failure to return all completed and priced Tender Documents in the manner, at the time and to the place specified will result in the tender being declared invalid.
- 4.3 Alterations and qualifications to the Tender Document must not be made. Tenders containing such alterations or qualifications may be declared void.
- 4.4 Should there be any query as to the meaning of any aspect of the Tender Document then the Tenderer shall submit such query to:

[Enter Name]
[Enter Address]
[Enter Telephone Number]
[Enter e-mail address]

who shall respond both to the enquiring Tenderer, and to all other Tenderers.

- 4.5 The Council does not bind itself to accept the lowest cost Tender.
- 4.6 The Council shall not be liable for any expenses incurred by the Tenderer in preparation of his Tender.
- 4.7 All prices quoted must be in Sterling and EXCLUDE Value Added Tax.
- 4.8 The prices inserted in the Summary Specification and Pricing Schedule shall include profit, delivery, labour, fuel, insurance, and all other expenses of any kind, which under the Conditions of Contract are borne by the Contractor.
- 4.9 In submitting a Tender the Tenderer warrants that he has complied in all respects with the requirements imposed by the Tender Document.
- 4.10 In submitting a Tender the Tenderer warrants that he is of sound financial standing, that he has sufficient working capital available, that he has full power and authority to enter into and carry out the Contract and that they can provide the service in accordance with the Contract.
- 4.11 The tenderer shall be held bound by his tender for a period of 90 days following the last date for return of tenders.
- 4.12 Completed tenders will be evaluated and will have regard to price and quality of the tenderers submission, as follows:- ***[Enter any specific evaluation criteria here]***
- 4.13 Anyone has a right to receive information held by the Council under the Freedom of Information (Scotland) Act 2002 ("the Act"). As part of the Council's duties under the Act, the Council must disclose information, which forms part of the tender or Contract to anyone who requests it, unless an exemption is applied. Before releasing any information, the Council will consult the tenderer or contractor and have regard to the tenderer or contractor's comments or objections

but the ultimate decision, as to whether the information falls within one of the exemptions or not, rests with the Council as holder of the information.

**SECTION FIVE
SUPPLIER APPLICATION FORM**

Question	Comments/Response
Company Name	
Type of legal entity -e.g. PLC, Private Company, Partnership etc	
Registered Office Address	
Post Code	
Telephone Number	
Fax Number	
Web Address	
Company Registration Number	
Date Company Founded	
Date of last Audited Accounts	
Number of Employees:	
a) This country	
b) Worldwide	
Is your company part of a Group?	
If "YES", please complete a separate sheet for the holding company	
Has any Director, Partner or Associate in your organisation been involved in any firm or company, which has been liquidated or gone into receivership or has been apparently insolvent? (If so, please give details.)	This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire
Is/has any Director, Partner or Associate an employee/has been an employee of Moray Council, or any of its predecessors (Moray District Council, and Grampian Regional Council)? (If so, please give details.)	This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire
Is/has any Director, Partner or Associate currently a Councillor/been a Councillor with Moray Council, or any of its predecessors (Moray District Council, and Grampian Regional Council)? (If so, please give details.)	This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire
Please state if any Director, Partner or Associate (or person of similar status) has a relative(s) who is a Councillor or an Officer with Moray Council.	This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire

Question	Comments/Response
Have you carried out any similar work for this authority or another local authority or public body? If yes, please provide details of all such contracts carried out in the last 3 years, including current work.	This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire
The Supplier should provide, as proof of financial and economic standing, copies of the previous three years' accounts, which should include the reports of directors and auditors and accompanying notes to the accounts	This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire

EQUAL OPPORTUNITIES

Question	Yes/No
Question This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire	
1. Is it your policy as an employer to comply with the Race Relations Act 1976, Sex Discrimination Acts 1975 and 1986, Equal Pay Act 1970 and the Disability Discrimination Act 1995 and, accordingly, your practice not to treat one group of people less favourably than others because of their sex, disability, colour, race, nationality or ethnic origin in relation to decisions to recruit, train or promote employees?	
2. Please provide details of any positive measures, which your organisation takes to encourage the employment of people with disabilities within your organisation.	
3. In the last 3 years, has any finding of unlawful discrimination on the grounds of sex, colour, race, nationality, ethnic origin or disability been made against your organisation by any court or employment tribunal?	
4. In the last 3 years, has your organisation been the subject of formal investigation by the Equal Opportunities Commission, Commission for Racial Equality or the Disability Rights Commission on grounds of alleged unlawful discrimination?	
5. If the answer to question 3 is in the affirmative or, in relation to question 4, the Commission made a finding adverse to your organisation please answer question 6.	
6. What steps did your organisation take in consequence of that finding? Please attach evidence.	
7. Does your organisation observe as far as possible the Commission for Racial Equality's Code of Practice for Employment, as approved by Parliament in 1983, which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities?	

HEALTH AND SAFETY

Question This question should be removed if asked and evaluated under a Pre-Qualifying Questionnaire	Yes/No
1. Does your organisation employ an Officer responsible for Health and Safety?	
2. Does your organisation employ Safety Consultants?	
3. Have any prosecutions, prohibitions or improvement notices been served on your organisation by any Local Authority Department of Environmental Health or by the Health and Safety Executive?	
4. Will your organisation permit the Council to examine the organisation's safety performance record, including type of work undertaken and accident record over the past 3 years if required?	

AFTER COMPLETION OF THE APPLICATION FORM, PLEASE READ AND SIGN THE SECTION BELOW

On behalf of the application organisation, I certify as follows:

1. That the information supplied in this Application Form is accurate to the best of my/our knowledge and understanding and that I/we accept the conditions and undertakings in the Application Form. I understand that the provision of false information may result in rejection of this application.
2. That the Applicant Organisation consents and authorises all third parties from whom references may be sought by Moray Council to disclose information held by that third party to Moray Council for the present purposes.
3. That the information provided in this form will be used for the purposes of verifying the Applicant's eligibility, financial and economic standing, technical capacity and ability to undertake the kind and value of works referred to in the application form. This information may be disclosed by Moray Council to relevant third parties for this purpose and by signing this Application, the Applicant consents to that disclosure and to the holding of that information by Moray Council for as long as is necessary for that purpose.

FULL NAME _____

DESIGNATION _____

FOR AND ON BEHALF OF _____

DATE _____

SIGNATURE _____

To be signed by the applicant. If the applicant is a firm, then a partner should sign in his/her own name and on behalf of the firm and if the applicant is a company an authorised signatory should sign in his/her own name and on behalf of the company.

**SECTION SIX
CERTIFICATE OF NON-COLLUSION**

The essence of tendering is that the Council shall receive bona-fide competitive tenders from all those tendering. In recognition to this principle I/We certify that this is a bona-fide tender, intended to be competitive, and that I/we have not fixed or adjusted the amount of the Tender or the rates, prices and percentages quoted by or in accordance with any agreement or arrangement with any other person.

I/We also certify that I/we have not done and I/we undertake that I/we shall not do at any time, before the hour and date specified for the return of this Tender any of the following acts:-

- (a) communicating to person other than the Council, the amounts or approximate amounts of the proposed Tender.
- (b) entering into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted.
- (c) offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the work any act or thing of the sort described above.

In this certificate, the word "person" includes any person and a body or association corporate or incorporate; and "any agreement or arrangement" includes any such transaction formal or informal, and whether legally binding or not.

Signed.....

Status.....

For and on behalf of

Date

**SECTION SEVEN
CERTIFICATE AS TO CANVASSING**

I/We certify that I/we have not canvassed or solicited any member, officer or employee of the Council in connection with the acceptance of this Tender or any other Tender or proposed Tender for the services defined in the Tender Document and that no person employed by me/us or acting on my/our behalf has done any such act.

I/We further hereby undertake that I/we will not in the future canvass or solicit any member, officer or employee of the Council in connection with the award of this Tender or any other Tender or proposed Tender for the services and that no person employed by me/us or acting on my/our behalf will do any such act.

Signed.....

Status.....

For and on behalf of

Date.....

**SECTION EIGHT
CERTIFICATE AS TO COMPLIANCE WITH
CONDITIONS OF TENDER**

I/We certify that I/we have and will continue to comply with the Conditions set out in the Tender Document. In particular, I/we unconditionally and irrevocably undertake that:-

In submitting this Tender I/we warrant that I/we are of sound financial standing, that I/we have sufficient working capital available and that I/we have full power and authority to enter into and carry out the Contract.

In submitting this Tender I/we warrant that I/we have or will have adequate resources in terms of employees, plant and equipment to carry out and fulfil the Service in accordance with the requirements of the Tender Document.

Signed.....

Status.....

For and on behalf of
.....

Date.....

SECTION NINE
TENDER FOR *insert title*

Chief Legal Officer
Moray Council
Council Buildings
High Street
Elgin
Moray
IV30 1BX

Dear Sir

TENDER FOR *insert title*

I/We hereby confirm the I/we have examined the Tender Document and are fully satisfied as to my/our abilities and experience in all respects to satisfy all the requirements of the Tender Document.

I/We hereby offer to execute the contract for []in accordance with all the terms and conditions contained within the Tender Document and any further instructions that may be given in terms of the said Tender Document for those rates, prices and percentages as detailed in the Summary Specification and Pricing Schedule and the Specification of Requirements contained herein.

Signed.....

Status.....

For and on behalf of

Address.....

.....

Phone..... Fax.....

Date.....

**SECTION TEN
SUMMARY SPECIFICATION
AND PRICING SCHEDULE**

Name of Company : _____