

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 Supplier shall form any part of the Contract unless specifically agreed to in writing by the Purchaser.

1. GENERAL DEFINITIONS

In these Conditions:

'Contract' means the contract between the Purchaser and the Supplier consisting of the Specification of Requirements, these Conditions and 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)

'Good Industry Practice' means, in relation to any undertaking and any circumstances, the exercise of a high degree of skill, diligence, prudence and foresight that would reasonably be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances and which is a generally accepted standard of good practice followed by the leading members of that industry.

'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 services are 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.

'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 services to be provided as specified in the Specification of Requirements and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'Services Plan' has the meaning given in Condition 2.6;

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'*Specification of Requirements*' means the document setting out the Purchaser's requirements for the Contract. Where the contract between the Purchaser and the Supplier 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 Supplier.

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

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

2. THE SERVICES

2.1 The Supplier shall deliver the Services with reasonable skill, care and diligence in accordance with the Contract and with Good Industry Practice.

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

2.4 The Supplier shall provide the Purchaser with such reports of its work on the Services at such intervals in such form as the Purchaser may from time to time require.

2.5 The Purchaser reserves the right by notice to the Supplier to modify the Purchaser's requirements in relation to the Services 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.

2.6 The Supplier may be required to provide a Services Plan setting out how and when it will deliver the Services. If it is so required:

- (a) The Purchaser shall be entitled to respond to the outline Services Plan and if it does it shall do so within 5 working days of the date of commencement of the Contract.
- (b) The Supplier shall produce a final Services Plan which is the same in all material respects as the outline Services Plan but developed in terms of detail as may be required and having regard to any response the Purchaser makes to the outline

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Services Plan and deliver same to the Purchaser within 10 working days of the date of commencement of the Contract.

(c)The Supplier will deliver the Services in line with the final Services Plan.

- 2.7 Timely delivery of the Services is of the essence of the Contract. In addition to timely delivery of the Services, performance of the Services in accordance with any stipulated service levels set out in or in the Supplier's response to the Specification of Requirements is also of the essence of the Contract.
- 2.8 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 Supplier within its Quality Submission and accepted by the Purchaser, subject to any formal clarification or correction thereof during the Tender evaluation process, where applicable.
- 2.9 Where the requirement for the Services (or any part of them) is committed by award of the Contract, the date of order of those committed Services (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 Supplier to follow hereon, notwithstanding the date of any formal purchase order(s) for those committed Services which may (or may not) be given by the Purchaser for the purpose of auditably tracking the purchase through its financial systems. Otherwise, for any uncommitted, on demand or optional Services, the date of order for that purpose shall be the date of issue of an instruction by the Purchaser to the Supplier to deliver those Services 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. INSPECTION OF PREMISES AND NATURE OF SERVICES

- 3.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.
- 3.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

4. SUPPLIER'S STATUS

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

- (a) the Supplier shall not (and shall procure that the Supplier's agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and
- (b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff or agents.

5. SUPPLIER'S PERSONNEL

- 5.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the

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

- 5.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all Supplier Personnel 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.
- 5.3 The decision of the Purchaser shall be final and conclusive as to whether any Supplier 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 performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 5.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

6. MANNER OF CARRYING OUT THE SERVICES

- 6.1 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.
- 6.2 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.
- 6.3 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.
- 6.4 The Supplier shall forthwith comply with any order made under Condition 6.3.
- 6.5 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

7 HEALTH AND SAFETY

The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are

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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 Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

8. TIME OF PERFORMANCE

Delivery of the Services shall commence following receipt by the Supplier of an official purchase order from the Purchaser subject to the Services Plan, if any, or any alternative commencement arrangements agreed between the Supplier and the Purchaser. The Supplier will continue to perform the Services 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 Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

9. PAYMENT OF CONTRACT PRICE

- 9.1 The Purchaser shall pay to the Supplier fees and expenses at the rate or lump sum specified in the Supplier's Pricing Schedule.
- 9.2 Where the Specification of Requirement provides for expenses to be paid in addition to fees, the Supplier shall be entitled to be reimbursed by the Purchaser only for expenses reasonably and properly incurred by the Supplier in the performance of the duties hereunder, subject to production of such evidence thereof as the Purchaser may reasonably require.
- 9.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for Services completed to the satisfaction of the Purchaser.
- 9.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. All invoices for payment of Services rendered must contain the level of detail required for a Value Added tax invoice, whether or not VAT is due on that invoice.
- 9.5 Invoices for payment of Services rendered may not be submitted in advance of delivery without the express written agreement of the Purchaser's Contract manager. Any invoice submitted in breach of this requirement will require to be cancelled and re-submitted in proper order.
- 9.6 All invoices for 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.

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9.7 Notwithstanding Condition 19 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 18 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

10. FREE-ISSUE MATERIALS

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

11. AUDIT

The Supplier 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 Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.

12. CORRUPT PRACTICES

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

12.2 Without limitation to the generality of clause 12.1, if the Supplier or a person associated with the Supplier as defined in clause 12.3 has committed any of the following acts (and whether or not the Supplier 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 Purchaser to take any or all of the steps set out in clause 17 (Termination, Default and Step-in) or otherwise available to the Purchaser by law:

(a) The Supplier or a person associated with the Supplier has materially misrepresented itself or its offer within the tender documents (including any pre-qualification questionnaire response) or equivalent submitted by it to the Purchaser and on the basis of which the Purchaser awarded the Contract to the Supplier;

(b) The Supplier or a person associated with the Supplier has been involved in money laundering through or related to the Contract. "Money laundering" for this

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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 Supplier or a person associated with the Supplier has been convicted of an offence under the Bribery Act 2010;

(d) The Supplier or a person associated with the Supplier 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 Supplier or a person associated with the Supplier promises or gives a financial or other advantage to any employee or representative of the Purchaser who is concerned with the award, management or operation of this Contract;

(f) The Supplier or a person associated with the Supplier 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.

12.3 A person associated with the Supplier for the purposes of this clause 12 means any employee, director, agent, owner, funder or other person involved in the control of the Supplier or deriving a financial return from the Supplier's operations.

13. PATENTS, INTELLECTUAL PROPERTY AND COPYRIGHT

13.1 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 Supplier 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 Supplier 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.

13.2 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 Supplier by the Purchaser shall remain vested in the Purchaser absolutely.

(b) prepared by or for the Supplier 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 Supplier shall not and shall procure that the Supplier'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 Supplier 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 Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

13.3 The provisions of this Condition 13 shall apply during the continuance of this Contract and after its termination howsoever arising.

14. INDEMNITY AND INSURANCE

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

14.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 14.1 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 14.1 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.

14.3 The Supplier 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 Purchaser in writing;

(b) public liability insurance for such sum and range of cover as the Supplier 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, product liability or any other special insurances (if any) for such cover and to such extent as is stipulated in Specification of Requirements, 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 supplier 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.

14.4 The policy or policies of insurance referred to in Condition 14.3 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

15. HUMAN RIGHTS AND EQUALITIES

15.1 In the performance of the Contract and specifically in relation to its directly or indirectly employed staff, the Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or

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sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 and all related, modifying, amending or re-enacting legislation. The Supplier shall take all reasonable steps to secure the observance of this Condition in all its sub-contracts under this Contract at any tier.

15.2 Without prejudice to Condition 15.1 or to any other terms of the Contract, insofar as under the Contract the Supplier is providing a service of a public nature on behalf of the Purchaser (which the Supplier acknowledges it is doing), the Supplier shall secure compliance with the duties incumbent on the Purchaser under the Human Rights Act 1998 and also the Purchaser'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 Supplier was the Purchaser for the purposes of performance of the Contract.

16. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

16.1 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 Supplier or such details fall within such other exemption as may be applicable at the discretion of the Purchaser, in terms of the Act. The Supplier 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 16.2(b).

16.2 Subject to Condition 16.1:-

(a) The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier 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 Supplier will be treated as commercial in confidence by the Purchaser except insofar as required by law or judicial order to be disclosed.

16.3 Where delivery of the Services does not involve the processing of any personal data by the Supplier on behalf of the Purchaser then each Party will observe its respective obligations under the Data Protection Legislation. However, where and insofar as delivery of the Services by the Supplier under the Contract does or may involve the Supplier processing personal data on behalf of the Purchaser, the terms of Annex 1 to these Conditions shall apply during the continuance of this Contract and after its termination, however arising.

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- 16.4 The provisions of this Condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 16.5 The Supplier 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.
- 16.6 At any time during the existence of this Contract, or for 2 years after its expiry or termination (however arising)), the Supplier shall provide to the Purchaser in writing such information as the Purchaser may require relating to the employees employed by the Supplier in the performance of the services within each reasonable period as may be specified by the Purchaser, 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 Supplier, 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.
- 16.7 The Purchaser may give the information provided to it by the Supplier in accordance with this Condition 16. to any firm, company, person or other legal entity invited or to be invited by the Purchaser to tender in respect of any contract for the provision of the Services, or any part thereof, for any period commencing after the expiry or earlier termination of the Contract (however arising).
- 16.8 The Supplier irrevocably consents to the disclosure of the information provided by it in terms of this Condition to the Purchaser 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 Purchaser. The Supplier undertakes that the conditions of employment of the Supplier's employees shall be such that the Supplier shall be entitled to release information which would otherwise be confidential between the Supplier's employees and the Supplier to the Purchaser for the purposes of this Contract.

17. TERMINATION, DEFAULT AND STEP-IN

- 17.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:
- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or
 - (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (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 Supplier to be wound up as an unregistered company; or

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

17.2 On the occurrence of any of the events described in Condition 17.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing its 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 Supplier 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 Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier 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 Supplier 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 Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

17.3 In addition to the Purchaser's rights of termination under Condition 17.2, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.

17.4 Termination under Condition 17.2 or 17.3 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 13 and 16.

17.5.1 Without prejudice to any other rights and remedies of the Purchaser under the Contract, including the right of termination on default set out in Condition 17.2, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 14 days of being required by the Purchaser in writing to do so, the Purchaser may (in its sole discretion) by further notice in writing temporarily suspend performance of the Contract by the Supplier, 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 Supplier) all materials, plant and equipment on the Premises belonging to the Supplier. The terms of clauses 17.5.2 and 17.5.3 shall apply in that event.

17.5.2 The Purchaser shall not be liable to make any further payment to the Supplier until compliance with the requirements of the Contract has been restored, and shall be entitled to deduct from any amount due to the Supplier 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 Supplier, the difference shall be due as a debt by the Supplier to the Purchaser.

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

18. RECOVERY OF SUMS DUE

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

19. ASSIGNATION AND SUB-CONTRACTING

- 19.1 The Supplier 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 Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions.

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

- 19.3 Where the Supplier enters a sub-contract with a supplier or contractor 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 supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

20. 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.

21. 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.

22. HEADINGS

The headings to Conditions shall not affect their interpretation.

23. GOVERNING LAW

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

24. ANNUAL INDEXATION PRICE REVIEW

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

24.2 In respect that the Supplier has priced its tender for the Contract at a fixed date in accordance with the Purchaser'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 Supplier's prices for the supply under the Contract in accordance with this Condition 24.

24.2 From each anniversary of the date of commencement of the Contract (the "Commencement Date") during its currency, the Supplier'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.

24.3 Either party may notify the other of the effect of an indexation price review in accordance with Condition 24.2 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 24. or any other Condition of the Contract permitting a price review.

24.4 Any dispute over the validity of a price review notice issued under Condition 24.3 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 21 (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 Supplier may also claim interest on any amount then due to it calculated on the sum outstanding far more than 30 days after receipt and agreement of the invoice to which the unpaid amount relates until payment by the purchasers 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.

24.5 If at any time during the currency of the contract the Retail Price index (All Items) ceases to be published then the Purchaser, acting reasonably, may stipulate an

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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.

25. TAYSIDE PROCUREMENT CONSORTIUM

25.1 In respect that and insofar as the tender documents preceding the Contract notified that the Contract is for the benefit of not only the Purchaser 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 25. as a "TPC Partner" or the "TPC Partners, as the case may be), then the terms of this Condition 25. shall apply to use of the Contract by any TPC Partner.

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

25.3 A purchase order under Condition 25.2 shall specify the name, contact address and delivery address for that TPC Partner and refer to the supply being ordered under this Contract.

25.4 Payment for a supply so ordered under Conditions 25.3 and 25.4 shall be due by the TPC Partner to the Supplier and all other performance obligations under the Contract for that supply shall be owed exclusively between the TPC Partner and the Supplier. Without prejudice to the terms of this Condition 25.4, however, the Purchaser, the Supplier 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 Supplier 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 Purchaser.

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 Supplier related to this Contract.

1. Data Protection – Processing

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in the Data Processing Schedule and may not be determined by the Supplier.
- 1.2 The Supplier shall notify the Purchaser immediately if it considers that any of the Purchaser's instructions infringe the Data Protection Legislation.
- 1.3 The Supplier shall provide all reasonable assistance to the Purchaser in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Purchaser, 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 Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

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(a) process that Personal Data only in accordance with the Data Processing Schedule, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Purchaser 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 Purchaser 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 Supplier 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 Supplier Personnel who have access to the Personal Data and ensure that they:

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

(B) are subject to appropriate confidentiality undertakings with the Supplier 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 Purchaser 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 Purchaser has been obtained and the following conditions are fulfilled:

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

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

(iii) the Supplier 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 Purchaser in meeting its obligations); and

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

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

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- 1.5 Subject to clause 1.6, the Supplier shall notify the Purchaser immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (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 Supplier's obligation to notify under clause 1.5 shall include the provision of further information to the Purchaser in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Supplier shall provide the Purchaser 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 Purchaser) including by promptly providing:
- (a) the Purchaser with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Purchaser to enable the Purchaser to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Purchaser, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Purchaser following any Data Loss Event;
 - (e) assistance as requested by the Purchaser with respect to any request from the Information Commissioner's Office, or any consultation by the Purchaser with the Information Commissioner's Office.
- 1.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- (a) the Purchaser determines that the processing is not occasional;
 - (b) the Purchaser 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 Purchaser determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

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- 1.9 The Supplier shall allow for audits of its Data Processing activity by the Purchaser or the Purchaser's designated auditor.
- 1.10 The Supplier 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 Supplier must:
- (a) notify the Purchaser in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Purchaser;
 - (c) enter into a written Contract with the Sub-processor which gives effect to the terms set out in this Annex 1 set of clauses such that they apply to the Sub-processor; and
 - (d) provide the Purchaser with such information regarding the Sub-processor as the Purchaser may reasonably require.
- 1.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Purchaser 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 Purchaser may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Suppliers 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

Suppliers 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 Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT

