ANGUS COUNCIL CONDITIONS OF CONTRACT FOR THE SUPPLY OF SOFTWARE AND / OR SOFTWARE SUPPORT

GENERAL CONDITIONS

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

1.   DEFINITIONS

In these Conditions:

'Acceptance Procedures' means the criteria, process and procedures for the Purchaser to establish to its satisfaction that development of the Software and any Software Implementation Services appear to have achieved the required standards for the Purchaser's acceptance set out in the Specification of Requirements;

'Acceptance Procedures Period' means the period of time commencing from the date of the Provider's written notification to the Purchaser claiming completion of development and delivery of the Software and any Software implementation Services in accordance with the Specification of Requirements within the Purchaser is to establish achievement of that completion, as set out in the Acceptance Procedures;

'Contract' means the contract between the Purchaser and the Provider consisting of the Specification of Requirements, these Conditions and other documents (or parts thereof) specified in the Specification of Requirements;

'Incident' means any occasion when the Software fails to operate in accordance with the Specification of Requirements and / or the Provider's Software Documentation, including operating manuals (provided that, in the event of conflict, the Specification of Requirements shall have precedence);

'Intellectual Property Right' means exclusive property rights over intangible assets by a human mind, both artistic and commercial and including copyrights, trademarks, patents and trade secrets, which are legally enforceable by the owner thereof in the United Kingdom irrespective of how and where they may have been created;

'Premises' means the location where the services are to be performed, as specified in the Specification   of Requirements;

'Provider' means the person, firm or company to whom the Contract is issued;

'Purchaser' means Angus Council, the local authority for the local government area of Angus, Angus House, Orchardbank Business Park, Forfar, DD8 1AX;

'Services' means the whole service to be provided under the contract as specified in the Specification of Requirements, either or both the supply of the Software and the Software Support Services and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'Software' means the Provider's Software, Provider's code and the third party Software;

'Software Documentation' means the entire operating manuals, guidance (including "quick start" guidance) and installation/ operation instructions required to support all users in the operation and use   of Software and written in clear, intelligible and non-technical English language.

'Software Support Services' means the services to be provided as specified in the Specification of requirement and shall, where the context so admits, include any materials, articles and Software to be supplied thereunder;

'Specification of Requirements' means the document setting out the Purchaser's requirements for the Contract. Where the contract between the Purchaser and the Provider proceeds only on a purchase order and acceptance of that order, this means the purchase order by which the Purchaser orders the Services from the Provider.

2. VARIATION OF THE SERVICES AND SOFTWARE

2.1 The Purchaser reserves the right by notice to the Provider to modify the quality or quantity of the Services or Software and any alteration to the Contract price or the completion date arising by reason of such modification shall be agreed by the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 38.

2.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Provider shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

2.3 Where any such variation of the Services made in accordance with Condition 2.1 and 2.2 has affected or may affect the costs incurred by the Provider in providing the Services, the Provider will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Provider in respect of the effect which such variation has had or may have on the costs incurred by the Provider in providing the service) and may authorise such alteration to the sums to be paid to the Provider in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

3. IMPLEMENTATION PLAN

3.1 Both parties shall perform all their obligations under the Contract in accordance with the Implementation Plan, either as stipulated within the Specification of Requirements, forming part of the Provider's Tender or otherwise as agreed in writing between the parties, as the case may be.

3.2 In the event that the Provider fails to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the Provider shall, at the request of the Purchaser and without prejudice to the Purchaser's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no extra charge to the Purchaser.

4. LICENCES TO USE SOFTWARE

4.1 The Purchaser shall not acquire title to the intellectual property rights in the Provider's Software or any third party Software which is supplied hereunder.

4.2 In consideration of the payment of the Contract price the Provider hereby grants to the Purchaser, a non-exclusive licence to use the Provider's Software. Such licence to use the Provider's Software, subject to Condition 16.7, shall be perpetual and irrevocable. In the case of any Provider's Software for which the Contract price are periodic, the licence to use shall subsist, subject to Condition 16.7, until the expiry of written notice by the Purchaser terminating such licence.

4.3 In consideration of the payment of the relevant Contract price in respect of third party Software supplied hereunder, the Provider either:

4.3.1 hereby grants to the Purchaser a sub-licence to use the third party Software, subject to Condition 4.4 and Condition 4.5; or

4.3.2 shall procure, prior to the commencement of the acceptance procedures period (to be agreed between the parties) that the third party grants to the Purchaser a licence to use the third party Software, subject to Condition 4.4 and Condition 4.5.

4.4 The Purchaser shall be entitled to engage a third party to use the Provider's Software and third party Software subject to and in accordance with the Contract on behalf of the Purchaser that such third party shall have entered into a confidentiality undertaking in accordance with Condition 33.2(b).

4.5 The Purchaser shall be entitled to copy the Provider's Software and third party Software in order to create an archival copy and a back-up copy of the same. When copying Software the Purchaser shall include the original machine readable copyright notice, and a label affixed to the media identifying the Software and stating: "This medium contains an authorised copy of copyrighted software which is the property of (the Provider or the third party Software owner)."

4.6 The Provider shall place the source code of the Provider's Software in escrow with ESCROW or an equivalent organisation on the basis of the appropriate standard agreement or on such other terms as the Purchaser and the Provider and ESCROW or such other equivalent organisation shall agree.

5. INSPECTION OF THE PREMISES AND NATURE OF THE SERVICES

5.1 The Provider confirms that it has had the opportunity to inspect the Premises, and that the Provider either:

5.1.1 Has satisfied itself that the Premises are suitable for the installation of the Software and the supply of the Services; or

5.1.2 Will advise the Purchaser in writing within 14 days of the date of installation of any matter, or aspect of the Premises, which is inadequate or not suitable for installing the Software or supplying the Services.

The Provider acknowledges that it is not entitled to recover any additional costs from the Purchaser which arise from any matter, or aspect of the Premises, which has not been notified to the Purchaser in accordance with Condition 5.1.2 and which is inadequate or unsuitable for installing or operating the Software or supplying the Services. For the avoidance of doubt, the Purchaser warrants that the Premises do not suffer from any latent structural defect rendering them inadequate or unsuitable for those purposes.

6. ACCEPTANCE

6.1 The Provider shall, during the Acceptance Procedures Period make available the Software for the Acceptance Procedures to be performed, as both the Acceptance Procedures and the Acceptance Procedures Period are either as stipulated within the Specification of Requirements, forms part of the Provider's Tender or otherwise is as agreed in writing between the parties.

6.2 The Purchaser shall accept the Software in accordance with the Acceptance Procedures.

6.3 The Acceptance Procedures shall be recorded as successful and the Provider notified accordingly where all the acceptance criteria (to form part of the Acceptance Procedures) are met.

6.4 The Acceptance Procedures shall be recorded as unsuccessful and the Provider notified accordingly where any of the acceptance criteria are not met.

6.5 If the Acceptance Procedures, in respect of any item of Software, have not been recorded as successful pursuant to Condition 6.3 by the latest Acceptance Date (to form part of the Implementation Plan) the Purchaser shall have the right either:

6.5.1 to accept such items of Software as the Purchaser may decide and pay a pro-rated Contract price therefore or such other charge, as may be agreed between the parties.

6.5.2 without prejudice to its other rights and remedies, to extend the Acceptance Procedures Period for a period or periods, specified by the Purchaser, during which the Provider shall correct the fault which caused the acceptance procedures to be recorded as unsuccessful; or

6.5.3 to terminate the Contract in accordance with Condition 34.3.

6.6 In the event that the Purchaser extends the Acceptance Procedures Period for a period pursuant to Condition 6.5.2 and the acceptance procedures have not been recorded as successful by the end of that period, the Purchaser shall have the right either:

6.6.1 to accept such items of Software as the Purchaser may decide and pay a pro-rated Charge therefore   or such other charge, as may be agreed by the parties.

6.6.2 to extend the Acceptance Procedures Period for a further period in accordance with Condition 6.5.2; or

6.6.3 to terminate the Contract in accordance with Condition 34.

7.   TITLE AND RISK

7.1 The Purchaser shall not acquire title to the media on which the Software is supplied under the Contract.

Risk in all media supplied under the Contract shall vest in the Purchaser upon acceptance of the Software in accordance with Condition 6.

8.   WARRANTIES AND REPRESENTATIONS – SOFTWARE SUPPLY

8.1 The Provider warrants and represents that:

8.1.1 the Provider has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform the Contract and that the Contract is executed by a duly Authorised representative of the Provider;

8.1.2 at the acceptance date, the Software shall meet the acceptance criteria;

8.1.3 at the acceptance date the Software shall operate in accordance with its technical specifications;

8.1.4 the Software shall operate in and be fully compatible with the operating environment (to be agreed   between the parties);

8.1.5 the Purchaser's use and operation of the Software shall not infringe any industrial, commercial or other Intellectual Property Rights of any third party.

8.1.6 the Provider has the full capacity and authority to grant the licence referred to in Condition 4;

8.1.7 the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures; and shall have the right to quiet possession of the Software.

8.1.8 the Purchaser shall have the right to full and unchallengeable possession of the Software.

8.2 Except as expressly stated in the Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness or purpose) are hereby excluded to the extent permitted by law.

9.   INTELLECTUAL PROPERTY RIGHTS INDEMITY

9.1 Subject always to the Purchaser's proper observance of its obligations under this Condition 9, the Provider shall indemnify the Purchaser against all claims, demands, actions, costs, expenses (including

but not limited to legal costs and disbursements on a solicitor and Purchaser basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right by the use or possession of the Software by the Purchaser or in connection with the Services.

9.2 The Provider shall forthwith notify the Purchaser if any claim or demand is made or action brought against the Provider for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Software by the Purchaser or which may affect the Services.

9.3 The Purchaser shall forthwith notify the Provider if any claim or demand is made or action brought against the Purchaser for infringement or alleged infringement of any Intellectual Property Right by reason of the use or possession of the Software by the Purchaser or in connection with the Services. The Provider shall at is own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Purchaser hereby agrees to grant the Provider exclusive control of any such litigation and such negotiations.

9.4 The Purchaser shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Purchaser or the Provider for infringement or alleged infringement of any Intellectual Property Right by reason of the use or possession of the Software by the Purchaser or in connection with the Services and shall be repaid all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and Purchaser basis) incurred in doing so.

9.5 The Purchaser shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement of any Intellectual Property Right by the Purchaser or the Provider in respect of the use or possession of the Software by the Purchaser or in connection with the Services.

9.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in respect of the Software or in connection with the Services or in the reasonable opinion of the Provider is likely to be made, the Provider may at its own expense either:

9.6.1 modify or replace the Software and the Services, without reducing the performance and functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Software and Services; or

9.6.2 procure a licence to use the Software and perform the Services on terms which are acceptable to the Purchaser.

9.7 The foregoing provisions of this Condition 9 shall not apply insofar as any such claim or demand or action is in respect of:

9.7.1 any use by or on behalf of the Purchaser of anything supplied by the Provider under the Contract in combination with any item not so supplied where such use of the item directly gives rise to the claim, demand or action; or

9.7.2 any modification carried out by or on behalf of the Purchaser to any item supplied by the Provider under the Contract if such modification is not authorised by the Provider in writing; or

9.7.3 any use of the Software not reasonably to be inferred from the specification or requirements of the Purchaser; or

9.7.4 the Purchaser's unreasonable refusal to use a modified or replacement Software supplied pursuant to Condition 9.6.

9.8 If the Provider has availed itself of its rights to modify the Software or Services under Condition 9.6.1 or to procure a licence in accordance with Condition 9.6.2 and such exercise of the said rights has

avoided any claim, demand or action for infringement or alleged infringement, then the Provider shall have no further liability thereafter under this Condition 9 in respect or the said claim, demand or action.

9.9 If a replacement or modification in accordance with Condition 9.6.1 above is not possible so as to avoid the infringement or the Provider has been unable to procure a licence in accordance with Condition 9.6.2, the Provider shall be liable for the value of replacement Software or Services or part thereof together with associated costs incurred in implementing such replacements.

9.10 The Purchaser hereby warrants that any instructions given in relation to the Provider's use of any third party item supplied directly or indirectly to the Purchaser shall not cause the Provider to infringe any third party's Intellectual Property Rights in such item.

9.11 The foregoing states the entire liability of the Provider with regard to infringement of any Intellectual Property Right by the use or possession of the Software by the Purchaser or in connection with the Services.

10. SOFTWARE DOCUMENTATION

10.1 The Provider shall supply the Software Documentation (as specified by the Provider or otherwise agreed between the parties) with the Software.

10.2 The Provider warrants that the Software Documentation includes a complete set of operating manuals.

11. THE SOFTWARE SUPPORT SERVICES

11.1 In consideration of the payment of the Charges the Provider shall supply from the commencement date, in respect of the Software, the Software Support Services.

11.2 The Purchaser may, by service of not less than thirty (30) days prior written notice, add to or delete from the list of items of Software detailed in the Contract, provided always that any items of Software added to the list shall have been supplied by the Provider or shall be added to the list with the Provider's consent.

11.3 The Provider shall supply the Software Support Services in respect of the Software from the date on which the notice of variation of the Software expires.

11.4 In the event of a change to the Software in accordance with condition 2.2 the Charges shall be adjusted as agreed between the parties by application of the charges variation procedure (to be agreed between the parties).

11.5 The Software Support Services shall only be varied by application of the change of control procedure (to be agreed between the parties).

11.6 In the event of the Provider releasing a new version or update of the Software or Software Documentation or part thereof to the Purchaser, it shall be installed by the Provider under the Software Support Services at no additional cost and accepted and used by the Purchaser except where the Purchaser can show that the new issue or update has a significant adverse effect on the performance of the Software for the Purchaser's operational requirements. In which case the Purchaser may elect to retain the superseded issue of the Software and the Provider shall use all reasonable endeavours to continue to provide the Software Support Services.

12. LICENSES TO USE SOFTWARE

12.1 The Provider shall perform all necessary routine and remedial maintenance required for the Software to operate in accordance with the service levels (to be agreed between the parties).

12.2 The Purchaser shall permit the Provider such access to the Software as is reasonably required for the Provider to comply with its obligations under condition 12.1.

13. SERVICE CREDITS AND ADDITIONAL RESOURCES

In the event that the Software fails to operate in accordance with the service levels, the Provider shall, at the request of the Purchaser and without prejudice to the Purchaser's other rights and remedies, arrange all such additional resources as are necessary to correct the said failure as early as practicable thereafter and at no additional charge to the Purchaser.

14. INCIDENT REPORTING AND RECORD KEEPING

14.1 The Purchaser shall notify the Provider of all Incidents which come to the Purchaser's attention.

14.2 The Purchaser shall maintain at the premises a daily log recording the use of the software and any Incident which occurs.

14.3 The daily log referred to in condition 14.2 shall be in a format agreed between the Provider and the Purchaser and shall be available for inspection at all reasonable times and a reasonable notice by the Provider.

15. WARRANTIES AND REPRESENTATIONS – SOFTWARE SUPPORT SERVICES

15.1 The Provider warrants and represents that:

15.1.1 the Provider has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform the Contract and that the Contract is executed by a duly authorised representative of the Provider;

15.1.2 the Software shall operate in and be fully compatible with the operating environment (to be agreed between the parties);

15.1.3 all components of the Software shall operate in accordance with their technical specifications;

15.1.4 the Provider has the full capacity and authority to perform the Software Support Services;

15.1.5 the Purchaser's receipt of the Software Support Services shall not infringe any industrial, commercial or other rights or any Intellectual Property Rights of any third party;

15.1.6 the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this condition) in accordance with its own established internal procedures; and

15.1.7 the Software Support Services shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel.

15.2 Except as expressly stated in the Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness or purpose) are hereby excluded to the extent permitted by law.

16. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

16.1 Subject always to the Purchaser's proper observance of its obligations under this condition 16, the Provider shall indemnify the Purchaser against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and Purchaser basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right in connection with Software Support Services.

16.2 The Provider shall forthwith notify the Purchaser if any claim or demand is made or action brought against the Provider for infringement or alleged infringement of any Intellectual Property Right which may affect the Software Support Services.

16.3 The Purchaser shall forthwith notify the Provider if any claim or demand is made or action brought against the Purchaser for infringement or alleged infringement of any Intellectual Property Right in connection with the Software Support Services. The Provider shall at is own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Purchaser hereby agrees to grant the Provider exclusive control of any such litigation and such negotiations.

16.4 The Purchaser shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Purchaser or the Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the Software Support Services and shall be repaid all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and Purchaser basis) incurred in doing so.

16.5 The Purchaser shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Purchaser or the Provider in connection with the Software Support Services.

16.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in respect of the Software Support Services or in the reasonable opinion of the Provider is likely to be made, the Provider may at its own expense either:

16.6.1 modify or replace the Software Support Services, without reducing the performance and functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Software Support Services; or

16.6.2 procure a licence to perform the Software Support Services on terms which are acceptable to the Purchaser.

16.7 The foregoing provisions of this condition 16 shall not apply insofar as any such claim or demand or action is in respect of:

16.7.1 any use by or on behalf of the Purchaser of anything supplied by the Provider under the Contract in combination with any item not so supplied where such use of the item directly gives rise to the claim, demand or action; or

16.7.2 any modification carried out by or on behalf of the Purchaser to any item supplied by the Provider under the Contract if such modification is not authorised by the Provider in writing; or

16.7.3 the Purchaser's unreasonable refusal to use a modified or replacement Software Support Services supplied pursuant to Condition 16.6.

16.8 If the Provider has availed itself of its rights to modify the Software Support Services under condition 16.6.1 or to procure a licence in accordance with condition 16.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Provider shall have no further liability thereafter under this condition 16 in respect or the said claim, demand or action.

16.9 If a modification in accordance with condition 16.6.1 above is not possible so as to avoid the infringement or the Provider has been unable to procure a licence in accordance with condition 16.6.2, the Provider shall be liable for the value of the costs associated in procuring replacement Software Support Services.

16.10 The Purchaser hereby warrants that any instructions given in relation to the Provider's use of any third party item supplied directly or indirectly by the Purchaser shall not cause the Provider to infringe any third party's Intellectual Property Rights in such item.

16.11 The foregoing states the entire liability of the Provider with regard to infringement of any Intellectual Property Right in connection with the Software Support Services.

17. DISPATCH OF PRODUCTS

17.1 If the Provider sends any product, compromised in the Software, away from the Premises for repair or for any other reason, the Provider shall be responsible for:

17.1.1 the packing, carriage and insurance of the product; and

17.1.2 all costs associated with the dispatch, repair, return and reinstallation of the product.

18. REMOVAL

18.1 Subject to condition 18.2 and if so requested by the Purchaser the Provider shall move the Software or any part thereof either within the Premises or to other Premises.

18.2 The cost of removal in accordance with condition 18.1 shall be agreed between the parties.

18.3 The Software or part thereof, after removal in accordance with condition 18.1 shall continue to be subject to the Software Support Services.

19. HOUSING AND OPERATION

19.1 The Purchaser shall maintain the environmental conditions as set out in the Provider's offer to provide the Services in response to the Specification of Requirements at the Premises.

19.2 The Purchaser shall use the Software in accordance with reasonable guidance given by the Provider to the Purchaser from time to time, provided that such guidance may in no way conflict with or diminish from the Specification of Requirements or the Providers offer to provide the Services in response thereto (provided that, in the event of conflict, the Specification of Requirement shall have precedence).

20. SPECIFIED CONSUMABLES

20.1 The Provider shall notify the Purchaser in the Provider's offer to provide the Services of the specifications for all consumables to be used with the Software where the Provider reasonably stipulates that failure to use consumables of such specification is likely to have a detrimental effect on the operation and/or proper function of the Software and provided that the Provider shall take all reasonable steps to so specify in an anti-competitive manner and shall, whenever practicable, allow equivalence where brand or proprietary consumables are so specified.

20.2 The Purchaser shall only use, with the Software, consumables which comply with the specifications notified by the Provider in accordance with condition 20.1; provided that insofar as no consumables are so specified, the Purchaser shall be entitled to use any apparently compatible consumables without prejudicing any warranty or condition incumbent upon the Provider under the Contract (whether express or implied).

21. PROVIDER'S STATUS

In carrying out the Services the Provider shall be acting as principal and not as the agent of the Purchaser. Accordingly:

(a)   the Provider shall not (and shall procure that the Provider's agents and servants do not) say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Purchaser, and

(b)   nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Provider to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Provider that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff or agents.

22. PROVIDER'S PERSONNEL

22.1 The Provider shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Provider notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed

from involvement in the performance of the Contract, the Provider shall take all reasonable steps to comply with such notice and if required by the Purchaser the Provider shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

22.2 If and when instructed by the Purchaser, the Provider shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.

22.3 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Provider has furnished the information or taken the steps required of the Provider by this Condition.

22.4 The Provider shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

23. MANNER OF CARRYING OUT THE SERVICES

23.1 The Provider shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.

23.2 Access to the Premises shall not be exclusive to the Provider but only such as shall enable the Provider to carry out the Services concurrently with the execution of work by others. The Provider shall co-operate with such others as the Purchaser may reasonably require.

23.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:

(a)   the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or

(b)   the substitution of proper and suitable materials, and/or

(c)   the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract.

23.4 The Provider shall forthwith comply with any order made under Condition 23.3.

23.5 On completion of the Services the Provider shall remove the Provider's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

24 HEALTH AND SAFETY

The Provider shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally. The Provider shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

25. TIME OF PERFORMANCE

The Provider shall begin performing the Services on the date stated in the Specification of Requirements and shall complete the Services by the date stated in the Specification of Requirements or continue to perform them for the period stated in the Specification of Requirements (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Provider to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Provider shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

26. PAYMENT

26.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.

26.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

26.3 Notwithstanding Condition 36 of this Contract the Provider may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Provider under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 35 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Provider shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

27. FREE-ISSUE MATERIALS

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Provider such materials shall be and remain the property of the Purchaser. The Provider shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Provider shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Provider or any of the Provider's servants, agents or sub-Providers shall be made good at the Provider's expense. Without prejudice to any other of the rights of the Purchaser, the Provider shall deliver up such materials whether processed or not to the Purchaser on demand.

28. AUDIT

The Provider shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Provider paid for by the Purchaser on a time charge basis. The Provider shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.

29. CORRUPT GIFTS OR PAYMENTS

The Provider shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Provider is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

30. PATENTS, INFORMATION AND COPYRIGHT

30.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Purchaser, that nothing done by the Provider in the performance of the Services shall

infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Provider shall indemnify the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

30.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

(a)   furnished to or made available to the Provider by the Purchaser shall remain vested in the Purchaser absolutely.

(b)   prepared by or for the Provider for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 16.2) the Provider shall not and shall procure that the Provider's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Provider may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Provider shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

30.3 The provisions of this Condition 30 shall apply during the continuance of this Contract and after its termination howsoever arising.

31. INDEMNITY AND INSURANCE

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

31.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Provider (in respect of which the indemnity in Condition 31.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser or any servant or agent of the Purchaser) the indemnity contained in Condition 31.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser or any servant or agent of the Purchaser.

31.3 The Provider shall have in force and shall require any sub-Provider to have in force:

(a)   employer's liability insurance in accordance with any legal requirements for the time being in force but covering at least all employer's liability matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £10 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing;

(b)   public liability insurance for such sum and range of cover as the Provider deems to be appropriate but covering at least all public liability matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing; and

(c)   professional indemnity insurance and any other insurances (if any) for such cover and to such extent as is stipulated in Special Condition of Contract 41 (if used), unless otherwise agreed by the Purchaser in writing.

Where an indemnity or compensation obligation falls within more than one of the heads of insurance cover referred to above, the Provider shall secure that the insurance effected to cover that obligation is to the extent of the highest of the indemnity limits stipulated in the clauses of this condition applying to that obligation.

31.4 The policy or policies of insurance referred to in Condition 31.3 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

31.5 Subject to the indemnities and insurance obligations contained in Conditions 31.1 to 31.4 and to any right to repudiate, resile from or otherwise terminate the Contract which may arise hereunder or otherwise at law, the liability of either party for defaults under the Contract shall be limited under the Contract as set out in this Condition 31.5, namely:

31.5.1 That liability shall be for damage only.

31.5.2 The aggregate liability for direct loss of or damage to the property of the other party shall be limited to £5 million.

31.5.3 The aggregate liability for other losses under the Contract shall not exceed the total Contract price.

31.5.4 Neither party shall be liable to the other under this Condition 31.5 for:

(a) loss of profits, business, revenue, goodwill or anticipated savings; or

(b) indirect or consequential loos or damage.

31.5.5 The provisions of condition 31.5.4 shall not, however, be taken as limiting the right of the Purchaser to claim from the Provider for:

(a) additional operational and administrative costs and expenses; and

(b) expenditure or changes rendered necessary as a result of the Provider's default.

32. DISCRIMINATION

The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Provider shall take all reasonable steps to secure the observance of this Condition by all employees and representatives of the Provider.

33. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

33.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time relating to access to public authorities information, details of any matters relating to the Contract, unless any 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 Purchaser or the Provider or such details fall within such other exemption as may be applicable at the discretion of the Purchaser, in terms of the Act. The Provider shall facilitate the Purchaser's compliance with the

Purchaser's obligations under these provisions and comply with any request from the Purchaser for that purpose. No term of the Contract either shall preclude the Purchaser from sharing pricing and under information under the Contract with other UK public bodies for the purpose of achieving better public procurement and subject to a reciprocal obligation of confidence upon such other public bodies as is imposed on the Purchaser in terms of Condition 33.2(b).

33.2 Subject to Condition 33.1:-

(a) The Provider shall keep secret and not disclose and shall procure that the Provider's employees keep secret and do not disclose any information of a confidential nature obtained by the Provider by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

(b) Commercially sensitive information related to the Contract with the Provider will be treated as commercial in confidence by the Purchaser except insofar as required by law or judicial order to be disclosed.

33.3 Where and insofar as provision of the Services by the Provider under the Contract does or may involve the Provider processing personal data on behalf of the Purchaser, the following terms of this Condition 33.3 shall apply during the continuance of this Contract and after its termination, however arising.

1. This Condition 33.3 takes account of paragraph 12 of Part II of Schedule 1 to the Data under the 1998 Act and words and phrases defined in the 1998 Act shall have the same meaning when used in this clause.

2. Both parties warrant to the other that, in terms of the Contract, the Purchaser as data controller and the Provider 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;

3. Without prejudice to the foregoing generality of Condition 33.3.2, the Provider 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 or destruction of, or damage to, personal data;

4. No sub-Provider shall be appointed by the Provider in connection with the processing of any data relative to the Contract without the prior written approval of the Purchaser. The Provider will enter into an equivalent agreement to the terms of this Condition 33.3 with any such approved sub-Provider in terms of paragraph 12 of Part II of schedule 1 of the 1998 Act;

5. The Provider undertakes to keep all data disclosed to it by the Purchaser under the Contract confidential and to process all such data strictly and only in accordance with the Purchaser's instructions from time to time; all instructions given by the Purchaser will be in accordance with the laws of Scotland;

6. The Provider shall ensure that only such of its employees who may be required by the Provider to assist it in meeting its obligations under this contract shall have access to the data. Where the Provider is providing third party system support to the Purchaser, whether remotely or on site, the Provider and any sub-Provider appointed in terms of this Contract must act reasonably and must access only such information as is required to enable the Provider or sub-Provider to   carry out the support required. The Provider also agrees to comply with the Purchaser's Access Procedures for External Support, a copy of which is available on request from the Purchaser's Head of Information Technology (or equivalent post).

7. The Provider agrees to assist the Purchaser with any subject information requests related to data processed by the Provider which may be received by the Purchaser under the 1998 Act within the time limits imposed by the 1998 Act;

8. The Provider undertakes not to use the data for a purpose which is inconsistent with the purposes notified to the data subjects by the Purchaser or to disclose the data to a third party other than at the specific request of the Purchaser;

9. The Provider 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 Purchaser and to allow the Purchaser to visit the Provider to ensure that the terms of this condition are being complied with;

10. Without prejudice to the terms of Condition 35, the Provider shall indemnify the Purchaser against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Purchaser may incur arising out of any breach of this Condition 16.3 by the Provider;

11. In the event of a breach of this Condition 33.3 by the Provider, the Provider shall be bound to remedy the breach within five working days of the breach coming to the attention of the Provider or the breach being notified to the Provider by the Purchaser, whichever is earlier. In the event that the breach is not resolved timeously, the Purchaser will be entitled to terminate the Contract forthwith.

12. On termination of the Contract, the Provider shall cease to process the data and shall arrange for the prompt and safe return of all data belonging to the Purchaser to the Purchaser, together with all copies of the data in its possession or control, including all copies with any approved sub-Provider;

13. In this Condition 33.3, "data" shall mean all information relating to the Purchaser's service users and prospective service users, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Purchaser's business affairs including all information of a confidential nature or imparted by whatever nature by the Purchaser to the Provider during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Purchaser.

33.4 The provisions of this Condition 33 shall apply during the continuance of this Contract and after its termination howsoever arising.

33.5 The Provider will provide the Purchaser with such management information on delivery of the Services as the Purchaser may reasonably require from time to time, including in particular summary reports on the detail of each item of supply provided within the Services, when and to whom.

34. TERMINATION

34.1 The Provider shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

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

(b) where the Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Provider to be wound up as an unregistered company; or

(c)	where the Provider is a company, if the company passes a resolution for winding-up of dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

34.2 On the occurrence of any of the events described in Condition 34.1 or, if the Provider shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Provider is an individual if the Provider shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Purchaser shall be entitled to terminate this Contract by notice to the Provider with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Provider) all materials, plant and equipment on the Premises belonging to the Provider, and the Purchaser shall not be liable to make any further payment to the Provider until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Provider the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Provider, the difference shall be recoverable by the Purchaser from the Provider.

34.3 In addition to the Purchaser's rights of termination under Condition 34.2, the Purchaser shall be entitled to terminate this Contract by giving to the Provider not less than 30 days notice to that effect.

34.4 Termination under Condition 34.2 or 34.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 9, 16, 30 and 33.

35. RECOVERY OF SUMS DUE
Wherever under this Contract any sum of money is recoverable from or payable by the Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Provider under this Contract or under any other agreement or contract with the Purchaser or with any department, agency or authority of the Purchaser.

36. ASSIGNATION AND SUB-CONTRACTING
36.1 The Provider shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract or these Conditions.

36.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Provider to the Purchaser immediately it is issued.

36.3 Where the Provider enters a sub-contract with a Provider or Provider for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the Provider or Provider within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

37. NOTICES
Any notice given under or pursuant to the Contract shall be in writing and may be delivered by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Specification of Requirements, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

38. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Purchaser is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.

39. HEADINGS

The headings to Conditions shall not affect their interpretation.

40. GOVERNING LAW

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

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Providers to Angus Council are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2. LATE PAYMENT OF INVOICES

Providers to Angus Council are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Head of Finance, Angus Council, Finance Division, Corporate Services Department, Angus House, Forfar DD8 1AF; Telephone 01307-461460; e-mail FINANCE@angus.gov.uk. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Providers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT