

**DUNDEE CITY COUNCIL
CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES
(other than Works Consultancies)**

GENERAL CONDITIONS

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

1. DEFINITIONS

In these Conditions

'Purchaser' means Dundee City Council, 50 North Lindsay Street Dundee DD1 1NZ;

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

'Project' means the services to be provided as specified in the Specification of Requirements;

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

"Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Request" have the meanings given in the Data Protection Laws;

"Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR;

"GDPR" means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"Personal Data" has the meaning given in the Data Protection Laws;

"Processing" has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

"Supervising Authority" has meaning given in Data Protection Laws.

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

'Specification of Requirements' means the document setting out the Purchaser's requirements for the Contract. Where the Contract proceeds on the basis of an invitation to tender issued by the Purchaser this phrase means the invitation to tender and any document incorporated therein by reference as forming or comprising the Contract between the Purchaser and the Consultant. Where the Contract between the Purchaser and the Consultant proceeds only on a purchase order and acceptance of that order this phrase means that purchase order and any document incorporated in the purchase order by reference, setting out the Purchaser's requirement.

2. THE PROJECT

- 2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.
- 2.2 The Consultant shall provide the Purchaser with such reports of his work on the Project at such intervals in such form as the Purchaser may from time to time require.
- 2.3 The Purchaser reserves the right by notice to the Consultant to modify the Purchaser's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by dispute resolution in accordance with the provisions of Condition 18.

3. CONSULTANT'S PERSONNEL

- 3.1 The Consultant shall make available for the purposes of the Project any individuals named on the Specification of Requirements as key personnel. The Consultant shall provide the Purchaser with a list of the names and addresses of all others regarded by the Consultant as key personnel and, if and when instructed by the Purchaser, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case 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. The Purchaser may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Purchaser make any changes in the key personnel referred to in this paragraph.
- 3.2 The Consultant shall take the steps reasonably required by the Purchaser, to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Consultant 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 Project, the Consultant shall take all reasonable steps to comply with such notice.
- 3.3 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 Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of the Consultant by this Condition.
- 3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

4. CHANGE TO CONTRACT REQUIREMENTS

- 4.1 Subject to the same constituting a permitted variation in terms one of the first eight paragraphs of the Regulation referred to in Condition 12.5 (a), either party may propose any variation to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services. Variations are to be agreed between the Consultant and the Purchaser and until an agreement is reached the contract will continue as previously agreed.
- 4.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 4.1 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 Contractor 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.

4.3 Where any such variation of the Services made in accordance with Clauses 4.1 and 4.2 has affected or may affect the costs incurred by the Consultant in providing the Services, the Consultant 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 Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in providing the service) and may authorise such alteration to the sums to be paid to the Consultant in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

5. FEES AND EXPENSES

5.1 The Purchaser shall pay to the Consultant fees and expenses at the rate specified in the Specification of Requirements.

5.2 The Consultant shall be entitled to be reimbursed by the Purchaser only for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to (a) such expenses having been agreed to by the Purchaser in advance and (b) production of such evidence thereof as the Purchaser may reasonably require.

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

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

5.5 Notwithstanding Condition 15 of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises its right of recovery under Condition 14 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 Consultant shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the Purchaser's arrangements for payment of the fees or expenses or for handling invoices.

6. AUDIT

The Consultant 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 by the Consultant or in connection with any employees of the Consultant paid for by the Purchaser on a time charge basis. The Consultant 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.

7. CORRUPT GIFTS OR PAYMENTS

The Consultant shall not offer or give or agree to give, to any member, employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Consultant is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

8. PATENTS, INFORMATION AND COPYRIGHT

8.1 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 Consultant 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 Consultant 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. The Purchaser agrees to provide prompt notice of such claims and allow the Consultant to assume responsibility for any legal proceedings and negotiations.

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

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

(b) prepared by or for the Consultant for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 11.2) the Consultant shall not and shall procure that the Consultant's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the 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 Consultant may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Consultant shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

(c) upon payment of the charges, all final versions of material, reports and presentations prepared by the Consultant for delivery to the Purchaser (the "Deliverables") shall be provided for the use of and shall be owned by the Purchaser (and for the avoidance of doubt non-final versions shall not so vest in the Purchaser). The Purchaser agrees that it will not, without first obtaining the Consultant's approval, which the Consultant will not unreasonably withhold, redistribute the Deliverables outside of its organisation in any manner that makes attribution of the Deliverables to the Consultant, except as required by law.

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

9. INDEMNITIES AND INSURANCE

9.1 The Consultant shall indemnify and keep indemnified the Purchaser, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents. This indemnity shall be limited to the minimum insurance value specified at 9.4c below.

9.2 The indemnity contained in Condition 9.1 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.

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

9.4 The Consultant shall have in force and shall require any sub-contractor to have in force:

- (a) **Employer's Liability Insurance** covering the death of or bodily injuries to employees of the bidder arising out of and in the course of their employment in connection with this contract to the level of 10,000,000 GBP in respect of each claim, and
- (b) **Public Liability Insurance** covering the death of or bodily injury to a person (not an employee of the bidder) or loss of or damage to property resulting from an action or failure to take action by the bidder to the level of 5,000,000 GBP in respect of each claim, and
- (c) **Professional Indemnity Insurance/Medical Malpractice Insurance** covering the failure of the bidder to use the skill and care normally used by professionals providing the services described in this tender to the level of £2,000,000 GBP in respect of each claim, and
- (d) **Product Liability Insurance** covering the death of or bodily injury to a person (not an employee of the bidder) or loss of or damage to property resulting from an action or failure to take action by the bidder to the level of 5,000,000 GBP in respect of each claim, and
- (e) Vehicle Insurance (provider motor vehicles). Provider responsible for ensuring that motor insurance of staff or volunteers who use their own vehicles have business use insurance covered. If carrying service users includes, business use and personal accident cover for passengers.

9.5 If requested, by the Purchaser the Consultant shall produce to the Purchaser the relevant policy or policies. But in the first instance, satisfactory evidence of a certificate of insurance shall be deemed sufficient.

9.6 The Purchaser shall indemnify the Consultant in respect of all claims, proceedings, actions damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Consultant acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Consultant-

- (a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with Condition 16.3.11 of this Contract;
- (b) fails to comply with any obligation under the Contract.

10. DISCRIMINATION

The Consultant shall not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser. The Consultant shall take all reasonable steps to secure the observance of this Condition by all employees and representatives of the Consultant.

11. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

11.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time relating to access to public authorities information, details of any matters relating to the Contract, unless any such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including but not limited to the

Purchaser or the Consultant or such details fall within such other exemption as may be applicable at the discretion of the Purchaser, in terms of the Act. The Consultant 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 other 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 11.2(b).

11.2 Subject to Condition 11.1:-

(a) Each party shall keep secret and not disclose and shall procure that its employees keep secret and do not disclose any information of a confidential nature obtained by it in relation to the other party or the other party's clients or business by reason of this Contract except information (i) which is in the public domain otherwise than by reason of a breach of this provision; (ii) obtained from third parties on a non-confidential basis; and

(b) Commercially sensitive information related to the disclosing party will be treated as commercial in confidence by the receiving party except insofar as required by law, regulatory authority or judicial order to be disclosed.

11.3 Where and insofar as provision of the Services by the Consultant under the Contract does or may involve the Consultant processing personal data on behalf of the Purchaser, the following terms of this Condition 11.3 shall apply during the continuance of this Contract and after its termination, however arising:-

11.3.1 The Consultant acknowledges that any Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Contract. For the purposes of any such Processing, Parties agree that the Consultant acts as the Data Processor and the Purchaser acts as the Data Controller

Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 11.3 are without prejudice to any obligations and duties imposed directly on the Consultant under the Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.

11.3.2 The Consultant will, in conjunction with the Purchaser and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.

11.3.3 The Consultant will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

11.3.4 The Consultant must:

11.3.4.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Consultant is subject; in which case the Consultant must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to

the extent, and in such manner as is necessary for the performance of the Consultant's obligations under this Contract or as is required by the Law;

- 11.3.4.2 subject to Condition 11.3.4.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
- 11.3.4.3 take all reasonable steps to ensure the reliability and integrity of any Consultant's Representatives who have access to the Personal Data and ensure that the Consultants' Representatives:
 - (a) are aware of and comply with the Consultant's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Consultant or the relevant Sub-contractor;
 - (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.
- 11.3.5 Implement appropriate technical and organisational measures and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 11.3.6 The Consultant shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Consultant must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 11.3.7 If the Consultant engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Consultant must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Consultant shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 11.3.8 The Consultant must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Consultant must notify the Purchaser 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 Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or

(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 regulatory order;
and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

11.3.9 Taking into account the nature of the Processing and the information available, the Consultant must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

(a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.

(b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;

(c) assisting the Purchaser with communication of a personal data breach to a Data Subject;

(d) supporting the Purchaser with preparation of a data protection impact assessment;

(e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

11.3.10 At the expiry or termination of the Contract the Consultant must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

11.3.11 The Consultant must:

(a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Consultant's compliance with this Clause 11;

(b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Clause 11 and contribute as is reasonable to those audits and inspections;

(c) inform the Purchaser if, in its opinion, an instruction from the Purchaser infringes any obligation under the Data Protection Laws.

11.3.12 The Consultant must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.

11.3.13 If requested, the Consultant must make such records referred to Clause 11.3.11 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

11.3.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 11.3.12 with minimum disruption to the Consultant's day to day business.

- 11.3.15 Without prejudice to the terms of Clause 18, the Consultant shall indemnify the Purchaser against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Purchaser may incur arising out of any breach of this Clause 11 by the Consultant;
- 11.3.16 In the event of a breach of this Clause 11 by the Consultant, the Consultant shall be bound to remedy the breach within five working days of the breach coming to the attention of the Consultant or the breach being notified to the Consultant by the Purchaser, whichever is earlier. In the event that the breach is not resolved timeously, the Purchaser will be entitled to terminate the Contract forthwith.
- 11.3.17 In this Condition 11, “data” shall mean all information relating to the Purchaser’s service users and prospective service users, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Purchaser’s business affairs including all information of a confidential nature or imparted by whatever nature by the Purchaser to the Consultant during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Purchaser.

11.4 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

11.5 The Consultant will provide the 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.

SCHEDULE (DATA PROTECTION)

This Schedule includes certain details of the Processing of Personal Data in connection with the Contract:

Subject matter and duration of the Processing of Personal Data

Processing of Personal Data necessary to the supply of Services for duration of the Contract and for the lifetime of the guarantees to be provided in accordance with the Contract.

The nature and purpose of the Processing of Personal Data

The Personal Data to be processed is necessary for the Purchaser to fulfil their statutory obligations in connection with the provision of local authority housing and is necessary in order for the Consultant to fulfil their obligations in providing the Services to the Purchaser.

The type of Personal Data to be processed

- Names
- Addresses
- Professional Qualifications

The categories of Data Subject to whom Personal Data relates

- Purchaser’s Tenants
- Consultant’s Employees

The obligations and rights of the Purchaser as the Data Controller are set out in Condition 11 of the Contract.

12. TERMINATION

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

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

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

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

12.2 On the occurrence of any of the events described in Condition 12.1, the Purchaser shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

12.3 If either party shall have committed a material breach of this contract and (if such breach is capable of remedy) the party in breach shall have failed to remedy such breach within 7 days of being required by the other party in writing to do so, then that other party shall be entitled to terminate this Contract by notice to the other with immediate effect.

12.4 Where the Consultant is an individual, if the Consultant shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Purchaser shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

12.5 The Purchaser may terminate the Contract in the event that:

(a) The Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with Regulation 72 (9) (regarding Modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

(b) The Consultant has, at the time of contract award, been in one of the situations referred to in regulations 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the applications of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

(c) The Contract should not have been awarded to the Consultant in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

12.6 The Purchaser may also terminate the Contract in the event of a failure by the Consultant to comply in the performance of the Services with legal obligations in the field of environmental, social and employment law.

12.7 Termination under this Condition 12 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 6 (Audit), 8 (Patents, Information and Copyright), 9 (Indemnities and Insurance), and 11 (Data Protection, Access To And Provision of Information).

13. RETURN OF DOCUMENTS

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

13.2 Where the Contract has been terminated pursuant to Condition 12.7, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant to prepare any report required under that paragraph. Promptly upon submission of the report to the Purchaser, the Consultant will return any documents, papers, materials or information which the Consultant may have retained in terms of this paragraph.

14. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Consultant, that sum may be deducted from any sum then due under this Contract or which at any later time may become due, to the Consultant under this Contract.

15. ASSIGNATION AND SUB-CONTRACTING

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

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

15.3 Where the Consultant enters into a sub-contract with a consultant or contractor for the purpose of performing the Contract, the Consultant must ensure that a provision is included in it which:

15.3.1 requires payment to be made of all sums due by the Consultant to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Consultant in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Consultant is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Consultant, payment must be made to the sub-contractor without deduction;

15.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and

15.3.3 in the same terms as the set out in the condition 15.3 (including for the avoidance of doubt this Condition 15.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Consultant and sub-contractor as the case may be.

15.4 The Consultant shall also include in every sub-contract:

15.4.1 a right for the Consultant to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 12.5 occur; and

15.4.2 a requirement that the sub-contractor includes a provision having the same effect as 15.4.1 above in any sub-contract which it awards.

In this condition 15.4, 'sub-contract' means a contract between two or more consultants, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

16. BLACKLISTING

The Consultant must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.

17. DISCLOSURE AND PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

17.1 Where the Contract requires the Consultant, his employees or agents to undertake Regulated Work as defined in Section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") the Consultant shall ensure that he complies with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 ("PVG Act"). The Consultant hereby acknowledges that it is an offence in terms of section 35 of the PVG Act to offer an individual Regulated Work with (i) protected adults and/or (ii) children where the individual is barred from that work.

17.2 For the supply of the services which fall outside of the scope of Regulated Work under the PVG Act, the Consultant shall obtain the level of Disclosure which is available directly from Disclosure Scotland and shall confirm to the Council that it has done so. This does not apply to criminal conviction certificates under section 112 of the Police Act 1997 (also known as a basic level check) unless the Council instruct that this is required. The level of Disclosure available shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by reference to any regulations made under that Act and guidance issued by Disclosure Scotland (if applicable);

17.3 Before an individual is assigned to the delivery of the Services the Consultant shall have used the findings of the Disclosure check as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act. Where the Disclosure check showed that the individual has convictions, reprimands, warnings, cautions or any other relevant information, the Consultant shall have conducted a risk assessment and shall have used that assessment to protect the interests of all persons falling within the said definition of a child or protected adult including without prejudice to the foregoing generality, prohibiting the individual from being involved in the supply of the services to all persons falling within the said definition of a child or protected adult. To ensure compliance with this clause, the Consultant shall have recorded the fact that a risk assessment had been undertaken and shall on request from the Council disclose the record taken of the decision making process to it.

17.4 The Consultant shall immediately remove an individual from provision of the Services which involve the undertaking of Regulated Work to either (i) protected adults or (ii) children in the event that the Consultant or any agency that it is using to recruit individuals is notified by Disclosure Scotland under Section 30 (2) (a) of the PVG Act that the individual is barred from PVG Scheme membership for the type(s) of Regulated Work undertaken.

18. NOTICES

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

19. STATUS OF CONTRACT

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

20. DISPUTE RESOLUTION

18.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

18.2 any dispute or difference arising out of or in connection with the Contract, including any questions regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

18.3 Any arbitration under 18.2 is subject to the Arbitration (Scotland) Act 2010

21. HEADINGS

The headings to Conditions shall not affect their interpretation.

22. COMPLIANCE WITH THE LAW ETC.

In providing the Services and otherwise when performing the Contract, the Consultant must comply in all respect with:

20.1 all applicable law

20.2 any applicable requirements of regulatory bodies; and

20.3 Good Industry Practice.

In the condition 'Good Industry Practice' means standards, practices, methods and procedure conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Consultant under the same or similar circumstances.

23. GOVERNING LAW

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

SPECIAL CONDITIONS OF CONTRACT (IF ANY)

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Consultants to the purchasing authorities 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

Consultants to the purchasing authorities 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 Dundee City Council, Dundee House, 50 North Lindsay Street, Dundee, DD1 1NZ; Telephone 01382-433555; e.mail generalfinance@dundeecity.gov.uk.

This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Consultants' legal rights.

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