

ANGUS COUNCIL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES (other than Works Consultancies)

GENERAL CONDITIONS

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

1. GENERAL DEFINITIONS

In these Conditions:

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

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

'Consultant Personnel' means all directors, officers, employees, agents, consultants and contractors of the Consultant and/or of any Sub- Consultant engaged in the performance of its obligations under this Contract

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

'Data Protection Legislation' means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

LED: Law Enforcement Directive (Directive (EU) 2016/680)

'Law' means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

'Party' means a Party to this Contract and 'Parties' shall be construed accordingly

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

'Pricing Schedule' means the document or documents setting out the Supplier's pricing or other financial response to the Purchaser's Specification of Requirements in the form of the prices payable for supplies under the Contract, whether or the document or documents is named as such or is self-contained or not; and references to the Contract price shall be construed accordingly.

'Project' means the consultancy and any other ancillary services to be provided as specified in the Specification of Requirements or any part or parts of them;

'Project Plan' has the meaning given in Condition 2.4;

'Specification of Requirements' means the document setting out the Client's requirements for the Contract. Where the contract between the Client and the Consultant proceeds only on a purchase order and acceptance of that order, this phrase means that purchase order and any document incorporated in the purchase order by reference setting out the Client's requirement.

2. THE PROJECT

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- 2.1 The Consultant shall complete the Project with the high degree of skill, care, expertise and diligence that is commensurate with the nature of the consultancy engagement for the Project, the Client's reasonable expectations of the Consultant's expertise as a consultant and in accordance with the Contract.
- 2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.
- 2.3 The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 17.
- 2.4 The Consultant may be required to provide a Project Plan setting out how and when it will deliver the Project. If it is so required:
- (a) The Client shall be entitled to respond to the outline Project Plan and if it does it shall do so within 5 working days of the date of commencement of the Contract.
 - (b) The Consultant shall produce a final Project plan which is the same in all material respects as the outline Project Plan but developed in terms of detail as may be required and having regard to any response the Client makes to the outline Project Plan and deliver same to the Client within 10 working days of the date of commencement of the Contract.
 - (c) The Consultant will deliver the Project in line with the final Project Plan.
- 2.5 Timely delivery of the Project is of the essence of the Contract. In addition to timely delivery of the Project, performance of the Project in accordance with any stipulated service levels set out in or in the Consultant's response to the Specification of Requirements is also of the essence of the Contract.
- 2.6 Where any maximum delivery timescale or performance service level is stipulated to be "As Bid", then the relevant timescale or service level for the purposes of the Contract shall be that offered by the Consultant within its Quality Submission and accepted by the Client, subject to any formal clarification or correction thereof during the Tender evaluation process, where applicable.
- 2.7 Where the requirement for the Project (or any part of them) is committed by award of the Contract, the date of order of those committed Project (or that part) for the purpose of any stipulated maximum delivery timescales for delivery shall be taken as the date of contract award to the Consultant to follow hereon, notwithstanding the date of any formal purchase order(s) for those committed Project which may (or may not) be given by the Client for the purpose of auditably tracking the purchase through its financial systems. Otherwise, for any uncommitted, on demand or optional Project, the date of order for that purpose shall be the date of issue of an instruction by the Client to the Consultant to deliver those Project under this Contract, be that by formal purchase order, instruction or other approved method of communication. If that instruction is not given by e-mail, electronic communication, fax, phone or other instantaneous form of communication, 2 working days will be added to the maximum timescales set out for delivery.

3. CONSULTANT'S PERSONNEL

- 3.1 The Consultant shall make available for the purposes of the Project any individuals named on, referred to in or named in the Consultant's response to the Specification of Requirements as key Consultant Personnel. The Consultant shall provide the Client with a list of the names and business addresses of all others regarded by the Consultant as key Consultant Personnel and, if and when instructed by the Client, all other persons who may at any time concerned with the Project or any part of it, specifying in each case the

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capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key Consultant Personnel. The Consultant shall not without the prior written approval of the Client make any changes in the key Consultant Personnel referred to in this paragraph.

- 3.2 The Consultant shall take the steps reasonably required by the Client, to prevent unauthorised persons being admitted to the Premises. If the Client gives the Consultant notice that any Consultant Personnel 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 Project, the Consultant shall take all reasonable steps to comply with such notice.
- 3.3 The decision of the Client shall be final and conclusive as to whether any Consultant Personnel 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 Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of the Consultant by this Condition.
- 3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.
- 3.5 Where stipulated in the Specification of Requirements, the Consultant Personnel shall include named staff responsible for specified contract management and communications roles. The Client may identify reciprocal roles for its staff. Where so required:
 - (a) individuals shall be identified and their names, official titles, postal addresses, e-mail addresses, telephone numbers, fax numbers and other pertinent communication information (e.g. mobile numbers and out-of-hours contact details, where appropriate) exchanged within 10 working days of the date of Contract award.
 - (b) The Consultant shall maintain a master list of that information for this Contract up to date and supply a copy to the Client from time-to-time when a change has been made and any other time on reasonable request.
 - (c) The Parties may also agree and add to the master list deputising personnel to cover the absence or unavailability of the named personnel in emergency situations.
 - (d) Other roles and responsibilities may be added to the master list with written agreement between the parties.

4. CHANGE TO CONTRACT REQUIREMENTS

- 4.1 The Client may order any variation to any part of the Project that for any other reason shall in the Client's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Project and changes in quality, form, character, kind, timing, method or sequence of the Project.
- 4.2 Save as otherwise provided herein, no variation of the Project as provided for in Clause 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 4.3 Where any such variation of the Project made in accordance with Clauses 4.1 and 4.2 has affected or may affect the costs incurred by the Consultant in delivering the Project, the

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

5. FEES AND EXPENSES

- 5.1 The Client shall pay to the Consultant fees and expenses at the rate or lump sum specified in the Consultant's Pricing Schedule.
- 5.2 Where the Specification of Requirement provides for expenses to be paid in addition to fees, the Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.
- 5.3 Consultancy services to deliver the Project shall be commenced following receipt by the Consultant of an official purchase order from the Client subject to the Project Plan, if any, and any alternative commencement arrangements agreed between the Consultant and the Client.
- 5.4 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 Client.
- 5.5 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. All invoices for payment of Project services rendered must contain the level of detail required for a Value Added tax invoice, whether or not VAT is due on that invoice.
- 5.6 Invoices for payment of Project services rendered may not be submitted in advance of delivery without the express written agreement of the Client's Contract Manager. Any invoice submitted in breach of this requirement will require to be cancelled and re-submitted in proper order.
- 5.7 All invoices for Project services rendered must contain or be supported and accompanied by sufficient supply information to allow for immediate and easy verification for the period concerned against the Contract prices and terms. In the case of complex supply and/or pricing arrangements, the form, content and timing of invoice and supporting information submission shall be agreed between the parties before commencement of supply and kept under review.
- 5.8 Notwithstanding Condition 15 of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 14 of this Contract and (ii) all the related rights of the Client under this Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary the Client's arrangements for payment of the fees or expenses or for handling invoices.

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6. AUDIT

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

7. CORRUPT PRACTICES

7.1 The parties acknowledge and agree that this Contract is a public contract funded by public funds and therefore that the Consultant will not be involved in corrupt practices either in the performance of the Contract or generally.

7.2 Without limitation to the generality of clause 7.1, if the Consultant or a person associated with the Consultant as defined in clause 7.3 has committed any of the following acts (and whether or not the Consultant or that person has been convicted of a criminal offence for that act), then that shall constitute a material breach of this Contract entitling (but not obliging) the Client to take any or all of the steps set out in clause 12 (Termination, Default and Step-in) or otherwise available to the Client by law:

- (a) The Consultant or a person associated with the Consultant has materially misrepresented itself or its offer within the tender documents (including any pre-qualification questionnaire response) or equivalent submitted by it to the Client and on the basis of which the Client awarded the Contract to the Consultant;
- (b) The Consultant or a person associated with the Consultant has been involved in money laundering through or related to the Contract. "Money laundering" for this purpose has the same meaning as set out in section 340(11) of the Proceeds of Crime Act 2002 (or any statutory modification or re-enactment thereof);
- (c) The Consultant or a person associated with the Consultant has been convicted of an offence under the Bribery Act 2010;
- (d) The Consultant or a person associated with the Consultant has acted in a way which would amount to the commission of a serious criminal offence and the circumstances of the act are related to the subject matter of the Contract. A "serious criminal offence" for this purpose is any act which could be tried as a crime under solemn procedure according to the law of Scotland;
- (e) The Consultant or a person associated with the Consultant promises or gives a financial or other advantage to any employee or representative of the Client who is concerned with the award, management or operation of this Contract;
- (f) The Consultant or a person associated with the Consultant has been involved in price-fixing, collusion with other parties to distort fair competition, bribery or similar corrupt activity and that whether or not that activity is related to this Contract.

7.3 A person associated with the Consultant for the purposes of this clause 7 means any employee, director, agent, owner, funder or other person involved in the control of the Consultant or deriving a financial return from the Consultant's operations.

8. PATENTS, INTELLECTUAL PROPERTY AND COPYRIGHT

8.1 It shall be a condition of the Contract that, except to the extent that the Project incorporate designs furnished by the Client, that nothing done by the Consultant in the performance of the Project shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Consultant shall indemnify the Client against all actions, claims, demands, costs and

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expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.

8.2 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 Consultant by the Client shall remain vested in the Client absolutely.

(b) prepared by or for the Consultant for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Client absolutely, and (without prejudice to Condition 11.2) the Consultant shall not and shall procure that the Consultant's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Client 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 Consultant 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 Consultant shall not refer to the Client or the contract in any advertisement without the Client's prior written consent.

8.3 The provisions of this Condition 8 shall apply during the continuance of this Contract and after its termination howsoever arising.

9. INDEMNITIES AND INSURANCE

9.1 The Consultant shall indemnify and keep indemnified the Client, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents.

9.2 The Consultant (if an individual) represents that the Consultant is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Consultant by reason of this Contract.

9.3 The Consultant shall have in force and shall require any sub-contractor to have in force with a reputable insurance company licensed to offer insurance services in the United Kingdom:

(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 Client in writing,

(b) public liability insurance for such sum and range of cover as the Consultant 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 Client in writing, and

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(c) professional indemnity insurance and any other special insurances (if any) for such cover and to such extent as is stipulated in the Specification of Requirements unless otherwise agreed by the Client in writing.

Where an indemnity or compensation obligation falls within more than one of the heads of insurance cover referred to above, the Consultant 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.

9.4 If requested, by the Client the Consultant shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

10. HUMAN RIGHTS AND EQUALITIES

10.1 In the performance of the Contract and specifically in relation to its directly or indirectly employed staff, the Consultant 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 Consultant shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 and all related, modifying, amending or re-enacting legislation. The Consultant shall take all reasonable steps to secure the observance of this Condition in all its sub-contracts under this Contract at any tier.

10.2 Without prejudice to Condition 10.1 or to any other terms of the Contract, insofar as under the Contract the Consultant is providing a service of a public nature on behalf of the Client (which the Consultant acknowledges it is doing), the Consultant shall secure compliance with the duties incumbent on the Client under the Human Rights Act 1998 and also the Client's equality duties and duty not to engage in prohibited conduct as regards race, gender, age and disability and other protected characteristics under the Equalities Act 2010 and all related, modifying, amending or re-enacting legislation as if the Consultant was the Client for the purposes of performance of the Contract.

11. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

11.1 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 Client or the Consultant or such details fall within such other exemption as may be applicable at the discretion of the Client, in terms of the Act. The Consultant shall facilitate the Client's compliance with the Client's obligations under these provisions and comply with any request from the Client for that purpose. No term of the Contract either shall preclude the Client 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 Client in terms of Condition 11.2(b).

11.2 Subject to Condition 11.1:-

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

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

- 11.3 Where delivery of the Project does not involve the processing of any personal data by the Consultant on behalf of the Client then each Party will observe its respective obligations under the Data Protection Legislation. However, where and insofar as delivery of the Project by the Consultant under the Contract does or may involve the Consultant processing personal data on behalf of the Client, the terms of Annex 1 to these Conditions shall apply during the continuance of this Contract and after its termination, however arising.
- 11.4 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 11.5 The Consultant will provide the Client with such management information on delivery of the Project as the Client may reasonably require from time to time, including in particular summary reports on the detail of each item of supply provided within the Project, when and to whom.
- 11.6 At any time during the existence of this Contract, or for 2 years after its expiry or termination (however arising), the Consultant shall provide to the Client in writing such information as the Client may require relating to the employees employed by the Consultant in the performance of the Project within each reasonable period as may be specified by the Client, including (but not restricted to): the number of such employees, the post in which each such employee is employed, the salary or wages and other remuneration paid to each such employee by the Consultant, the period of notice required to terminate employment of each such employee, the whole terms and conditions of employment of each such employee and the whole terms and conditions of any occupational pension scheme of which any such employee is a member, together with the number of such employees who are members of each such scheme.
- 11.7 The Client may give the information provided to it by the Consultant in accordance with this Condition 11 hereof to any firm, company, person or other legal entity invited or to be invited by the Client to tender in respect of any contract for the provision of the Project, or any part thereof, for any period commencing after the expiry or earlier termination of the Contract (however arising).
- 11.8 The Consultant irrevocably consents to the disclosure of the information provided by it in terms of this Condition to the Client in accordance with the provisions hereof, and irrevocably waives the right of confidentiality which it may have in respect of the said information and any other right which it may have in respect of the said information limiting disclosure by it or the Client. The Consultant undertakes that the conditions of employment of the Consultant's employees shall be such that the Consultant shall be entitled to release information which would otherwise be confidential between the Consultant's employees and the Consultant to the Client for the purposes of this Contract.

12. TERMINATION, DEFAULT AND STEP-IN

12.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

- (a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of the Consultant's estate or a criminal bankruptcy order is made against the Consultant, or the Consultant is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or

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makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Consultant's affairs; or

(b) where the Consultant 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 Consultant to be wound up as an unregistered company; or

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

12.2 On the occurrence of any of the events described in Condition 12.1 or, if the Consultant 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 Client in writing to do so or, where the Consultant is an individual if the Consultant shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect. Thereupon, without prejudice to any other of the Client's rights, the Client may complete the Project or have it completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Consultant) all materials, plant and equipment on the Premises belonging to the Consultant, and the Client shall not be liable to make any further payment to the Consultant until the Project has been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Consultant the costs thereof incurred by the Client (including the Client's own costs). If the total cost to the Client exceeds the amount (if any) due to the Consultant, the difference shall be recoverable by the Client from the Consultant.

12.3 In addition to the Client's rights of termination under Condition 12.2, the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 30 days notice to that effect.

12.4 Termination under Condition 12.2 or 12.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 8 and 11.

12.5.1 Without prejudice to any other rights and remedies of the Client under the Contract, including the right of termination on default set out in Condition 12.2, if the Consultant 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 14 days of being required by the Client in writing to do so, the Client may (in its sole discretion) by further notice in writing temporarily suspend performance of the Contract by the Consultant, either wholly or partially, and remedy that breach or have it remedied by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Consultant) all materials, plant and equipment on the Premises belonging to the Consultant. The terms of clauses 12.5.2 and 12.5.3 shall apply in that event.

12.5.2 The Client shall not be liable to make any further payment to the Consultant until compliance with the requirements of the Contract has been restored, and shall be entitled to deduct from any amount due to the Consultant the costs thereof incurred by the Client (including the Client's own costs). If the total cost to the Client exceeds the

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amount (if any) due to the Consultant, the difference shall be due as a debt by the Consultant to the Client.

- 12.5.3 Once compliance with the Contract has been restored to the Client's satisfaction and all sums due by the Consultant to the Client under this Condition paid, the Client may by notice in writing to the Consultant require him to resume performance of the Contract from the date specified in the notice or forthwith from receipt of the notice.

13. RETURN OF DOCUMENTS

13.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Client or any associated body or person in connection with the Contract, or extracted from such documents, papers, materials or information.

13.2 Where the Contract has been terminated pursuant to paragraph 12.3, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant to prepare any report required under that paragraph. Promptly upon submission of the report to the Client, the Consultant will return any documents, papers, materials or information which the Consultant may have retained in terms of this paragraph.

14. RECOVERY OF SUMS DUE

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

15. ASSIGNATION AND SUB-CONTRACTING

15.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract or these Conditions.

15.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Consultant to the Client immediately it is issued.

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

16. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, teletext, 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.

17. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Consultant the servant of the Client.

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18. 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 decisions of the Client 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.

19. HEADINGS

The headings to Conditions shall not affect their interpretation.

20. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Consultant 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 Client to take proceedings against the Consultant 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.

21. ANNUAL INDEXATION PRICE REVIEW

21.1 This Condition only applies where indexation is stated to apply to this Contract in the Specification of Requirements.

21.2 In respect that the Consultant has priced its tender for the Contract at a fixed date in accordance with the Client's instructions for that tender and the Contract is due to endure for longer than 1 year, then there shall be a review of the Consultant's prices for the supply under the Contract in accordance with this Condition 21.

21.3 From each anniversary of the date of commencement of the Contract (the "Commencement Date") during its currency, the Consultant's prices for the supply under the Contract shall be increased (or decreased) in proportion with the increase (or decrease) of the Retail Price Index (All Items) published by HM Government between either:

- (a) the Commencement date and the day preceding the first anniversary of the Commencement Date for the second year of the Contract; or
- (b) each anniversary of the Commencement Date and the day preceding the following anniversary for each subsequent year of the Contract.

21.4 Either party may notify the other of the effect of an indexation price review in accordance with Condition 21 in writing and, unless disputed, the review prices shall take effect from the date specified in the notice of price review, being a date not earlier than 14 days after the date of dispatch of said notice. The review prices shall have effect for the remaining duration of the Contract unless further reviewed in accordance with this condition 21 or any other Condition of the Contract permitting a price review.

21.5 Any dispute over the validity of a price review notice issued under this Condition 21 shall be notified by counter-notice issued by the other party prior to the date on which the price review is otherwise due to take effect (as stipulated in the price review notice) and shall be determined in accordance with Condition 18 (Arbitration). In the event of the price review notice being upheld in whole or in part upon determination of the dispute, its effect insofar as held shall be back-dated to the date upon which it would have taken effect but for the dispute. In the event, the Consultant may also claim interest on any amount then due to it calculated on the sum outstanding for more than 30 days after

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receipt and agreement of the invoice to which the unpaid amount relates until payment by the Clients of the unpaid amount at the base rate from time to time applicable for that period of the Royal Bank of Scotland plc. Any such claim shall be by invoice containing or accompanied by a detailed breakdown of the sum claimed.

21.6 If at any time during the currency of the contract the Retail Price index (All Items) ceases to be published then the Client, acting reasonably, may stipulate an alternative method of indexation as nearly equivalent to the Retail Price Index (All Items) as is reasonably practicable, to be applied for the remaining duration of the Contract.

22. TAYSIDE PROCUREMENT CONSORTIUM

22.1 In respect that and insofar as the tender documents preceding the Contract notified that the Contract is for the benefit of not only the Client but also the other partner organisations within the Tayside Procurement Consortium, namely: Dundee City Council, Perth and Kinross Council and Tayside Contracts (any one or more of whom is referred to in this condition 22. as a "TPC Partner" or the "TPC Partners, as the case may be), then the terms of this Condition 22. shall apply to use of the Contract by any TPC Partner.

22.2 A TPC Partner may secure supply to it under this Contract from the Consultant by purchase order which shall create a contract for that supply between (and only between) the Consultant and the TPC Partner on the basis of that purchase order but otherwise on the whole terms and conditions of the Contract, mutatis mutandis.

22.3 A purchase order under Condition 22.2 shall specify the name, contact address and delivery address for that TPC Partner and refer to the supply being ordered under this Contract.

22.4 Payment for a supply so ordered under Conditions 22.3 and 22.4 shall be due by the TPC Partner to the Consultant and all other performance obligations under the Contract for that supply shall be owed exclusively between the TPC Partner and the Consultant. Without prejudice to the terms of this Condition 22.4, however, the Client, the Consultant and the TPC Partners may agree to convene a combined management forum or similar arrangement for the effective and efficient operation of the Contract amongst the parties.

ANNEX 1 – DATA PROCESSING CONDITION

Annex 1 Definitions:

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer all take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Consultant under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Processing Schedule means the Schedule: "Processing, Personal Data and Data Subjects" to the Specification of Requirements setting out further written instructions with respect to processing by the Client.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Consultant related to this Contract.

1. Data Protection – Processing

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant is the Processor. The only processing that the Consultant is authorised to do is listed in the Data Processing Schedule and may not be determined by the Consultant.

1.2 The Consultant shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.

1.3 The Consultant shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with the Data Processing Schedule, unless the Consultant is required to do otherwise by Law. If it is so required

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the Consultant shall promptly notify the Client before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Client as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that:

(i) the Consultant Personnel do not process Personal Data except in accordance with this Contract (and in particular the Data Processing Schedule);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Consultant's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Consultant or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(i) the Client or the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and

(iv) the Consultant complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

(e) at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Contract unless the Consultant is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Consultant shall notify the Client immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

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- (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Consultant's obligation to notify under clause 1.5 shall include the provision of further information to the Client in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Consultant shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:
- (a) the Client with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Client following any Data Loss Event;
 - (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 1.8 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Consultant employs fewer than 250 staff, unless:
- (a) the Client determines that the processing is not occasional;
 - (b) the Client determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Consultant shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 1.10 The Consultant shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Consultant must:
- (a) notify the Client in writing of the intended Sub-processor and processing;

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(b) obtain the written consent of the Client;

(c) enter into a written Contract with the Sub-processor which give effect to the terms set out in this this Annex 1 set of clauses such that they apply to the Sub-processor; and

(d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.

1.12 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.

1.13 The Client may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Consultant amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Consultants to Angus Council are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Client 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

Consultants 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 & Legal Services, Angus Council, 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 Consultants' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT