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# PRELIMINARIES

For the purposes of this Consultancy the following terms contained in this document will be held to be amended to those shown below:

<u>Term</u>	<u>Replaced by</u>
Tender	Quotation
Tenderer/ s	Quoter/ s

## PRELIMINARY PARTICULARS

### THE CONTRACT

#### **The Contract/Sub-contract**

#### **Form, type and Conditions of Contract**

The works shall be carried out and completed in accordance with, and the rights and duties of the Employer and the Consultant shall be regulated by:

- a. The Tender (Part 1.00)
- b. The Instructions to Tenderers and Procedure on Receipt of Tenders (Part 2.00)
- c. The Tender Analysis (Part 3.00)
- d. The Conditions of Contract (Part 4.00)
- e. The Appendices (Part 4.00A)
- f. The Specification of Consultancy Services (Part 5.00),

all of which are held to be incorporated in and form part of this Contract.

Execution of the Contract shall be deemed to have taken place when a Tender and a Letter of Acceptance have been exchanged between the parties.

In the case of contracts equal to or exceeding £50,000 in value the successful Consultant will also be required to enter into a Form of Agreement with the Employer in the terms of the sample Form attached as Appendix F to the Tender Documents. This will constitute a formal contract and such contract shall embody the Tender Documents and Letter of Acceptance.

In the event of failure by the Consultant to execute a formal contract as herein before provided, the Employer shall be entitled to terminate the contract by notice to the Consultant.

# **PART 4.00: CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES**

The Conditions of Contract contained herein are based on the Contract Document for the Procurement of Consultancy Services as published by the Society of Construction and Quantity Surveyors Ltd; with amendments and modifications by Angus Council.

## **PART 4/1: DEFINITIONS**

In this Contract the following words and phrases shall have the following meanings:

**Acceptance.** Acceptance of Offer shall be in writing, by letter, from the Employer to the Consultant and the Date of Acceptance will be held to be the date of the Letter of Acceptance.

**Commencement Date** shall mean the date stated in the Employer's Letter of Acceptance of the Consultant's Tender.

**Completion Date** shall mean the date certified by the Employer as being the date upon which the Consultant has completed the services as defined within the Consultancy Contract.

**Construction Contract** shall mean the contract or all of the several contracts between the Employer and the Construction Contractors for the Construction Works to which this Consultancy Contract relates. The form(s) of Construction Contract to be adopted for the commission will be as specified in Appendix A, Section 1 of the Tender Documents

**Construction Contract Sum** shall mean the amount or the aggregated amounts (exclusive of VAT) of the accepted Construction Contract(s) Sum(s) for the execution of the Construction Works, an estimate of which is given in Appendix A of the Tender Documents.

**Construction Works** shall mean the works to be executed by the Construction Contractor(s) as briefly described in Appendix A, Section 1 of the Tender Documents.

**Consultancy Contract** shall mean the contract between the Employer and the Consultant for the provision of Consultancy Services, detailed herein, in respect of the Construction Contract(s) and may be a contract for the provision of Consultancy Services in respect of a single or several disciplines.

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**Consultancy Contract Documents** shall be interpreted as meaning the Tender Documents and the Employer's Letter of Acceptance of Tender.

**Consultancy Contract Period** shall mean the period commencing on the Commencement Date and terminating upon the Completion Date.

**Consultancy Fee** shall mean the amount of fee (exclusive of VAT) entered in the Form of Tender and adjusted in accordance with the terms of the Consultancy Contract.

**Consultancy Services** shall mean the services to be provided by the Consultant under the terms of these Conditions and the Specification of Consultancy Services.

**Consultant** shall mean the party or parties whose tender has been accepted by the Employer for the provision of the services defined in the Consultancy Contract.

**Contract.** Execution of the Contract shall be deemed to have taken place when a Tender and a Letter of Acceptance have been exchanged between the parties.

**Contractor** shall mean the company, firm or persons contracted to carry out construction works under the terms of the construction contract(s) for the project works.

**Days** shall mean calendar days.

**Design Team** shall comprise ALL the consultants appointed or nominated by the Employer to provide Consultancy Services in respect of the Construction Contract as defined in Appendix A of the Tender Documents and may incorporate Consultants employed direct by the Employer.

**Design Team Programme** shall mean the programme prepared by the Lead/ Co-ordinating Consultant in consultation with the Design Team, defining the dates by which the individual members of the Design Team shall progressively provide their services to comply with the requirements of the Project Programme.

**Employer** shall mean Angus Council or the person or persons duly authorised to act on the Council's behalf, as stipulated under the terms of this Contract. The officer appointed by the Employer and duly authorised to act on the Council's behalf, under this Contract, is the Head of Property.

**Head of Property** shall mean the officer currently in the post held within Angus Council, Corporate Services Department. The Consultant will act under direction from and report to this officer in all matters regarding the Consultancy Contract.

**Lead/ Co-ordinating Consultant** shall mean the party appointed or nominated by the Employer, or in the case of a multi consultancy contract, designated by the Employer to provide the services defined in the Specification of Consultancy

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Services: Lead/ Co-ordinating Consultant in respect of the Consultancy Contract and the Construction Works.

**Letter of Acceptance** shall mean the letter prepared by the Employer and accepting the Consultants Tender.

**Project** shall mean the undertaking as described in Appendix A of the Tender Documents.

**Project Cost Plan** shall mean a statement of how the Design Team proposes to distribute the Employer's budget on the elements of the project. The cost plan shall be prepared using the BCIS Standard Form of Cost Analysis format.

**Project Programme** shall mean the Project Programme included in Appendix A of the Tender Documents and which defines the dates within which the provision of Consultancy Services shall be carried out or the most recent amendment thereto as revised in accordance with the terms of Condition 11 of these Conditions.

**Stages** shall mean the activity stages used in the Specification of Consultancy Services.

**Sub-Contract** shall mean any part of the service carried out by others on behalf of the Consultant in accordance with the terms of Condition 6 of these Conditions.

**Tender** shall mean the fee offer submitted by the Consultant using the Form of Tender and Tender Analysis; based on the Instructions to Tenderers and Procedure on Receipt of Tenders; the Preliminaries and Conditions of Contract and Appendices and the Specification of Consultancy Services.

**Tender Documents** shall comprise the following:

- Part 1.00 – Form of Tender
- Part 2.00 – Instructions to Tenderers and Procedure of Receipt of Tenders
- Part 3.00 – Tender Analysis
- Part 4.00 – Preliminaries and Conditions of Contract
- Part 4.00A - Appendices
- Part 5.00 – Specification of Consultancy Services

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### **PART 4/2: STANDARD CONDITIONS OF CONTRACT**

#### 1 ALTERATIONS TO CONTRACT

- 1.1 Without prejudice to any other term or condition of the Consultancy Contract, no omission from, addition to or variation in the terms of the Consultancy Contract shall be valid or of any effect unless instructed in writing by the Employer
- 1.2 This Consultancy Contract comprises and incorporates all the contract documents and these are taken to be mutually explanatory of one another. Should there be any inconsistency between these Standard and Supplementary Conditions and any other Contract Documents then the Standard and Supplementary Conditions shall prevail except that, should any of the other Contract Documents expressly state that they (or any part of them) prevail over the Standard and Supplementary Conditions then they shall do so (to the extent stated) in preference to these Standard and Supplementary Conditions. Should there be a discrepancy between the Standard Conditions and the Supplementary Conditions then the Standard Conditions shall prevail except that, should any Supplementary Condition expressly state that they (or any part of them) prevail over the Standard then they shall do so (to the extent stated).
- 1.3 If the Consultant discovers any discrepancy, ambiguity, error, omission or mis-statement in the Consultancy Contract the Consultant shall immediately refer the same in writing to the Employer who shall issue instructions in regard thereto.
- 1.4 Any such discrepancy, ambiguity, error, omission or miss-statement shall not vitiate the contract nor release the Consultant from any or all of the Consultant's obligations under this Contract.

#### 2 CONSULTATION, LIAISON AND AGREEMENT

- 2.1 In matters requiring consultation or liaison with, or the agreement of, the members of the Design Team, the Employer reserves the right to make the final decision. The Employer's decision shall not relieve the Consultant of any responsibility under the Consultancy Contract.

#### 3 CONSULTANTS OBLIGATIONS

- 3.1 The Consultant shall, upon and subject to the Conditions of the Consultancy Contract, supply the services described by and referred to in the Specification of Consultancy Services in respect of the Project and all matters relating to the Project as defined in Appendix A to the Tender Documents.
- 3.2 The Consultant is deemed to be familiar with the Conditions of Contract used for the Construction Contract(s) and will observe, perform and

## SERVICES - PRELIMINARIES AND CONDITIONS OF CONTRACT

- comply with such provisions in order that the Consultant does not render the Employer in breach of contract with the Contractor(s).
- 3.3 The Consultant shall supply services in the stages identified in the Specification of Consultancy Services and referred to in Appendix A to the Tender Documents, in the Tender Analysis and in accordance with the Project Programme. The Consultant's attention is drawn to the requirement for the Consultant to be familiar with the Specification of Consultancy Services for the other members of the Design Team.
- 3.4 The Consultant shall not proceed to provide any service in respect of any individual stages without the prior confirmation of the Employer.
- 3.5 The Consultant shall exercise reasonable skill, care and diligence in the carrying out of the Consultancy Services and shall exercise control, supervision, management and direction as to the method and manner of providing the Consultancy Services to obtain the results required by the Employer under the terms and Specification of Consultancy Services.
- 3.6 Payment shall be made in respect of the provision of services additional to those included in the Specification of Consultancy Services upon which the Consultancy Contract is based, only with the prior written approval of the Employer, excepting that the Consultant shall be reimbursed in respect of such additional Services without such written consent where they are provided:
- .1 in emergency situations where risk of injury or damage to life or property is involved
  - .2 to the clear advantage of, or benefit to, the Employer where circumstances do not permit prior approval to be sought.
- 3.7 The Consultant shall not, without the prior written consent of the Employer, change, or issue an instruction to change significantly, matters such as location of the site, planning, structure, layout, appearance, specification, method of construction, cost, etc. of the proposed Construction Works during the provision of the Consultancy Services after approval has been given to these matters by the Employer at an earlier date. In requesting such consent the Consultant shall provide in writing the reasons for the proposed change and the details of consequences of the change including the effect of such change on the Project Cost Plan or Construction Contract Sum and the Project Programme.
- 3.8 The Consultant shall not, without the prior written consent of the Employer, change or issue an instruction to change the Conditions of Contract for the Construction Contract after the said contract has been entered into.

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### 4 AGENCY

4.1 Neither the Consultant nor any employee of the Consultant is and shall not in any circumstance hold the Consultant out as being the servant or agent of the Employer other than as specifically empowered in the terms of the Consultancy Contract and shall in no circumstances hold out as having the power to bind the Employer or make, vary, discharge or waive any by-law or regulation of any kind.

### 5 CONFIDENTIALITY

5.1 The Consultant and the Consultant's staff shall regard as confidential and shall not disclose to any person other than upon the specific instructions of, and in terms of such instruction by the Employer, any information acquired by the Consultant or the Consultant's staff in or in connection with the provision of the service concerning the Employer, the Employer's staff, customers or procedures.

5.2 The Consultant shall comply with the security regulations of the Employer including any made for the purpose of the Data Protection Act (refer to Condition 40.8). In particular, but without prejudice to the generality of the foregoing, the Consultant shall not read, and shall prohibit employees from reading, any documents belonging to or concerning the Employer, the Employer's staff or customers except in the pursuance of the Consultant's obligations under the terms of the Consultancy Contract (whether printed, typed or handwritten and whether or not produced by computer or word processor), the contents of any documents however produced or information displayed on any screen, or listen to the contents of any tape or electronically produced recording.

5.3 The Consultant shall indemnify the Employer against all claims, proceedings, costs and expenses in respect of any damage or distress suffered by any person arising from the Consultant or their staff, having obtained without the consent of the Employer, personal data within the meaning of the Data Protection Act, directly or indirectly disclosing or publishing the data to any person or allowing improper access to the data, or in any event, directly or indirectly causing the loss damage or destruction of such data.

### 6 ASSIGNATION AND SUB-LETTING

6.1 The Consultant shall immediately inform the Employer in writing of any change:

.1 in the status of the Consultant

.2 in the names or numbers of partners or directors

6.2 The Consultant shall not transfer, assign, directly or indirectly, or otherwise dispose of the Consultant's benefit or interest in the Consultancy Contract



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or any part thereof to any persons whatever without the prior written consent of the Employer

- 6.3 The Consultant shall not sub-let the whole of the Consultancy Contract.
- 6.4 The Consultant shall not sub-let any part of the Consultancy Contract without the prior written consent of the Employer. Such consent, if granted, shall not relieve the Consultant from any liability or obligation under the terms of the Consultancy Contract and the Consultant shall be responsible for all acts, omissions or defaults of the sub-contractor and the sub-contractor's staff.
- 6.5 The Consultant shall ensure that any sub-contractor employed shall be bound by the same terms and conditions, so far as appropriate, as pertain to the Consultancy Contract. The Consultant shall, upon request, provide the Employer with copies of the sub-contract terms and conditions.
- 6.6 The Consultant shall be responsible for all work, acts, omissions and defaults of any sub-contractor as if they were the work, acts, omissions and defaults of the Consultant.
- 6.7 The Consultant shall be responsible for ensuring that all information requiring to be provided by such sub-contractors is provided in compliance with the Design Team Programme.
- 6.8 Any sub-contract to which this condition refers shall terminate immediately upon the termination (for any reason) of the Consultant's employment under the terms of the Consultancy Contract.

## 7 INDEMNITY TO THE EMPLOYER

- 7.1 The Consultant shall be liable for and shall indemnify the Employer, its officers, employees and agents against any expense, liability, loss, claims or proceedings whatsoever arising under statute or at common law in respect of:

.1 any loss of or damage to property, heritable or moveable, including any infringement of third party patents, copyrights and registered designs arising out of or in the course of or in connection with the provision of the service or the use by the Consultant or the Consultant's staff of Employer's premises; and

.2 personal injury to, or the death of any person whomsoever, arising out of or in the course of or caused by the carrying out of this Contract or the use or the occupation by the Consultant or the Consultant's staff of the Employer's premises; except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible, and

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.3 any failure in compliance with any statutes, orders, regulations, by-laws and other provisions to be observed in connection with the Contract;

The Consultant shall be liable for, and shall indemnify the Employer against any expense, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal, insofar as such injury or damage arises out of or by reason of the carrying out of the Contract, and to the extent that the same is due to any negligence, omission or default of the Consultant, the Consultant's servants or agents.

### 8 INSURANCE

8.1 Without prejudice to the Consultant's liability to indemnify the Employer under Condition 7, the Consultant shall throughout the Contract Period maintain in full force, with a reputable insurer, such insurances as are necessary to cover the liability of the Consultant and the Employer in respect of the matters specified in Condition 7 and ensure that the Employer's interest is endorsed on such insurances and, without prejudice to the foregoing generality, shall maintain in full force the following insurances:

.1 employers liability insurance to comply with the Employers Liability (Compulsory Insurance) Act 1969 any statutory instruments or orders made thereunder covering injury or death to any of the Consultant's staff arising out of or in the course of their duties in the performance of this Contract; and

.2 third party risk insurance with a minimum indemnity as stated in Appendix A to the Tender Documents in respect of any one claim or series of claims arising from any one event covering all operations of the Consultant including among other risks the contractual liability assumed herein by the Consultant and including products liability insurance; and

.3 motor vehicle third party property damage with a minimum indemnity as stated in Appendix A to the Tender Documents.

8.2 The Consultant shall maintain in full force, with reputable insurers, suitable professional indemnity insurance for the Consultancy Services. The limit for each and every claim is to be at least that stated in Appendix A to the Tender Documents or, where the company's declared gross fee income earned on UK schemes in their last financial year exceeds £1,000,000, at least twice that gross fee income up to a maximum cover of £5,000,000 (unless the company has required a greater amount).

The Consultant must hold and maintain such insurance for a period of five years from the date of the completion of the Contract.

The requirement to hold and maintain Professional Indemnity Insurance applies equally to any subcontractor employed by the Consultant.

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- 8.3 The Consultant shall submit proof of insurances held at tender stage and immediately upon the commencement of the Consultancy Contract provide the Employer with appropriate evidence of insurance and thereafter annually throughout the Consultancy Contract period. And at such times as required, supply to the Employer copies of all insurance policies, cover notes, premium receipts and other documents necessary to confirm compliance with Conditions 8.1 and 8.2.
- 8.4 If the Consultant defaults in taking out or in maintaining insurances as provided for in Condition 8.1 the Employer may insure against any liability or expense which may be incurred arising out of such default and a sum or sums equivalent to the amount paid or payable by the Employer in respect of premiums and administrative costs therefore may be deducted by the Employer from any monies due or to become due to the Consultant under this Consultancy Contract or any other contract between the Employer and the Consultant or such amounts may be recoverable by the Employer as a debt.
- 8.5 If the Consultant defaults in taking out or maintaining in full force professional indemnity insurance as provided for under the Terms of Condition 8.2 the employment of the Consultant under this Contract may, at the discretion of the Employer be terminated in accordance with Condition 12 or the Employer may insure against any liability or expense which may be incurred arising out of such default and a sum or sums equivalent to the amount paid or payable by the Employer in respect of premiums and administrative costs therefore may be deducted from any monies due or to become due to the Consultant under the Consultancy Contract or any other contract between the Employer and the Consultant or such amounts may be recoverable by the Employer as a debt.

## 9 VARIATIONS TO THE CONSULTANCY SERVICES

- 9.1 The Employer shall have the right at any time to issue instructions to the Consultant to undertake, and the Consultant shall comply with any such instruction which constitute a variation to the Consultancy Services contracted for:
- .1 any revision to the project which may involve revision of the Consultancy Services; and
  - .2 any revision to the Consultancy Services which may include additions, omissions or substitutions; and
  - .3 any revision to parts of the Consultancy Services already completed in accordance with the Consultancy Contract; and

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.4 accelerate the programme or reschedule the resourcing of the work, within the limits of practicality, in order to recover all or any delay which has occurred other than delay on the part of the Consultants.

- 9.2 If the Consultant considers that there has been a material change in the undertaking of the Consultancy Contract, for which a variation should be issued; the Consultant, before proceeding with any service affected by such an event, shall request immediately in writing that the Employer issue a variation. Any such request shall include details of the event and provide supporting documentary evidence and an estimate of the effect on the Consultancy Contract. Failure to submit a written request for a variation and to provide supporting evidence and estimates within fourteen days of the event shall result in the Consultant forfeiting any right to receive such variation and any rights concerning the adjustment to the Consultancy Fee.

The Consultant shall also provide the Employer with an estimate of any cost and/or programming implications in complying with a variation before commencing any work on the said variation to the Consultancy Services.

- 9.3 The Consultancy Fee shall be subject to adjustment only as a result of a written variation issued by the Employer.
- 9.4 A variation shall not affect the rights and obligations of the parties except as expressly provided for in that variation. Any service, performed as a result of a variation, shall be governed by all the provisions of the Consultancy Contract.

## 10 SITE STAFF

- 10.1 Where the Consultant is required by the Employer to provide staff to be based on site permanently during the period of the Construction Works or particular sections of these Works or continuously for a stated period and this requirement is not specified in the Consultancy Contract then the Consultant shall be entitled to additional payment for that service providing that a written instruction on the matter is issued by the Employer. The amount of the additional cost shall be agreed between the Employer and the Consultant.

## 11 PROJECT PROGRAMME

- 11.1 The Project Programme given in Appendix A of the Tender Documents is based upon the best information available to the Employer at the date on which tenders for the Consultancy Contract are invited and will not be subject to change other than on the written instruction of the Employer.
- 11.2 The Design Team shall adhere strictly to the requirements of the Project Programme and shall prepare, in conjunction with the Lead/ Co-ordinating Consultant for submission to the Employer, a detailed Design Team

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Programme identifying each Consultant's input to demonstrate how the requirements of the Project Programme will be met.

- 11.3 The foregoing programmes shall be reviewed at each stage of the project development and shall be amended only with the written approval of the Employer.

### 12 TERMINATION BY THE EMPLOYER

- 12.1 The Employer shall have the right, by giving notice, to terminate all or part of the Consultancy Services with immediate effect:

.1 at the completion of any of the following times as referred to in the Specification of Consultancy Services:

Stage 1 - Outline Proposals

Stage 2 - Detailed Proposals or Final Proposals

Stage 3 - Production Information

.2 at any other time during the Consultancy Contract.

- 12.2 If the Consultant, where required to do so, fails to provide a Parent Company Guarantee accordance with the terms of Condition 18 of these Conditions, the Employer shall be entitled, by written notice sent to the Consultant, to treat such failure as a breach of contract and terminate the Contract. The Consultant shall thereupon be liable to reimburse the Employer the difference between the amount of the successful Tender Fee and the amount of any subsequently accepted by the Employer including all additional expenses incurred by the Employer as a result of the said failure.

- 12.3 Without prejudice to any other right or remedies which the Employer may possess in the event of any default on the part of the Consultant in respect of one or more of the following, that is to say if the Consultant:

.1 without reasonable cause wholly suspends the carrying out of the Service or any part of the Service under the Consultancy Contract before completion thereof; or

.2 fails to proceed regularly and diligently with the Service or part thereof and in accordance with the Project and Design Team Programmes; or

.3 fails to comply with the provisions of Conditions 3, 5, 8.2 and 11 of the Consultancy Contract

then the Employer may issue to the Consultant a notice specifying the default. If the Consultant either, shall continue such default for 14 days

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- after receipt of such notice or shall at any time thereafter further breach the terms of the Consultancy Contract then the Employer may within 10 days after such continuance, repetition or further breach of Contract, by written notice, forthwith terminate the employment of the Consultant provided that such notice shall not be given unreasonably or vexatiously.
- 12.4 In the event of the Consultant or any partner, principal or director of the Consultant being suspended or expelled from membership of the Consultant's relevant professional institute or institution, the Employer may terminate the employment of the Consultant under the terms of the Consultancy Contract by giving the Consultant seven days written notice of such termination.
- 12.5 In the event of a professional liquidator being appointed to control the affairs of the Consultant, the Employer may terminate the employment of the Consultant under the terms of the Consultancy Contract by giving the Consultant seven days written notice of such termination.
- 12.6 In the event of the Consultant becoming bankrupt or making a composition or arrangement with the Consultant's creditors or having a proposal in respect of the Consultant's company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or having application made under the Insolvency Act 1986 in respect of the Consultant's company to the Courts for the appointment of an administrator or having the Consultant's estate sequestered or becoming insolvent as defined in the Bankruptcy (Scotland) Act 1985 or entering into a trust deed for the Consultant's creditors or having a winding up order made (except for the purposes of reconstruction) or a resolution for voluntary winding up passed or a receiver or manager for the Consultant's business or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act 1986, appointed, or possession taken by or on behalf of the holder of any debenture secured by a floating charge, the employment of the Consultant under the terms of this Consultancy Contract shall forthwith automatically be terminated.
- 12.7 In the event of the employment of the Consultant being terminated under the provisions of Conditions 12.5 and 12.6 hereof, the said employment may be reinstated and continued, at the discretion of the Employer, the Consultant and the Consultant's trustee in bankruptcy, provisional liquidator, receiver, manager or administrative receiver as the case may be shall so agree.
- 12.8 The Employer may forthwith terminate the employment of the Consultant and recover from the Consultant the amount of any loss or damage resulting from such termination, if the Consultant shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement of reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution

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of the Consultancy Contract or any other contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to the Consultancy Contract or any other contract with the Employer, or if the like acts shall have been done by any person employed or acting on the Consultant's behalf (whether with or without the knowledge of the Consultant), or if in relation to any contract with the Employer, the Consultant or any person employed or acting on the Consultant's behalf shall have committed any offence under the Prevention of Corruption Acts 1889-1916 or shall have given any fee or reward, the receipt of which is an offence under Section 68(2) of the Local Government (Scotland) Act 1973.

12.9 In the event of the Employer giving the Consultant notice of termination of all or any part of the Consultancy Services the notice shall become effective on the date specified therein or in the absence of any specified date on the date of receipt of the notice whereupon the Consultant shall immediately:

.1 cease performance of the Consultancy Services or such part thereof as may be specified in the notice.

.2 end the Consultancy Services provided to the Employer in an orderly and professional manner.

.3 allow the Employer full rights of access to the relevant part of the Consultancy Services completed so far and, subject to the Employer having paid the consultants fees for services satisfactorily completed to date, shall within 30 days of the termination, deliver to the Employer copies and reproductions of drawings, specifications, requisitions, calculations, programmes, testing, plans, schedules and all other data or documents prepared by the Consultant or any Sub-contractor.

12.10 In the event of the employment of the Consultant being terminated under condition 12.1.1 the Consultant's entitlement to payment shall be the aggregate of:

.1 the proportion of that part of the Consultancy Fee which is defined in Appendix A to the Tender Documents which relates to the stage or stages which have been completed to the reasonable satisfaction of the Employer at the date of termination; and

.2 any costs incurred in respect of stages for which instructions to proceed were not given under the terms of Condition 3.3 providing the Employer had given the Consultant prior written consent to incur such costs; and

.3 a proportion of any amount included in the Consultancy Fee Tender Analysis in respect of any part of a stage of the Specification of Consultancy Services which has been undertaken to the reasonable satisfaction of the Employer; and

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.4 payments resulting from a variation to the Consultancy Contract issued under Condition 9; and

.5 reimbursable expenses properly incurred up to the date of termination.

12.11 In the event of the employment of the Consultant being terminated under the terms of Condition 12.1.2 above the Consultant's entitlement to payment shall be:

.1 the total value of the Consultancy Services stages completed to the reasonable satisfaction of the Employer at the date of termination including a proportion of the costs of any Service stage commenced but not completed at that date, the proportion to be assessed on the basis of the appropriate information and details supplied to the Employer by the Consultant.

.2 any sum ascertained in respect of direct loss and/or expense arising out of the termination but excluding any payments in the respect of:

.1 loss of profit on any services included in the Consultancy Contract but which, by reason of the issue of the notice of termination, will not be provided; and

.2 any cost, loss or expense incurred by reason of the redundancy of the Consultant, staff employed by the Consultant or any Sub-Contractor.

.3 the cost of services or materials properly ordered in connection with the Consultancy Services for which the Consultant shall have paid or for which the Consultant is legally bound to pay, and on payment for such services or materials by the Employer, the said services or materials shall become the property of the Employer.

12.12 In the event of the employment of the Consultant being terminated under the terms of Condition 12.3 or 12.4 or 12.5 or 12.6, and so long as it has not been reinstated and continued under condition 12.7:

.1 the Employer may employ and pay other persons to carry out and complete the Service; and

.2 the Consultant shall allow or pay to the Employer the amount of any direct loss and/or expense caused to the Employer by the termination

12.13 Until after the completion of the Service under Condition 12.12.1 the Employer shall not be bound by any provision of this Consultancy Contract to make any further payments to the Consultant, but upon such completion and verification within a reasonable time of the account therefore the Employer shall certify the amount of expenses properly incurred by the



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Employer and the amount of any direct loss and/or expense caused to the Employer by the termination and, if such amounts when added to the monies paid to the Consultant before the date of termination exceed the total amount which would have been payable on due completion of the Service in accordance with the Consultancy Contract, the difference shall be a debt payable to the Employer by the Consultant: and if the said amounts when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Employer to the Consultant.

### 13 TERMINATION BY THE CONSULTANT

13.1 Without prejudice to any other rights or remedies which the Consultant may possess:

.1 the Consultant shall give immediate notice in writing to the Employer of any situation arising from force majeure which makes it impractical to carry out any of the specified duties and agree with the Employer a suitable course of action.

.2 should the Employer fail to make due payment in accordance with the Consultancy Contract the Consultant may give 28 days notice to terminate the Consultancy Contract. Should the Employer continue in such default for 7 days after receipt of the notice of termination the Consultancy Contract shall be deemed to be terminated from that date.

13.2 In the event of termination under Condition 13.1.2 and after taking into account the amounts previously paid under the Consultancy Contract the Consultant shall be paid by the Employer:

.1 the total value of the Consultancy Services stages completed to the reasonable satisfaction of the Employer at the date of termination including a proportion of the costs of any Service stage commenced but not completed at that date, the proportion to be assessed on the basis of the appropriate information and details supplied to the Employer by the Consultant.

.2 any sum ascertained in respect of direct loss and/or expense arising out of the termination but excluding any payment in respect of:

.1 loss of profit on any Services stages included in the Consultancy Contract but which, by reason of the issue of the notice of termination, will not be provided; and

.2 any costs, loss or expense incurred by reason of the redundancy of the Consultant, staff employed by the Consultant or Sub-Contractor.

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.3 the cost of Services or materials properly ordered in connection with the Consultancy Services for which the Consultant has paid or for which the Consultant is legally bound to pay, and on payment for such services or materials by the Employer, any service or materials shall become the property of the Employer.

### 14 SUSPENSION

14.1 The Employer may suspend the performance of any or all of the Services which the Consultant has contracted to provide by giving reasonable notice in writing.

14.2 The Employer may instruct the Consultant to resume the performance of the Services suspended as described in Condition 14.1 by giving reasonable notice in writing.

14.3 If the Employer, having issued a notice of suspension under Condition 14.1, does not thereafter instruct the Consultant to resume performance of the Service within a period of twelve months after the date of the notice of suspension then the Consultant shall make written request for an instruction to resume and if the Employer does not issue such instruction within a period of 30 days then the Consultant will be entitled to, and may, treat the Consultancy Contract as terminated unless the Employer has agreed other arrangements in writing with the Consultant.

14.4 If the Employer, having issued a notice of suspension under Condition 14.1 issues a notice to resume performance of the Service:

.1 within six months after the date of the notice of suspension the Consultant will not be entitled to any adjustment to the Consultancy Fee because of the suspension; and

.2 after a period of twelve months after the date of the notice of suspension the Consultant will be entitled to recover from the Employer any additional costs or expenses which may have occurred because of the suspension.

### 15 CONTRACT COMPLETION

15.1 When the Consultant considers that the Consultancy Services have been performed and completed in accordance with the terms of the Consultancy Contract, the Consultant shall notify the Lead/ Co-ordinating Consultant accordingly.

15.2 When the Employer is satisfied that the Consultancy Services have been performed and completed in accordance with the terms of the Consultancy Contract, the Employer shall issue to the Consultant a Certificate of Completion.

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15.3 The issue of a Certificate of Completion by the Employer shall not relieve the Employer or the Consultant from any obligations or liabilities under the provisions of the Consultancy Contract or at Common Law.

### 16 DAMAGES

16.1 If the Consultant:

.1 fails to provide or delays the provision of any or all Services under this Consultancy Contract; or

.2 fails to comply with the Specification of Consultancy Services; or

.3 fails to comply fully and timeously with the Consultant's obligations under the Construction Contract; or

.4 issues instructions under the Construction Contract, for reasons attributable solely to the act or omission of the Consultant (other than those required due to ground or other site conditions which the Consultant could not reasonably have foreseen prior to the commencement of the Construction Works);

then the Employer shall issue to the Consultant a written notice to that effect specifying such failure or delay or act or omission and the consequences thereof for the Project Programme.

If the Employer issues a written notice to the effect that the Consultant has failed to complete the Consultancy Contract in accordance with the Project Programme the Employer hereby gives notice that Liquidated and Ascertained Damages will automatically be deducted at the rate stated in Appendix A of the Tender Documents.

16.2 If as a consequence of any failure or delay or act or omission of the Consultant and subject to the issue of written notification under the terms of Condition 16.1:

.1 completion or achievement of any stage or part of stage of the Project Programme is delayed, then the Consultant shall, as the Employer may require, pay or allow to the Employer a sum calculated

.1 in respect of delay to the Project Programme occurring during any or all of the Brief/Outline Proposals, Detailed Proposals and Final Proposals/ Production Information stages of the Consultancy Services, at the rate of liquidated and ascertained damages stated in Appendix A to these conditions; and

.2 in respect of delay to the Project Programme occurring during the Post Contract stage of the Consultancy Services, as an aggregate of any and all liquidated and ascertained damages not

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recoverable by the Employer under the Construction Contract in respect of loss and/or expense as a result of such delay to the Construction Works.

.2 completion or achievement of any stage or part of stage of the Project Programme is not delayed but the Employer has thereby incurred loss and/or expense

then the Consultant shall, as the Employer may require, pay or allow to the Employer the amount of any such loss and/or expense properly incurred.

16.3 If the Consultant includes/ agrees to inclusion of, amounts in an interim or final certificate paid by the Employer under the terms of the Construction Contract, then the Consultant shall, as the Employer may require, pay or allow the Employer:

.1 in respect of an error or misjudgement giving rise to an over payment;

.1 where the Employer is able to recover such amounts, the aggregate of any costs reasonably incurred by the Employer in obtaining the recovery of the said amounts and the cost of borrowing the said amounts calculated from the date of issue of the said certificate to the date of recovery; or

.2 where the Employer is unable to recover such amounts, the aggregate of the said amounts and any costs reasonably incurred by the Employer in endeavouring to obtain the recovery of the said amounts and the cost of borrowing the said amounts calculated from the date of issue of the certificate to the date of payment by the Consultant to the Employer

.2 in respect of goods or materials or workmanship which are subsequently found to be defective or not in accordance with the Construction Contract Documentation and which the Consultant ought reasonably to have known prior to the issue of the said certificate:

.1 where the Employer is able to recover the expense or rectifying such goods, materials or workmanship, the aggregate of any costs reasonably incurred by the Employer in obtaining recovery of the said amounts and the cost of borrowing the said amounts calculated from the date of issue of the said certificate to the date of recovery of the said amounts; or

.2 where the Employer is unable to recover the expense of rectifying such goods, materials or workmanship, the aggregate of the said amounts and any costs reasonably incurred by the Employer in endeavouring to obtain recovery of the said amounts and the cost of borrowing the said amounts calculated from the

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date of issue of the said certificate to the date of completion of the remedial works.

- 16.4 If the completed Project is found to contain defects arising from the design and or specification of the Consultant, then the Consultant shall, either at the Consultant's own expense or as the Employer may require, pay or allow to the Employer the aggregate of the expense of remedying such defects and the cost of borrowing the amount of the said expense calculated from the date of issue of the final certificate under the Construction Contract to the date of completion of the remedial works.
- 16.5 If the aggregate of the Total Construction Cost at completion of the final account and the amount of fluctuations in building costs, if applicable, exceeds the aggregate of the estimated Total Construction Cost stated in Appendix A of the Tender Documents and the amount of variations approved by the Employer and the actual amount of fluctuations in building costs, if applicable, then the Consultant shall, as the Employer may require, pay or allow to the Employer the amount of said excess, subject to the Employer having the right to withhold from any payments due to the Consultant at any stage the amount of excess which may reasonably be anticipated at that stage to arise.
- 16.6 If any members of the Employer's design team are involved in incurring additional project time or are disrupted as a result of a failure by the Consultant to comply with the requirements of the contract then the Consultant shall pay to the Employer the recorded expenses of the Employer which may comprise inter alia additional time incurred due to the following:
- 1 changes required by and attributable to the Consultant during the progress of the work of other design team members.
  - 2 disruption or delay to other design team members as a result of non or late receipt of information from the Consultant.
  - 3 raising and recording queries and making amendments to the scheme drawings or documents necessitated by lack of information from the Consultant or information lacking in clarity.
  - 4 preparation or major revision of Specifications for the Consultant's approval in place of production of same by the Consultant.
  - 5 remeasurement of work in place of adjustment by variation order and necessitated by the volume of changes required by and attributable to the Consultant.
- 16.7 The Employer reserves the right to consider having the Consultant pay/ recovering from the Consultant, the Employer's costs incurred due to the following events:
- 1 where the Consultant fails to provide information reasonably required by the Employer's design team in accordance with the project programme which causes or contributes to, directly or indirectly,

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either the project start on site date or the project completion date, or both to be delayed.

- 2 where contract extensions of time to the Building Contract are necessitated as direct result of variations to the design required by the Consultant, or the late issue of drawings or specifications, or other instruction for which the Consultant is responsible (other than those due to ground or other site conditions which the Consultant could not reasonably have foreseen prior to the commencement of the work on site).

16.8 If the Employer becomes liable under a Building Contract with a contractor to pay 'direct loss and/or expense' to the contractor, due to the Consultant requiring variation instructions or drawings or other information to be issued to the contractor which the Consultant could reasonably have foreseen, (other than for instructions required as a result of a written change of brief from the Employer), then the Consultant shall pay to the Employer, or the Employer shall recover from the Consultant, the amount of any such 'direct loss and/or expense' payments made by the Employer to the contractor.

16.9 If any part of the Consultancy Services is subsequently found not to have been delivered fully, then the fee applicable to the appropriate stage will be reduced or omitted completely as determined by the Employer. The Consultant will repay or allow to the Employer by way of damages any fee paid to the Consultant in respect of Consultancy Services found not to have been delivered fully, together with any loss or expense sustained by the Employer as a result thereof.

16.10 Any amounts payable or allowable by the Consultant under this Condition may be deducted from any sum due or to become due to the Consultant or shall be recoverable from the Consultant by the Employer as a debt.

16.11 The provisions of this Condition are without prejudice to any other rights or remedies the Employer may possess.

## 17 OWNERSHIP

17.1 Title to, access to and inspection of, copyright in, the right to possession and the right of use of all reports, drawings, specifications, calculations, electronically stored data (including computer aided design models), Bills of Quantities or other pricing documents, other contract documentation or materials and all other things created under or arising out of the Consultancy Contract shall vest in the Employer immediately on the commencement of the Service or creation of the article or document or item as applicable.

17.2 The Consultant shall on completion of the Consultancy Services provide the Employer with a satisfactory, complete and up-to-date copy of the electronically stored data (including all computer aided design models) and all other information necessary to ensure that the Employer can

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- continue to satisfactorily use the electronically stored data so provided by the Consultant.
- 17.3 Electronically stored data shall mean data however stored on a computer (or similar) storage medium, and shall include data stored in conventional files, databases and computer aided design files, and which contain relevant design information. The Consultant shall supply the data on a suitable transfer medium in either its native format or in a neutral file format or as specified by the Employer; to suit the Employer's requirements.
- 17.4 The Employer reserves the right to verify and validate any information contained within the electronically stored data within one year from completion of the Service. The Consultant shall remedy at the Consultant's own expense any defects or inadequacies discovered during the said one year and notified by the Employer to the Consultant and such defects or inadequacies shall be remedied within 14 working days of receipt of such notification.
- 17.5 The Employer, in acquiring title to and copyright of reports, drawings, specifications, electronically stored data, Bills of Quantities or other pricing documents, other contract documentation, materials, etc created by the Consultant in compliance with the Consultancy Contract, agrees:
- .1 that the Employer may not make use of these on any other project which the Employer may undertake or in which the Employer may be involved, without the prior written consent of the Consultant.
  - .2 that the Employer will use these only for purposes such as the maintenance, repair, alteration, extension or refurbishment of the Construction Works.
  - .3 that in making these available to other parties for the purposes of Condition 17.5.2 the Consultant will not incur any obligation or liabilities in respect of these.
  - .4 to pay in full all sums properly due under the terms of Conditions 19 and 20 of the Consultancy Contract.

## 18 PARENT COMPANY GUARANTEE

- 18.1 If the Consultant is a subsidiary company within the meaning of Section 736 of the Companies Act 1985 the Employer may, if requested, require the Consultant to provide the Employer within 30 days of issue of the Employer's written acceptance of the tender with a Parent Company Guarantee from the holding company or companies (as defined by the said Section of the said Act) to secure the due performance by the Consultant of the Consultant's obligations under the Consultancy Contract to the Employer.

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- 18.2 The Parent Company Guarantee, where required, shall be in the form set out in Appendix B to these Conditions.
- 18.3 The Consultant shall submit with the tender a letter of intent from the holding company or companies in terms satisfactory to the Employer confirming that, in the event that the Consultant's tender is successful and is accepted by the Employer, the holding company or companies will guarantee to secure the due performance by the Consultant of the Consultant's obligations under the Consultancy Contract to the Employer.
- 18.4 The Consultant shall not commence the Consultancy Services until the Parent Company Guarantee has been properly executed and is in the hands of the Employer and if the Consultant shall have failed to provide the Parent Company Guarantee within 28 days of the date of the award of the Contract or within such further period as may be permitted by the Employer, the Employer shall be entitled to terminate the Contract by giving seven days notice to the Consultant. In the event of termination under this Condition, the Consultant shall pay to the Employer all costs incurred by the Employer in connection with the obtaining of new tenders or a sum equivalent to the difference between the amount of the successful tender and the amount of the tender subsequently accepted by the Employer including all additional expenses properly incurred by the Employer; and the Employer shall not be liable for any claim or demand from the Consultant in respect of anything already done or furnished in connection with the Contract or in respect of any matter or thing in connection with the Contract whatsoever.

## 19 CONSULTANCY FEE – INCLUSIONS AND EXCLUSIONS

- 19.1 The Consultancy Fee shall be deemed to be a lump sum for providing the Service as described in the Specification of Consultancy Services.
- 19.2 The Consultancy Fee shall be inclusive of the following costs:
- .1 providing all services detailed in the Specification of Consultancy Services; and
  - .2 all travelling, mileage, hotel, subsistence, clerical, administration, telephone, postage, computer, special equipment costs and other expenses necessary for the carrying out of the Consultancy Contract; and
  - .3 preparing, printing, copying and electronic storage of reports, drawings, contract documentation and other documents and the like:
    - .1 required by the Design Team for the execution of the Consultancy Services under the terms of the Consultancy Contract(s); and



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.2 required for the purpose of obtaining statutory and other approvals and for related negotiations; and

.3 to be provided in terms of the Specification(s) of Consultancy Services; and

.4 to be provided in addition to those referred to in Condition 19.2.3.1, 19.2.3.2 and 19.2.3.3 above, as defined in Appendix A to these Conditions.

.4 the purchase of copies of standard documents such as contract forms, standard specifications, regulations, government statute, European Union directives, etc for use or for reference; and

.5 complying with all applicable rules, regulations and obtaining approvals, licenses, permits for the performance of the Service defined in the Consultancy Contract.

19.3 The Consultancy Fee shall exclude the costs of the following:

.1 printing, copying, etc of prepared drawings and documents additional to those required to be provided under the terms of Condition 19.2.3 which shall be reimbursed as reimbursable expenses at the rates appearing in the Tender Analysis or pro-rata thereto.

.2 all fees in respect of applications for Statutory Approvals.

## 20 TERMS OF PAYMENT

20.1 In exchange for the satisfactory performance and completion of the Consultancy Contract, the Employer shall pay or cause to be paid to the Consultant the amounts provided in the Consultancy Fee in the manner specified in this Condition.

20.2 Interim payments of the Consultancy Fee shall be made in the stages and in the proportions defined in Appendix A to the Tender Documents when completion of each of these stages has been achieved to the reasonable satisfaction of the Employer.

20.3 Payment in respect of reimbursable expenses shall be made with the payments referred to in Condition 20.2.

20.4 Payment on the basis of time charges shall be made only:

.1 in respect of services specified and priced at hourly rates inserted in the Tender Analysis; or

.2 with the prior written authorisation of the Employer; or

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- .3 on the basis of time sheets signed by the Consultant and containing the name and status of the individual concerned with a precise description of the work involved and delivered to the Employer within 14 days of the execution of the work to which the time sheets relate. If any Time Charge amounts have been agreed these will only be paid when time sheets have been submitted in the proper form and after authentication by the Employer. The time sheets must be submitted no later than 14 days from the end of the week in which any agreed Time Charge work is executed, and must be signed by an authorised representative of the Employer. Failure to submit time sheets in the proper form, manner and time scale will result in non-payment; or
- .4 for partners and senior staff in respect of time spent directly by them on the Project. The cost of time spent by partners and senior staff in supervising the work of staff of lower status will be deemed to be included in the time charges of these latter staff. Where e.g. Partners/ Principals / Associates carry out services normally capable of being provided by Professional staff then reimbursement will be made on the basis of the Professional staff hourly rates inserted in the Tender Analysis; or
- .5 payments agreed at the time of acknowledging such variation as outlined in Section 9.
- 20.5 Notwithstanding the provisions of Conditions 20.4.3 and 20.4.4 above, time charges will be reimbursed only at the hourly rate appropriate to the level of skill required for the service involved.
- 20.6 In providing services to be paid for on the basis of time charges the Consultant shall be expected to maximise the use of electronic aids and other facilities to the best advantage of the Employer.
- 20.7 If any of the materials in the Construction Works are supplied by the Employer, then the actual or estimated market value thereof shall be included in amounts upon which fees are to be calculated.
- 20.8 Payment in respect of variations to the Consultancy Contract made under the terms of Condition 9 shall be calculated and made as follows:
- .1 where it is appropriate and subject to Condition 20.8.2 payment shall be calculated as a percentage of the cost of Construction Works involved, which percentage shall be equal to or analogous to that which relates to the Consultancy Fee payable in respect of the stage or stages in which the variation was implemented; or
- .2 where the variation relates to the provision of an additional service as referred to in the Specification of Consultancy Services, payment shall be calculated on a basis to be agreed between the Employer and the Consultant prior to the provision of the additional service; or

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.3 where, in the opinion of the Employer and the Consultant the nature of work involved in implementing the variation is such that payment should be made on a time charge basis then the rates payable shall be as defined in the Tender Analysis or rates pro-rata thereto; or

Payment in respect of a variation shall be made with the payment of the service stage during which the variation was implemented.

- 20.9 The Consultant shall not be entitled to any recompense, loss of profit or any other payment in respect of service stages for which the Consultant has no written consent under the terms of Condition 3.4.
- 20.10 The Consultant shall submit to the Employer a fee invoice for services relating to the work stages as specified in Appendix A to the Tender Documents and showing the amount due, calculated in accordance with the Consultancy Contract; using the proforma attached as Appendix J to the Tender Documents.
- 20.11 If the Employer at any time incurs costs which, under the provisions of the Consultancy Contract, the Employer is entitled to recover from the Consultant, the Employer may invoice for such costs which shall be a debt from the Consultant to the Employer and shall forthwith be recoverable by action, provided always that the Employer may deduct the amounts of such costs from any amounts due or that may become due to the Consultant under this Contract or any other contract between the Employer and the Consultant. The Consultant shall immediately pay to the Employer any sums outstanding after such deductions.
- 20.12 For the purposes of reviewing and verifying the fee of reimbursable items and the quantity of both these and of items chargeable by specified rate for any other reasonable purpose, the Employer or the Employer's authorised representatives shall have access, at all reasonable times, to all personnel details, books, records (including data stored in computers), storage media, correspondence, instructions, plans, drawings, receipts, vouchers and memoranda of both the Consultant and the Consultant's Sub-Contractors, pertaining to the Consultancy Contract. The Employer or the Employer's authorised representatives shall have the right to reproduce and retain copies of any of the aforesaid documents, information and data.
- 20.13 The Employer will be responsible for paying all fees in respect of applications for Statutory Approvals.
- 20.14 Final payment of the Consultancy Fee shall be made only when completion of the Construction Contract and all stages of the Consultancy Contract have been certified by the Employer as having been satisfactorily completed. The Consultant's attention is expressly drawn to the stage payments shown in Appendix A, Section 2 to the Tender Documents.

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20.15 The Employer shall pay all valid fee accounts properly submitted in accordance with Condition 20 and incorporating VAT as per Condition 21, no later than 30 days from receipt (Date for Payment). Where fee accounts are not properly submitted the 30 days will not commence until the fee account has been submitted in the proper form and in the amount agreed by the Employer. The Date for Payment for the purposes of these Conditions shall be deemed to mean the date the payment leaves the Employer. Payments are most likely to be made by BACS (Banking Automated Clearing Service) transfer or cheque but is not restricted to these two methods. The method of payment is at the sole discretion of the Employer.

If the Employer fails properly to pay the amount properly due, or any part thereof, due to the Consultant by the Date for Payment the Employer shall pay to the Consultant in addition to the amount not properly paid simple interest thereon for the period until such payment is made. Payment of such simple interest shall be treated as a debt due to the Consultant by the Employer. The rate of interest payable shall be five percent (5%) over the Base Rate of the Bank of England which is current at the date the payment by the Employer became overdue.

20.16 All fee accounts must be submitted with the correct Project/ Contract Code (details will be supplied to the successful tenderer). Second and subsequent fee accounts shall be cumulative, indicating fees already paid.

20.17 All fee accounts must be submitted on the standard "Application for Payment" form (Appendix J), in accordance with the Conditions. An additional fee account must be submitted no later than 15 March each year, requesting payment of any outstanding fees and summarising amounts paid.

### 21 VALUE ADDED TAX

21.1 The Consultant shall be solely responsible for calculating the amount of Value Added Tax chargeable on the amounts paid to the Consultant under the terms of this Contract.

21.2 The Employer shall re-imburse the Consultant any Value Added Tax properly chargeable by the Consultant under the legislation currently in force upon provision of the Consultancy Services at the appropriate rate.

21.3 The Employer shall pay to the Consultant the amount due in respect of Value Added Tax appropriate to any fee account properly submitted. VAT must be identified separately on all fee accounts.

### 22 LAW

22.1 This Contract is a Scottish Contract and shall be construed and the rights of parties and all matters arising hereunder shall be determined in all

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respects according to the Law of Scotland and subject to the jurisdiction of the Scottish Courts.

- 22.2 If any provision of the Consultancy Contract shall become or shall be declared by any court to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision, all of which will remain in full force and affect.

## 23 CAPACITY AND COMPLIANCE

- 23.1 The successful Consultant will act under this Contract as an officer of Angus Council, as Employer, under the direction of the Head of Property.

Any change in status, re-structuring or re-organisation of the Consultancy, or any change in partner/ principal responsible for the Contract shall be reported to the Employer via the Head of Property and any commercial interests held by the partner/ principal of the practice in construction/ engineering firms shall be reported to the Employer via the Head of Property.

Under the terms of Angus Council's Financial Regulations the Consultant is required to:

- a) Comply with the Financial Regulations of Angus Council as Employer; though the Consultant were an Officer of the Council
- b) At any time during the carrying out of the Contract, produce, on request, to the Employer, via the Head of Property, all records maintained by the Consultancy in relation to the Contract
- c) On completion of the Contract, transmit all such records which pertain to the Contract, to the Employer via the Head of Property
- d) Transfer copyright of all drawings and documents produced in relation to the Contract, to the Employer via the Head of Property.

A copy of the Employer's i.e. Angus Council's current Financial Regulations is available for viewing/ downloading on the Council's website at [www.angus.gov.uk/ac/documents/financeregulations](http://www.angus.gov.uk/ac/documents/financeregulations).

The Consultant's attention is expressly drawn to the section on Contract Arrangements.

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### 24 LIENS

24.1 The Consultant shall indemnify the Employer from and against all liens, attachments, charges and claims on the Consultancy Services, the Construction Works and any property of the Employer in the possession of the Consultant.

### 25 WAIVER

25.1 Failure by the Employer at any time to enforce the provisions of the Consultancy Contract or require performance by the Consultant of any of the provisions of the Consultancy Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Consultancy Contract or any part thereof or the right of the Employer or the Employer to enforce any provision in accordance with its terms.

### 26 PUBLIC RELATIONS AND PUBLICITY

- 26.1 The Consultant shall make all reasonable efforts to maintain goodwill with the various regulatory bodies and the general public. No communication with the Press, including technical journals or other outside bodies, or disclosure or publication of any matter arising from the Consultancy Services, whether by photograph or other means; may be made without prior consultation with and approval by the Employer. All members of the Consultant's staff must be made aware of this provision.
- 26.2 The Consultant shall not make any publicity releases or announcements concerning the Consultancy Contract, the Construction Works or the activities or participation of the Consultant with respect to the Construction Works without the prior agreement of the Employer.
- 26.3 The Consultant shall not affix or display any sign or notice indicating the Consultant's involvement with the Project or the Construction Contract or the Construction Works without the prior written permission of the Employer.

### 27 ADJUDICATION

- 27.1 The Employer or the Consultants may at any time during the contract notify the other of its intention to refer a dispute or significant difference of opinion out of or arising from this contract to adjudication. Within seven days of either party giving written notice the dispute may, by further notice, be referred to the adjudicator specified in Appendix A to the Tender Documents.
- 27.2 The notice of referral shall set out the principal facts and arguments relating to the dispute. Copies of all relevant documents in the possession of the party giving the notice of referral shall be enclosed with the notice. A

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- copy of the notice and enclosures shall, at the same time be sent, by the party giving the notice to the other party.
- 27.3 It shall be a condition precedent to the appointment of the adjudicator that the adjudicator shall notify both parties of the adjudicator's appointment and confirmation that the adjudicator will comply with the terms of the adjudicator's appointment with particular reference to the timescales.
- 27.4 The adjudicator shall be appointed within seven days of the issue of the notice of intention to refer the dispute to adjudication. The Employer and Consultant shall jointly proceed to use all reasonable endeavours to complete the appointment of the adjudicator. However, if the joint appointment has not been completed within twenty-eight days of acceptance on the appointment, either of the parties can proceed alone to complete the appointment. A copy of the finalised appointment shall be supplied to each party. No appointment shall be amended or replaced without the consent of both parties.
- 27.5 The other party may submit representations to the adjudicator not later than 14 days from receipt of the notice of referral.
- 27.6 The adjudicator shall notify the adjudicator's decision to the parties not later than 28 days from receipt of the notice of referral, or such longer period as is agreed by the parties after the dispute has been referred. The adjudicator may extend the period of 28 days by up to 14 days with the consent of the parties. The adjudicator's decision shall nevertheless be valid if issued after the time allowed. The adjudicator's decision shall state how the costs of the adjudicator's fee or salary (including overheads and on-costs) shall be apportioned between the parties, and whether one party is to bear the whole or part of the reasonable legal and other costs and expenses of the other, relating to the adjudication.
- 27.7 The adjudicator will be required to take the initiative in ascertaining the facts and the law and both parties shall be required to offer the adjudicator every assistance to enable the adjudicator to do so. In coming to a decision the adjudicator shall have due regard to how far the parties have complied with any procedures in the appointment relevant to the matter in dispute and to what extent each of them has acted promptly, reasonably and in good faith. The adjudicator shall act independently and impartially as an expert adjudicator and not as an arbiter. The adjudicator shall have the fullest of powers possible to assess damages, legal and other costs and expenses, and to award interest.
- 27.8 The Employer and the Consultants shall comply forthwith with any decision of the adjudicator and shall submit to summary judgement and enforcement in respect of all such decisions.
- 27.9 The adjudicator shall provide reasons for the adjudicator's decision to both parties within 14 days of notification of the adjudicator's decision.

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27.10 The adjudicator is not liable for anything done or omitted in the discharge of the adjudicator's function as adjudicator unless the act is malicious or in bad faith. Any employee, consultant or agent of the adjudicator is similarly protected from liability.

### 28 ARBITRATION

28.1 In the event of any dispute or difference between the Employer and the Consultant arising during the progress of the Consultancy Contract and/or the Construction Works or after completion or abandonment thereof in regard to any matter or thing arising out of this Consultancy Contract or in connection therewith which cannot be agreed between the parties, the said dispute or difference shall be and is hereby referred to the arbitration of such person as the parties may agree to appoint as Arbiter. If, after fourteen days, the parties cannot agree to the appointment of an Arbiter either party can refer the matter to the Arbiter nominating body referred to in Appendix A to the Tender Documents.

28.2 The arbitration shall be conducted under the appropriate Arbitration Rules of the Chartered Institute of Arbiters.

28.3 The award of the Arbiter shall be final and binding on the parties.



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### **PART 4/3: SUPPLEMENTARY CONDITIONS OF CONTRACT**

#### 29 COLLATERAL WARRANTY

29.1 On acceptance of the Consultant's Tender, the Consultant may be required to enter into a collateral warranty with a third party if so specified in Appendix A, Section 2 to the Tender Documents and in the Form of Tender.

#### 30 GUARANTEE

30.1 There shall be a guarantee period of 20 years commencing from the date specified in the Certificate of Completion issued to the Consultant by the Employer under the terms of Condition 15.2 for the work carried out under the Consultancy Contract.

30.2 The Consultant shall indemnify the Employer against any loss and/or expense arising under this Consultancy Contract as a result of:

.1 any deficiency or deficiencies, including error, omission, defect, failure, etc. in the Consultancy Services provided; and

.2 any deficiency or delay in the provision of information or drawings or the co-ordination of the work, provided that such deficiency or delay results directly from the Consultant's failure to exercise the performance standards described in the Specification of Consultancy Services.

30.3 In the event of any breach of Condition 29.1 the Employer shall notify the Consultant of the breach. Upon receipt of such notification from the Employer, the Consultant shall immediately at the Consultant's own expense rectify any defective services, materials, workmanship and carry out all associated work.

30.4 The rights and remedies of the Employer provided under this Condition are without prejudice to any other rights the Employer may have under the Consultancy Contract or at Common Law.

#### 31 EMPLOYER QUALITY CONTROL

31.1 The Employer shall carry out inspections at such intervals and frequencies as it considers appropriate and shall at its own discretion monitor the service provided therein to satisfy itself that the performance standard in terms of the Consultancy Contract is being maintained. The Consultant shall be required to co-operate with such monitoring and attend such meetings, both formal and informal, as may be deemed necessary by the Employer to facilitate the monitoring of the Contract.

## SERVICES - PRELIMINARIES AND CONDITIONS OF CONTRACT

31.2 The Employer reserves the right to carry out formal quality and quantity service audits to monitor the Consultant's performance on a random or comprehensive basis.

### 32 CONSULTANT'S QUALITY CONTROL

32.1 The Consultant is required to have in place a fully documented quality assurance system certified as complying with the requirements of BS.EN.ISO.9001/2 by a third party accredited by the National Accreditation Employer for Certification Bodies and incorporating detailed practices and procedures covering all aspects of the service to be provided under the terms of the Consultancy Contract. The said quality assurance system shall also be subject to the approval of the Employer and shall be maintained throughout the Contract Period by a series of regular annual system audits carried out by the certification body. The Consultant shall submit with the tender a copy of the BS.EN.ISO.9001/2 certificate and throughout the Contract Period shall inform the Employer in advance of the proposed dates of the annual system audit and shall submit to the Employer a copy of each audit report immediately upon receipt thereof by the Consultant.

32.2 If at any time during the Contract Period the Consultant for any reason:

- .1 fails to maintain quality assurance certification; or
- .2 fails to rectify within a reasonable period of time any default included in an annual audit report; or
- .3 fails to submit to the Employer a copy of any annual audit report; or
- .4 is refused renewal of quality assurance certification

then the Employer may exercise the Employer's right to terminate the Consultancy Contract under the terms of Condition 12.

32.3 The system maintained by the Consultant in accordance with this condition shall be in addition to and shall not prejudice any inspection and monitoring procedures carried out by the Employer or any default action arising there from.

### 33 STAFF

33.1 The Consultant shall employ an adequate number of sufficiently trained and competent staff to ensure that the Consultancy Services are provided at all times and in all respects to the required performance standards. Without prejudice to the generality of this obligation, it shall be the duty of the Consultant to ensure that a sufficient reserve of suitably qualified and experienced staff is available and used for replacement to provide the

## SERVICES - PRELIMINARIES AND CONDITIONS OF CONTRACT

- Consultancy Services to the contract standards during staff holidays, absence through sickness, voluntary absence or during any other circumstances.
- 33.2 The Consultant shall, where not a professional in-house team of the Employer, give full consideration to the engagement of any staff dismissed by reason of redundancy by the Employer as a direct result of the awarding of this Consultancy Contract and seeking further employment.
- 33.3 The Consultant shall immediately inform all relevant trade unions or associations representing the Consultant's workforce of the award of the Consultancy Contract and its commencement date and shall confirm this Condition in writing to the Employer.
- 33.4 The Employer is concerned to ensure where applicable that staff employed by the Consultant are suitable to be employed in premises where they:
- .1 are likely to come into contact with persons under the age of 18 or other persons who may for any reason be considered vulnerable by the Employer; or
  - .2 may have to enter particularly sensitive locations such as Social Work Offices, secure areas, computer rooms, legal offices, etc.
- 33.5 The Consultant shall accordingly no less than 10 working days prior to commencement of the Consultancy Services, provide to the Employer a complete list of the employees who will provide the Consultancy Services. The list shall include the employee's name, address and national insurance number and specify the premises which each employee may be required to enter.
- 33.6 The Consultant throughout the Consultancy Contract Period shall provide the Employer in writing with details of the names, addresses and national insurance numbers of all new employees who are engaged or likely to be engaged in connection with the Consultancy Services within 3 working days of the commencement of their employment.
- 33.7 The Consultant shall maintain current and accurate records of all employees who are, or may be, engaged in connection with the Consultancy Services. These records shall be open for inspection by the Employer at all reasonable times, and a copy of these records shall be provided to the Employer if so required.
- 33.8 Apart from the provisions expressly allowed for in the Consultancy Contract, the Consultant shall be entirely responsible for the employment and conditions of service of the Consultant's own or sub-contracted staff.

## SERVICES - PRELIMINARIES AND CONDITIONS OF CONTRACT

- 33.9 The Consultant shall in respect of all persons employed or seeking to be employed by the Consultant (whether in and about the provision of the Consultancy Services or otherwise) comply with each and every provision of the law prohibiting discrimination in relation to employment on the grounds of sex, colour, disablement, race, ethnic or national origin or religion.
- 33.10 The Employer may instruct the Consultant to remove from the Employer's premises any person employed by the Consultant who is considered detrimental to the interests of the Employer or disruptive to the running of the Employer's premises or business. The Consultant shall immediately comply with any such instruction, and as soon as reasonably practicable after removing the member of staff responsible, provide a substitute. The Employer shall under no circumstances be liable, either to the Consultant or to the member of staff involved, in respect of any liability, loss or damage occasioned by such removal and the Consultant shall fully indemnify the Employer against any claim arising there from.
- 33.11 It is an essential condition of the Consultancy Contract that prior to the commencement date, or in the event of staff being recruited or convicted of an offence after the commencement date, prior to the employee or employees in question being allowed access to any Employer premises that the Consultant must disclose to the Employer full details of all convictions of members of the Consultant's staff including sentences imposed which are not spent convictions for the purposes of the Rehabilitation of Offenders Act 1974.

If, owing to the nature of the Consultancy Services, the employees of the Consultant are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitations of Offenders Act 1974 (Exceptions) Order 1975, then the Consultant shall ensure that all employees engaged in the provision of the Consultancy Services shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provisions of the said Act.

- 33.12 The Consultant shall ensure that, in taking up references for all prospective members of staff, an appropriate statement of the position regarding the Rehabilitation of Offenders Act 1974 is included in the request to referees. The Consultant shall disclose to the Employer the names and addresses and sufficient information to enable proper checks to be made and as appropriate all convictions of employees engaged in and about the provision of the Consultancy Services and the Employer may require such employees to be removed from the performance of the Consultancy Services.
- 33.13 The Consultant shall not without the prior written consent of the Employer employ in connection with the Consultancy Services to be provided under this Consultancy Contract any person who discloses any previous

## SERVICES - PRELIMINARIES AND CONDITIONS OF CONTRACT

conviction or convictions or about whom such disclosure is made by a referee.

33.14 The Consultant shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by the Consultant and shall comply with the requirements of the Health and Safety at Work Act and of any other statements, regulations or orders pertaining to the health or safety of employed persons. The Consultant shall nominate a person to be responsible for health and safety matters as required by the Act. The Consultant shall require staff whilst within the Employer's premises to comply with all the Employer's safety requirements.

33.15 The Consultant shall employ in or about the provision of the Consultancy Services only such persons as are careful, skilled and experienced for their proposed employment. The Consultant shall accordingly ensure that every person employed for the purposes of the Consultancy Contract is at all times properly and sufficiently trained, competent and instructed with regard to:

- .1 the task or tasks that the person has to perform; and
- .2 all relevant provisions of the Consultancy Contract and, in particular, the terms of the Specification of Consultancy Services; and
- .3 all relevant policies, rules and procedures of the Employer; and
- .4 all relevant rules and procedures concerning health and safety at work; and
- .5 all relevant statutory rules and procedures concerning data protection where persons are involved in the processing of computerised data; and
- .6 fire risks and fire precautions.

33.16 The Consultant shall ensure that staff carry out their duties and behave whilst on the Employer's premises in a quiet and orderly manner and in such a way as to cause the minimum possible disruption to the routine and procedures of other persons using such premises.

33.17 The Consultant shall ensure that staff will comply with statutory legislation in relation to smoking and ensure that all employees refrain from smoking whilst on or immediately adjacent to any of the Employer's premises.

33.18 The Consultant shall ensure that staff, whilst on the Employer's premises:

- .1 do not attend work under the influence of alcohol, drugs and/or illegal substances; and

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.2 do not consume alcohol, drugs and/or illegal substances; and

.3 do not have in their possession alcohol, drugs and/or illegal substances. Consultant's staff who are reasonably suspected of being under the influence of alcohol, drugs and/or illegal substances will be refused entry to or removed from the Employer's premises.

### 33.19 Consultant's staff:

.1 shall not enter or be present on Employer's premises outwith the Consultant's working hours unless authorised in writing by the Employer; and

.2 shall not authorise removal of or receive any material, furniture, equipment and/or product or stationary belonging to or consigned to the Employer; and

.3 shall not remove, borrow or lend any property or equipment belonging to or consigned to the Employer.

Any breach will lead to that particular employee of the Consultant being removed from the premises. The future role of any employee within the Consultancy Contract will be determined by agreement between the Employer and the Consultant.

## 34 SECURITY

34.1 Without prejudice to any other rights and remedies which the Employer or the Consultant may possess, where the Consultant is required to enter the Employer's premises and for so long as the Consultant is present on the Employer's premises in connection with the Consultancy Contract:

.1 the Consultant shall be responsible for the security of all materials, goods and equipment belonging to and/or used by the Consultant in and about the provision of the Consultancy Services; and

.2 the Employer will not accept any liability in respect of the theft, loss or damage to personal property of the Consultants or sub-contractors staff however caused. The Consultant shall draw this matter to the attention of the Consultant's or sub-contractors staff engaged in or about the provision of the Consultancy Services; and

.3 the Consultant shall comply and shall ensure staff and sub-contractor's staff comply with the security systems and arrangements which are in operation in the said premises; and

.4 when the Consultant is given custody of the keys for the purposes of gaining access to unoccupied Employer premises, the Consultant shall be responsible for the safekeeping of all such keys and for ensuring that the

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said premises are maintained in a secure condition both while on the premises and when leaving the premises. The Consultant shall also be responsible for immediately informing the Employer and the Police of the loss of any keys and shall reimburse to the Employer any cost or replacement and/or any reasonable security measures implemented as a result of such loss. The Consultant and staff shall not have duplicate keys copied or cut.

### 35 INSPECTIONS

35.1 The Consultant shall co-operate with such staff of the Employer or with any inspector of the Health and Safety Executive or other Statutory Body or agency so as to facilitate the carrying out of inspections or the taking of samples on Employer's premises.

35.2 Any report received by the Employer from the Health and Safety Executive or other Statutory Body or agency in relation to the Consultant's use of any of the Employer's premises shall be copied by the Employer and forwarded to the Consultant.

35.3 The Consultant shall forthwith comply with the recommendations of any report dealing with matters for which the Consultant is liable, and inform the Employer of the action taken.

### 36 IDENTIFICATION

36.1 The Consultant shall provide and ensure that staff wear at all times whilst on Employer's premises photo-identification cards dated and signed by the bearer in a form approved by the Employer prior to the commencement of the Consultancy Contract. It is an essential condition of the Consultancy Contract that all Consultant's staff must be in possession of an appropriate photo-identification card prior to the commencement date. Any person who does not have a valid identity card may be refused admittance to or be required to leave the premises by the Employer. After the commencement date new employees will be permitted admittance for a period of 3 days only on the production of a valid temporary identity card.

### 37 USE OF EMPLOYER PREMISES

37.1 For the avoidance of doubt it is expressly declared that permission to enter and use Employer's premise is not the grant of tenancy of any part thereof.

37.2 The Consultant shall permit nothing to be done that is calculated to cause damage to the fabric of the establishments, the fittings or fixtures therein and ensure that no damage is caused to any property belonging to the Employer, officers, employees, customers, members of the public or invitees. The Consultant will be held responsible for all damage arising

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through negligence, carelessness or inadvertence in this respect, and the cost of making good any such damage will be borne by the Consultant.

The Employer may instruct others to make good the said damage and any costs incurred by the Employer in so doing will be set off against monies due or which may become due to the Consultant under this Consultancy Contract or recovered by the Employer from the Consultant as a debt, provided always that such set off will not prejudice any other rights or remedies which the Employer may possess. The Employer may charge the whole cost of remedial work provided or procured by it under this Condition together with an administration charge equal to 10% of the cost of doing so, to the Consultant.

- 37.3 The Consultant shall afford all reasonable facilities to any other contractors or consultants employed by the Employer, to employees of the Employer and of any other properly authorised authorities or statutory bodies. The Consultant shall not do, or fail to do, anything which may have the effect of hindering such parties in their duties.

### 38 FACILITIES NOT AVAILABLE TO THE CONSULTANT

- 38.1 The Consultant shall NOT make use of the under-noted facilities on Employer premises:

- .1 telephone systems
- .2 computer systems
- .2 restaurant, kitchen, welfare and rest rooms
- .3 first aid facilities, except in the case of an emergency
- .4 shower facilities

unless with the prior written consent of the Employer

### 39 CONSTRAINTS

- 39.1 The Consultant, in providing the Consultancy Services on the Employer's premises, shall be fully aware of and accept the following constraints:

- .1 access to premises shall generally be available only within normal working hours or otherwise as may be varied and agreed by the Employer; and
- .2 the normal operation of all the premises and safety of all occupants and users require to be regarded as paramount and the Consultant shall follow the officer-in-charge's instructions and co-operate fully with regard to the day-to-day organisation of the premises; and
- .3 the Consultant shall not at any time take any photograph, film or video recording of the site or of the Employer's premises or any part thereof, and shall take all reasonable steps to ensure that no such



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photograph, film or video recording shall at any time be taken or published or otherwise circulated by any person employed by the Consultant, unless with prior written permission of the Employer.

### 40 ADDITIONAL SUPPLEMENTARY CONDITIONS

The following Supplementary Conditions are extracted from Angus Council's standard Building Contract documentation and the Consultant is required to comply with the terms of the following and to ensure the Building Contractor complies with same. Where the term Contractor appears in the following clauses the requirements will equally apply to Consultants.

#### 40.1 **Health & Safety Performance Standards (“the Standards”)**

Tenderers are expressly directed to note that, when carrying out work for the Employer, they should take cognisance of the Health & Safety Performance Standards prepared by the Employer's Property Service, a copy of which is issued to all tenderers. These Standards will be updated to reflect the Employer's current requirements with regard to Health and Safety and it is the responsibility of the company holding a copy of this document to ensure any updates or amendments are incorporated and complied with.

Additional copies of this document can be obtained from the Head of Property, Angus Council, Bruce House, Arbroath DD11 3TP however a charge will be made for this service.

Tenderers must be aware of the contents of this document and will be expected to take cognisance of the standards contained therein and will be held responsible for ensuring all sub-contractors employed are conversant with the requirements of same.

Tenders submitted will be deemed to include for all costs necessary for executing the Works, taking account of the requirements of the Health & Safety Performance Standards.

Nothing contained in the Standards shall overrule, set aside or in any way alter the Contractor's statutory liability to carry out the Works in accordance with all current Health & Safety legislation.

Further, and without prejudice to the foregoing, notification of failure to comply with the Standards shall be within the sole discretion of the Employer and failure to notify non-compliance with the Standards shall not in any way infer any approval on the part of the Employer in respect of the Contractor's operating methods or practices nor shall it free or relieve the Contractor from any obligation otherwise incumbent upon it.

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The Employer accepts no liability for any loss, injury or damage occasioned to the Contractor, or to any third party, whether arising directly or indirectly as a result of the Employer's notification or non-notification of failure to comply with the Standards.

### 40.2 Unsafe Operations

In the event that Officers or Safety Personnel employed by the Employer become aware of what they would consider to be an unsafe operation which carries potential danger to the Contractor's employees or any other persons or property, the Employer's employees or the public at large during the execution of the Works they may notify the Contractor of such unsafe operation.

For the purposes of this clause the following definitions apply:

Safety Personnel	Persons employed by the Employer who may visit the Works to carry out safety audits, health and safety inspections and accident investigations.
Officer	Persons employed by the Employer who will visit the Works. These persons may be architects, quantity surveyors, engineers, clerks of works etc.

The Contractor should note that persons termed Safety Personnel are authorised by the Employer to enter all buildings and sites owned, leased, operated, rented or to any extent in the control of the Employer, to inspect any documentation required to be kept by health and safety legislation and all parts of the building/ site to monitor conformity with health and safety requirements. The Contractor must provide all necessary access facilities for such inspections by Safety Personnel.

Notification to the Contractor of identified unsafe working operations will normally be made through the following procedure. The Officer or Safety Personnel:

- ◇ may notify the operative of the likely danger
- ◇ will notify the Contractor's site manager
- ◇ will record the notification both in the site log and on an "Unsafe Operation" proforma issued by the department (Example copy attached as Appendix G)
- ◇ will record the notification in the project health and safety file
- ◇ will record the notification in the Contractor's performance record. This record will be taken into account in determining whether the Employer will employ the Contractor on further projects and in extreme circumstances may result in the Contractor being removed

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from the Employer's Standing List of Contractors. In the event that the Employer is requested by another person or body to provide a reference for the Contractor this information will be taken into account in the provision of such reference

- ◇ will forward a copy of the notification to the Employer's Safety Personnel
- ◇ may forward a copy of the notification to the Health & Safety Executive. This notification may be made at the same time as notification to the Contractor's site manager, depending on the severity of the event

In the event that the Contractor fails to take the necessary actions to eliminate any notified unsafe working operation the Architect/ Contract Administrator may take such actions as the Architect/ Contract Administrator deems necessary to safeguard any persons. It should be noted that any resultant cost incurred by the Contractor will be borne by the Contractor and the Employer will not be responsible for any costs arising from actions considered necessary to avoid danger or death to any persons employed on, visiting or in the location of the Works.

Further, and without prejudice to the foregoing, notification of unsafe working operations shall be within the sole discretion of the Employer and failure to notify such events shall not in any way infer any approval on the part of the Employer in respect of the Contractor's operating methods or practices nor shall it free or relieve the Contractor from any obligation otherwise incumbent upon it.

The Employer accepts no liability for any loss, injury or damage occasioned to the Contractor, or to any third party, whether arising directly or indirectly as a result of the Employer's notification or non-notification of unsafe working operations.

### 40.3 Warranties and Design

All Design Subcontractors and all Design Subconsultants employed by the Contractor must be listed in the Tender Appendix L and clearly marked as such, defining which portion of the Works they are responsible for designing.

The Works are to be designed in such a manner as to be totally fit for the purpose for which these Works are intended to be used and of entirely satisfactory quality, based on principles acceptable to the Employer for design.

All design work shall be entrusted to suitably qualified professional persons with adequate and appropriate experience.

The Contractor will be responsible for obtaining, from all Design Subcontractors and Design Subconsultants appropriate Warranty

## SERVICES - PRELIMINARIES AND CONDITIONS OF CONTRACT

Agreements in favour of the Employer and any Purchasers, Tenants or Funders in respect of their design elements.

The Contractor will not be permitted to commence the contract until the following Warranty Agreements have been properly executed and in the hands of the Employer:

SBCC Collateral Warranty Agreements in favour of Purchasers and Tenants - CWa/ P&T/ Scot (2005 Edition Issued October 2007)

SBCC Collateral Warranty Agreements in favour of Funders - CWa/ F/ Scot (2005 Edition Issued October 2007)

SBCC Collateral Warranty Agreements (November 2001 Edition) in favour of the Employer - SCWa/ E/ Scot (2005 Edition issued October 2007)

If the Contractor shall have failed to provide and obtain the above Warranty Agreements, or necessary Statutory Approvals relative to the Contractor's Designed Portions, within 28 days of the date of the award of the Contract; or within such further period as may be permitted by the Employer, the Employer shall be entitled to terminate the Contract by giving seven days notice to the Contractor.

In the event of termination under this Supplementary Condition, the Contractor shall pay to the Employer all costs incurred by the Employer in connection with the obtaining of new tenders and the Employer shall not be liable for any claim or demand from the Contractor in respect of anything already done or furnished in connection with the Contract or in respect of any matter or thing in connection with the Contract whatsoever.

### 40.4 **Human Rights Act**

Where, in terms of this Contract, the Contractor is deemed to be a public authority in terms of Section 6(3)(b) of the Human Rights Act 1998 ("the 1998 Act") the Contractor shall, at all times, strictly comply with the requirements of the 1998 Act together with subsequent amendment or re-enactment thereof and of all secondary legislation made under the 1998 Act, or any subsequent amendment thereto or re-enactment thereof.

The Contractor shall take all reasonable steps to ensure the observance of this Condition by all servants, employees or agents of the Contractor and all Sub-Contractors employed by the Contractor.

The Contractor shall indemnify the Employer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Employer may incur arising out of a breach of this condition by the Contractor.

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The Employer will monitor the Contractor's compliance with the 1998 Act at periodic intervals during the performance of the Contract.

### 40.5 **Freedom of Information (Scotland) Act 2002**

Anyone will have a right to receive information held by the Employer under the Freedom of Information (Scotland) Act 2002 ("the Act"), with effect from January 2005. As part of the Employer's duties under the Act, the Employer must disclose information, which forms part of the tender or Contract, to anyone who requests it; unless an exemption applies. Before releasing any information, the Employer will consult the tenderer or Contractor and have regard to the tenderer's 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 Employer as holder of the information.

No term of the Contract, whether express or implied, shall preclude the Employer from making public, under the Act, and any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to the Contract, unless such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including, but not limited to, the Contractor or the Employer) or such details fall within such other exemption as may be applicable at the discretion of the Employer, in terms of the Act. The Contractor will facilitate the Employer's compliance with the Employer's obligations under these provisions and comply with any request from the Employer for that purpose.

### 40.6 **Required Memberships and Registrations**

#### **The Control of Asbestos Regulations 2006**

Where the Works include the removal or disposal of asbestos-containing materials the Contractor must hold a current and valid Licence in accordance with the above Regulation and a copy of the Contractor's Licence must be submitted with the tender.

#### **Gas Installations and Repairs**

In accordance with the Gas Safety (Installation and Use) Regulations 1998 all gas installation and repair works must be carried out by contractors who are registered members of the Confederation for the Registration of Gas Installers (CORGI). In addition all gas fitting operatives must have been assessed, tested and hold current, valid certificates of competence in the appropriate area of gas work to be carried out.

PRIOR to carrying out any works, or arranging for any works to be carried out on gas installations, the contractor MUST provide proof of CORGI registration to the Contract Administrator, together with current, valid

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certificates of competence, appropriate to the type and nature of work; in respect of all operatives who are to be engaged on the works. Failure to provide such proof will be considered a material breach of contract and will be treated accordingly. Such failure will also be notified to the Health and Safety Executive and to CORGI.

In this regard any contractor not so registered who submits a tender for Plumbing or Heating Works shall, if successful, employ a CORGI registered contractor with appropriately certified operatives to carry out any gas installation or repair work.

### **Electrical Installations and Repairs**

The Contractor must be currently enrolled with the National Inspection Council for Electrical Installation Contracting (NICEIC) or be a current member of the Electrical Contractors Association of Scotland (SELECT) (or European equivalent of either organisation) for these works and the Contractor's registration/ membership number must be inserted in the Tender Appendix under "Registered Nr" as confirmation of same.

### **Security Systems Installations and Repairs**

The Contractor must be a fully subscribed current member of the The National Supervisory Council for Security Systems (NACOSS) for these works must be registered members of the organisations indicated and the Contractor's registration number must be inserted in Tender Appendix L under "Registered Nr" as confirmation of same.

#### **40.7 Working Platforms**

Tenderers are expressly directed to note the HSE publication "Health and Safety in Construction" [HSG150 (rev)], which details the various methods of working at height and in particular the statement that ladders should be primarily used for access and only be used as workplaces to do light work of short duration.

The Employer's interpretation of this statement is that ladders are not considered to be an acceptable working platform and accordingly the use of ladders as working platforms will not normally be permitted. Any exception to this must be agreed in writing by the Contract Administrator prior to commencing any work of this nature.

Tenderers particular attention is drawn to the completion of Method Statements regarding identified risks for Pre-Construction Information.

Use of stepladders is acceptable as working platforms up to single storey height, as long as they are fitted with handrails. Otherwise ladders may only be used for access, inspection and survey purposes.

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### 40.8 Data Protection Act – Security Condition

As the parties to this Contract must enter into an agreement in terms of paragraph 12 of Part II of schedule 1 to the Data Protection Act 1998 (“the 1998 Act”); in order to regulate the processing of data (as defined in the 1998 Act) under this Contract, the parties therefore agree as follows:

- 1 Both parties warrant to the other that, in terms of this Contract, the Employer as Data Controller and the Contractor as Data Processor shall comply strictly with all of the requirements of the 1998 Act, together with any subsequent amendment or re-enactment thereof and of all secondary legislation made under the 1998 Act or any subsequent amendment thereto or re-enactment thereof.
- 2 Without prejudice to the foregoing generality of sub-clause 1 above, the Contractor warrants that it has read and that it shall comply strictly with the seventh principle of the Act, namely that it shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss of destruction of, or damage to, personal data.
- 3 No Sub-Contractor shall be appointed by the Contractor in connection with the processing of any data relative to this Contract without the prior written approval of the Employer. The Contractor will enter into an equivalent agreement with any such approved Sub-Contractor in terms of paragraph 12 of Part II schedule 1 of the 1998 Act.
- 4 The Contractor undertakes to keep all data disclosed to it by the Employer under this Contract confidential and to process all such data strictly and only in accordance with the Employer’s instructions from time to time; all instructions given by the Employer will be in accordance with the laws of Scotland.
- 5 The Contractor shall ensure that only such of its employees who may be required by the Contractor to assist it in meeting its obligations under this Contract shall have access to the data. Where the Contractor is providing third party system support to the Employer, whether remotely or on site, the Contractor and any Sub-Contractor appointed in terms of this Contract must act reasonably and must access only such information as is required to enable the Contractor or Sub-Contractor to carry out the support required. The Contractor also agrees to comply with the Employer’s Access Procedures for External Support, a copy of which is available on request from the Employer’s Head of Information Technology.
- 6 The Contractor agrees to assist the Employer with any subject information requests, which may be received by the Employer, under the 1998 Act; within the time limits imposed by the 1998 Act.

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- 7 The Contractor undertakes not to use the data for a purpose which is inconsistent with the purposes notified to the data subjects by the Employer or to disclose the data to a third party other than at the specific request of the Employer.
- 8 The Contractor confirms that it has a written security policy for the processing of data and that it will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Employer and to allow the Employer to visit the Contractor to ensure that the terms of this condition are being complied with.
- 9 The Contractor shall indemnify the Employer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Employer may incur, arising out of any breach of this condition by the Contractor.
- 10 On termination of this Contract, the Contractor shall cease to process the data and shall arrange for the prompt and safe return of all data, belonging to the Employer, to the Employer, together with all copies of the data in its possession or control, including all copies with any agreed Sub-Contractor.
- 11 In this condition, "data" shall mean all information relating to the Employer's clients and prospective clients, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Employer's business affairs including all information of a confidential nature or imparted by whatever nature by the Employer to the Contractor during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Employer.

### 40.9 **The Control of Asbestos Regulations 2006**

Whether or not asbestos-containing materials have been identified as being part of the Works or in the vicinity of the Works the Contractor must:

Inspect and sign the local asbestos register. In the case of occupied non-Housing properties this will normally be held at a central location within the property (normally Reception) and for Housing properties at the local ACCESS office.

Contractors shall be directed to the location of the local asbestos register for buildings, which are not normally occupied.

Where asbestos-containing materials are to be removed and disposed of as part of the Works, and/ or the Works are carried out in close proximity to asbestos-containing materials, the Contractor must:



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Submit, with the tender, a copy of a valid and current License in terms of The Control of Asbestos Regulations 2006

Submit, with the tender a completed Method Statement detailing proposals for dealing with the hazard. Please refer to the Risk Assessment sheets as part of the Pre-construction Information.

Immediately upon acceptance of Tender, submit to the Health and Safety Executive a method statement and plan of work, for their approval. All costs involved in obtaining such approval will be deemed to be included in the Tender amount. At the same time as submitting these documents to the Health and Safety Executive the Contractor must also submit a copy of this information to the Employer.

Tenders submitted will be deemed to include for all costs necessary for executing the Works, taking account of all appropriate Health & Safety requirements.

Nothing contained in this document shall overrule, set aside or in any way alter the Contractor's statutory liability to carry out the Works in accordance with all current Health & Safety legislation.

Further, and without prejudice to the foregoing, notification of failure to comply with the requirements contained herein shall be within the sole discretion of the Employer and failure to notify non-compliance shall not in any way infer any approval on the part of the Employer in respect of the Contractor's operating methods or practices nor shall it free or relieve the Contractor from any obligation otherwise incumbent upon it.

The Employer accepts no liability for any loss, injury or damage occasioned to the Contractor, or to any third party, whether arising directly or indirectly as a result of the Employer's notification or non-notification of failure to comply with these requirements.

The Contractor shall not be given possession of the site until the necessary approvals have been obtained from the Health and Safety Executive and, paperwork confirming same, is in the hands of the Employer. If the Contractor shall have failed to provide the required paperwork within 28 days of the date of the award of the Contract or within such further period as may be permitted by the Employer, the Employer shall be entitled to terminate the Contract by giving seven days notice to the Contractor.

In the event of termination under this Supplementary Condition, the Contractor shall pay to the Employer all costs incurred by the Employer in connection with the obtaining of new tenders and the Employer shall not be liable for any claim or demand from the Contractor in respect of anything already done or furnished in connection with the Contract or in respect of any matter or thing in connection with the Contract whatsoever.

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In the event that the Contractor discovers, or suspects, the existence of asbestos-containing materials, not previously identified, the Contractor must cease work immediately and notify the Contract Administrator. Thereafter the Contractor will be required to co-operate whilst samples of materials are taken and analysed. Once the results of any analysis are known the Contract Administrator will instruct the Contractor on the appropriate course of action.

### 40.10 **Race Relations Act**

Angus Council has a Statutory Duty under the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, to have due regard to the need to eliminate unlawful discrimination, promote equality of opportunity and good relations between persons of different racial groups.

The Council is committed to ensuring that racial equality is achieved in all aspects of its functions and services and requires all Contractors to comply with the provisions of the Race Relations Act 1976 and Race Relations (Amendment) Act 2000.