

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

GENERAL CONDITIONS

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

1. DEFINITIONS

In these Conditions:

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

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

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

'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.

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

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

'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,

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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.

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

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

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

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

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

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

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

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

2. VARIATION OF THE SERVICES AND SOFTWARE

2.1 The Purchaser reserves the right by notice to the Provider to modify the quality or quantity of the Services or Software and any alteration to the Contract price or the completion date arising by reason of such modification shall be agreed by the

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parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 38.

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

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

3. IMPLEMENTATION PLAN

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

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

4. LICENCES TO USE SOFTWARE

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

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

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

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

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

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

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

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

5. INSPECTION OF THE PREMISES AND NATURE OF THE SERVICES

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

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

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

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

6. ACCEPTANCE

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

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

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- 6.3 The Acceptance Procedures shall be recorded as successful and the Provider notified accordingly where all the acceptance criteria (to form part of the Acceptance Procedures) are met.
- 6.4 The Acceptance Procedures shall be recorded as unsuccessful and the Provider notified accordingly where any of the acceptance criteria are not met.
- 6.5 If the Acceptance Procedures, in respect of any item of Software, have not been recorded as successful pursuant to Condition 6.3 by the latest Acceptance Date (to form part of the Implementation Plan) the Purchaser shall have the right either:
- 6.5.1 to accept such items of Software as the Purchaser may decide and pay a pro-rated Contract price therefore or such other charge, as may be agreed between the parties.
 - 6.5.2 without prejudice to its other rights and remedies, to extend the Acceptance Procedures Period for a period or periods, specified by the Purchaser, during which the Provider shall correct the fault which caused the acceptance procedures to be recorded as unsuccessful; or
 - 6.5.3 to terminate the Contract in accordance with Condition 34.3.
- 6.6 In the event that the Purchaser extends the Acceptance Procedures Period for a period pursuant to Condition 6.5.2 and the acceptance procedures have not been recorded as successful by the end of that period, the Purchaser shall have the right either:
- 6.6.1 to accept such items of Software as the Purchaser may decide and pay a pro-rated Charge therefore or such other charge, as may be agreed by the parties.
 - 6.6.2 to extend the Acceptance Procedures Period for a further period in accordance with Condition 6.5.2; or
 - 6.6.3 to terminate the Contract in accordance with Condition 34.

7. TITLE AND RISK

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

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

8. WARRANTIES AND REPRESENTATIONS – SOFTWARE SUPPLY

- 8.1 The Provider warrants and represents that:

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

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

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

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

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

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

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

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

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

9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

9.1 Subject always to the Purchaser's proper observance of its obligations under this Condition 9, the Provider shall indemnify the Purchaser against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and Purchaser basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right by the use or possession of the Software by the Purchaser or in connection with the Services.

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

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

9.4 The Purchaser shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Purchaser or the Provider for infringement or alleged infringement

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of any Intellectual Property Right by reason of the use or possession of the Software by the Purchaser or in connection with the Services and shall be repaid all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and Purchaser basis) incurred in doing so.

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

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

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

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

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

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

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

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

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

9.8 If the Provider has availed itself of its rights to modify the Software or Services under Condition 9.6.1 or to procure a licence in accordance with Condition 9.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Provider shall have no further liability thereafter under this Condition 9 in respect of the said claim, demand or action.

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

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- 9.10 The Purchaser hereby warrants that any instructions given in relation to the Provider's use of any third party item supplied directly or indirectly to the Purchaser shall not cause the Provider to infringe any third party's Intellectual Property Rights in such item.
- 9.11 The foregoing states the entire liability of the Provider with regard to infringement of any Intellectual Property Right by the use or possession of the Software by the Purchaser or in connection with the Services.

10. SOFTWARE DOCUMENTATION

- 10.1 The Provider shall supply the Software Documentation (as specified by the Provider or otherwise agreed between the parties) with the Software.
- 10.2 The Provider warrants that the Software Documentation includes a complete set of operating manuals.

11. THE SOFTWARE SUPPORT SERVICES

- 11.1 In consideration of the payment of the Charges the Provider shall supply from the commencement date, in respect of the Software, the Software Support Services.
- 11.2 The Purchaser may, by service of not less than thirty (30) days prior written notice, add to or delete from the list of items of Software detailed in the Contract, provided always that any items of Software added to the list shall have been supplied by the Provider or shall be added to the list with the Provider's consent.
- 11.3 The Provider shall supply the Software Support Services in respect of the Software from the date on which the notice of variation of the Software expires.
- 11.4 In the event of a change to the Software in accordance with condition 2.2 the Charges shall be adjusted as agreed between the parties by application of the charges variation procedure (to be agreed between the parties).
- 11.5 The Software Support Services shall only be varied by application of the change of control procedure (to be agreed between the parties).
- 11.6 In the event of the Provider releasing a new version or update of the Software or Software Documentation or part thereof to the Purchaser, it shall be installed by the Provider under the Software Support Services at no additional cost and accepted and used by the Purchaser except where the Purchaser can show that the new issue or update has a significant adverse effect on the performance of the Software for the Purchaser's operational requirements. In which case the Purchaser may elect to retain the superseded issue of the Software and the Provider shall use all reasonable endeavours to continue to provide the Software Support Services.

12. LICENSES TO USE SOFTWARE

- 12.1 The Provider shall perform all necessary routine and remedial maintenance required for the Software to operate in accordance with the service levels (to be agreed between the parties).
- 12.2 The Purchaser shall permit the Provider such access to the Software as is reasonably required for the Provider to comply with its obligations under condition 12.1.

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13. SERVICE CREDITS AND ADDITIONAL RESOURCES

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

14. INCIDENT REPORTING AND RECORD KEEPING

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

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

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

15. WARRANTIES AND REPRESENTATIONS – SOFTWARE SUPPORT SERVICES

15.1 The Provider warrants and represents that:

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

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

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

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

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

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

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

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

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16. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. DISPATCH OF PRODUCTS

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

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

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

18. REMOVAL

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

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

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

19. HOUSING AND OPERATION

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- 19.1 The Purchaser shall maintain the environmental conditions as set out in the Provider's offer to provide the Services in response to the Specification of Requirements at the Premises.
- 19.2 The Purchaser shall use the Software in accordance with reasonable guidance given by the Provider to the Purchaser from time to time, provided that such guidance may in no way conflict with or diminish from the Specification of Requirements or the Providers offer to provide the Services in response thereto (provided that, in the event of conflict, the Specification of Requirement shall have precedence).

20. SPECIFIED CONSUMABLES

- 20.1 The Provider shall notify the Purchaser in the Provider's offer to provide the Services of the specifications for all consumables to be used with the Software where the Provider reasonably stipulates that failure to use consumables of such specification is likely to have a detrimental effect on the operation and/or proper function of the Software and provided that the Provider shall take all reasonable steps to so specify in an anti-competitive manner and shall, whenever practicable, allow equivalence where brand or proprietary consumables are so specified.
- 20.2 The Purchaser shall only use, with the Software, consumables which comply with the specifications notified by the Provider in accordance with condition 20.1; provided that insofar as no consumables are so specified, the Purchaser shall be entitled to use any apparently compatible consumables without prejudicing any warranty or condition incumbent upon the Provider under the Contract (whether express or implied).

21. PROVIDER'S STATUS

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

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

22. PROVIDER'S PERSONNEL

- 22.1 The Provider shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Provider notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Provider shall take all reasonable steps to comply with such notice and if required by the Purchaser the Provider shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

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- 22.2 If and when instructed by the Purchaser, the Provider shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 22.3 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Provider has furnished the information or taken the steps required of the Provider by this Condition.
- 22.4 The Provider shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

23. MANNER OF CARRYING OUT THE SERVICES

- 23.1 The Provider shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.
- 23.2 Access to the Premises shall not be exclusive to the Provider but only such as shall enable the Provider to carry out the Services concurrently with the execution of work by others. The Provider shall co-operate with such others as the Purchaser may reasonably require.
- 23.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:
- (a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or
 - (b) the substitution of proper and suitable materials, and/or
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract.
- 23.4 The Provider shall forthwith comply with any order made under Condition 23.3.
- 23.5 On completion of the Services the Provider shall remove the Provider's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

24 HEALTH AND SAFETY

The Provider shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any

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requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally. The Provider shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

25. TIME OF PERFORMANCE

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

26. PAYMENT OF CONTRACT PRICE

- 26.1 The Purchaser shall pay to the Provider fees and expenses at the rate or lump sum specified in the Provider's Pricing Schedule.
- 26.2 Where the Specification of Requirement provides for expenses to be paid in addition to fees, the Provider shall be entitled to be reimbursed by the Purchaser only for expenses reasonably and properly incurred by the Provider in the performance of the duties hereunder, subject to production of such evidence thereof as the Purchaser may reasonably require.
- 26.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for Software or Services supplied to the satisfaction of the Purchaser.
- 26.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. All invoices for payment of Software or Services supplied must contain the level of detail required for a Value Added tax invoice, whether or not VAT is due on that invoice.
- 26.5 Invoices for payment of Software or Services supplied 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.
- 26.6 All invoices for Software or Services supplied 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.
- 26.7 Notwithstanding Condition 36 of this Contract the Provider may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Provider under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 15 of this

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Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Provider shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

27. FREE-ISSUE MATERIALS

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

28. AUDIT

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

29. CORRUPT PRACTICES

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

29.2 Without limitation to the generality of clause 29.1, if the Provider or a person associated with the Provider as defined in clause 29.3 has committed any of the following acts (and whether or not the Provider 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 34 (Termination, Default and Step-in) or otherwise available to the Purchaser by law:

(a) The Provider or a person associated with the Provider 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 Provider;

(b) The Provider or a person associated with the Provider 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);

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(c) The Provider or a person associated with the Provider has been convicted of an offence under the Bribery Act 2010;

(d) The Provider or a person associated with the Provider 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 Provider or a person associated with the Provider 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 Provider or a person associated with the Provider 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.

29.3 A person associated with the Provider for the purposes of this clause 29 means any employee, director, agent, owner, funder or other person involved in the control of the Provider or deriving a financial return from the Provider's operations.

30. PATENTS, INTELLECTUAL PROPERTY AND COPYRIGHT

30.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Purchaser, that nothing done by the Provider in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Provider shall indemnify the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

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

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

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

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

31. INDEMNITY AND INSURANCE

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

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

31.3 The Provider shall have in force and shall require any sub-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 Provider deems to be appropriate but covering at least all public liability matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing; and

(c) professional indemnity insurance and any other special insurances (if any) for such cover and to such extent as is stipulated in the 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 Provider shall secure that the insurance effected to cover that obligation is to the extent of the highest of the indemnity limits stipulated in the clauses of this condition applying to that obligation.

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

31.5 Subject to the indemnities and insurance obligations contained in Conditions 31.1 to 31.4 and to any right to repudiate, resile from or otherwise terminate the Contract

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which may arise hereunder or otherwise at law, the liability of either party for defaults under the Contract shall be limited under the Contract as set out in this Condition 31.5, namely:

31.5.1 That liability shall be for damage only.

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

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

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

- (a) loss of profits, business, revenue, goodwill or anticipated savings; or
- (b) indirect or consequential loss or damage.

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

- (a) additional operational and administrative costs and expenses; and
- (b) expenditure or changes rendered necessary as a result of the Provider's default.

32. HUMAN RIGHTS AND EQUALITIES

32.1 In the performance of the Contract and specifically in relation to its directly or indirectly employed staff, the Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 and all related, modifying, amending or re-enacting legislation. The Provider shall take all reasonable steps to secure the observance of this Condition in all its sub-contracts under this Contract at any tier.

32.2 Without prejudice to Condition 32.1 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.

33. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

33.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time relating to access to public authorities information, details of any matters relating to the Contract, unless any such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the

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commercial interest of any person (including but not limited to the Purchaser or the Provider or such details fall within such other exemption as may be applicable at the discretion of the Purchaser, in terms of the Act. The Provider shall facilitate the Purchaser's compliance with the Purchaser's obligations under these provisions and comply with any request from the Purchaser for that purpose. No term of the Contract either shall preclude the Purchaser from sharing pricing and under information under the Contract with other UK public bodies for the purpose of achieving better public procurement and subject to a reciprocal obligation of confidence upon such other public bodies as is imposed on the Purchaser in terms of Condition 33.2(b).

33.2 Subject to Condition 33.1:-

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

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

33.3 Where delivery of the Software or Services does not involve the processing of any personal data by the Provider 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 Software or Services by the Provider under the Contract does or may involve the Provider 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.

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

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

33.6 At any time during the existence of this Contract, or for 2 years after its expiry or termination (however arising)), the Provider shall provide to the Purchaser in writing such information as the Purchaser may require relating to the employees employed by the Provider 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 Provider, 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.

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- 33.7 The Purchaser may give the information provided to it by the Provider in accordance with this Condition 33. 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).
- 33.8 The Provider 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 Provider undertakes that the conditions of employment of the Provider's employees shall be such that the Provider shall be entitled to release information which would otherwise be confidential between the Provider's employees and the Provider to the Purchaser for the purposes of this Contract.

34. TERMINATION, DEFAULT AND STEP-IN

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

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

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

(c) where the Provider is a company, if the company passes a resolution for winding-up 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.

- 34.2 On the occurrence of any of the events described in Condition 34.1 or, if the Provider shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Provider is an individual if the Provider shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Purchaser shall be entitled to terminate this Contract by notice to the Provider with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Provider) all materials, plant and equipment on the Premises belonging

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to the Provider, and the Purchaser shall not be liable to make any further payment to the Provider until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Provider the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Provider, the difference shall be recoverable by the Purchaser from the Provider.

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

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

34.5.1 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 34.2, if the Provider shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 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 Provider, 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 Provider) all materials, plant and equipment on the Premises belonging to the Provider. The terms of clauses 34.5.2 and 34.5.3 shall apply in that event.

34.5.2 The Purchaser shall not be liable to make any further payment to the Provider until compliance with the requirements of the Contract has been restored, and shall be entitled to deduct from any amount due to the Provider the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Provider, the difference shall be due as a debt by the Provider to the Purchaser.

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

35. RECOVERY OF SUMS DUE

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

36. ASSIGNATION AND SUB-CONTRACTING

36.1 The Provider shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall

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not relieve the Provider of any obligation or duty attributable to the Provider under the Contract or these Conditions.

- 36.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Provider to the Purchaser immediately it is issued.
- 36.3 Where the Provider enters a sub-contract with a Provider or Provider for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the Provider or Provider within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

37. NOTICES

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

38. ARBITRATION

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

39. HEADINGS

The headings to Conditions shall not affect their interpretation.

40. GOVERNING LAW

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

41. ANNUAL INDEXATION PRICE REVIEW

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

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- 41.2 In respect that the Provider 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 Provider's prices for the supply under the Contract in accordance with this Condition 41.
- 41.3 From each anniversary of the date of commencement of the Contract (the "Commencement Date") during its currency, the Provider'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.
- 41.4 Either party may notify the other of the effect of an indexation price review in accordance with Condition 41.3 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 41. or any other Condition of the Contract permitting a price review.
- 41.5 Any dispute over the validity of a price review notice issued under Condition 41.4 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 38 (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 Provider may also claim interest on any amount then due to it calculated on the sum outstanding for 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.
- 41.6 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 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.

42. TAYSIDE PROCUREMENT CONSORTIUM

- 42.1 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 42. as a "TPC Partner" or the "TPC Partners, as the case may be), then the terms of this Condition 42. shall apply to use of the Contract by any TPC Partner.

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- 42.2 A TPC Partner may secure supply to it under this Contract from the Provider by purchase order which shall create a contract for that supply between (and only between) the Provider and the TPC Partner on the basis of that purchase order but otherwise on the whole terms and conditions of the Contract, mutatis mutandis.
- 42.3 A purchase order under Condition 42.2 shall specify the name, contact address and delivery address for that TPC Partner and refer to the supply being ordered under this Contract.
- 42.4 Payment for a supply so ordered under Conditions 42.3 and 42.4 shall be due by the TPC Partner to the Provider and all other performance obligations under the Contract for that supply shall be owed exclusively between the TPC Partner and the Provider. Without prejudice to the terms of this Condition 42.4, however, the Purchaser, the Provider 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.

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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 Provider 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 Provider 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 Provider is the Processor. The only processing that the Provider is authorised to do is listed in the Data Processing Schedule and may not be determined by the Provider.

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

1.3 The Provider 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.

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1.4 The Provider 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 Provider is required to do otherwise by Law. If it is so required the Provider 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 Provider 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 Provider Personnel who have access to the Personal Data and ensure that they:

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

(B) are subject to appropriate confidentiality undertakings with the Provider 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 Provider 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 Provider 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

GENERAL CONDITIONS

(iv) the Provider 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 Provider is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Provider 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 Provider'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 Provider 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 Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

GENERAL CONDITIONS

- (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.
- 1.9 The Provider shall allow for audits of its Data Processing activity by the Purchaser or the Purchaser's designated auditor.
- 1.10 The Provider 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 Provider 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 Provider 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 Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

GENERAL CONDITIONS

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

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

2. LATE PAYMENT OF INVOICES

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

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT