

ABERDEENSHIRE COUNCIL – TERMS AND CONDITIONS

Any Contract to follow hereon between the Contractor and the Council shall incorporate *inter alia* the following terms and conditions: -

1. Within these terms and conditions and in any contract to follow hereon, the following words and phrases shall have the following meanings, namely –

Commencement Date means the date upon which the Contractor shall commence performance of the Services.

Contractor means the successful tenderer

Contract means the agreement to be entered into between the Council and the Consultant comprising the terms and conditions specified hereafter, the Service Specification, the Proposal and other documentation, as the Council shall deem appropriate.

Contract Period means the duration of the Contract.

Council means Aberdeenshire Council, a local authority constituted by the Local Government etc (Scotland) Act 1994 and having its principal offices at Woodhill House, Westburn Road, Aberdeen

Proposal means the Contractor's response to the Service Specification, which details amongst other things, the Services to be provided and the proposed means of delivery.

Review Meeting means the monthly meetings to be held between the Council and the Contractor for the purpose of monitoring the extent and quality of the Contractor's performance of the Services.

Schedule means the Schedule to be annexed and executed as relative to the Contract.

Services means the services to be provided to the Council by the Contractor as detailed in the Service Specification and Proposal.

Service Specification means the specification prepared by the Council detailing the Services sought from the Contractor.

2. The Contractor will perform the Services in a competent and professional manner to the complete satisfaction of the Council. If in the opinion of the Council, acting reasonably, the performance of the Services by the Contractor is unsatisfactory or does not meet the terms of the aforementioned Service Specification and the Proposal, then the Council may, where it deems it appropriate, instruct the Contractor to repeat the performance of any part of the Services at no additional cost to the Council, or alternatively, may withhold payment or part thereof. Any dispute or difference arising between the parties in relation to the

provisions of this clause will be determined by an Expert to be agreed between the parties. Failing agreement, either party may apply to the Sheriff Principal of Grampian, Highlands and Islands for the appointment of such an Expert. Notwithstanding the method of appointment of the Expert, it shall be an express condition of appointment that any decision shall be issued within 14 days of a joint statement by both parties, such parties being obliged to act reasonably and expeditiously in the preparation of such statement.

3. (a) The appointment of the Contractor shall commence on the Commencement Date, notwithstanding the date or dates hereof.
- (b) During the Contract Period, the Contractor will provide the Services to the Council during the normal office hours of 8.30 a. m. and 6.00 p.m., together with such extended hours as the Council may reasonably request, Monday to Friday (inclusive), excluding Public and Local Holidays.
4. (a) Throughout the duration of the Contract, the Contractor will report to the Council's nominated Project Manager and will liaise, as required, with Elected Members, Senior Management, Directors and Heads of Service of the Council. Further, the Contractor shall, as and when appropriate, liaise with operating staff at all levels of the Council's Management Structure in order to perform the Services.
- (b) The Council shall monitor the Services provided under the Contract from time to time, and shall ensure that they continue to meet the requirements of the Council. The quality of the Services shall be measured by the extent to which they accord with the standards and timescales included within the Service Specification and the Proposal and to accepted professional standards.
- (c) The Contractor shall appoint a representative acceptable to the Council, who will monitor and review the quality of the Services provided and will attend Review Meetings with representatives of the Council.
- (d) The monitoring process will be undertaken on a continuous basis with a specific review on a monthly basis. The Contractor will supply a report detailing work done since the last Review Meeting and action taken in respect of any matter, together with a breakdown of time spent on the Council's work and a note of its costs. The report shall be submitted to the Council no later than the day prior to the date of the Review Meeting. For the purposes of the Review Meeting, performance measures shall be established by the Contractor for all aspects of the Service. These measures shall be agreed by both parties and will be refined/added to/replaced by mutual agreement at the Review Meetings.

- (e) The Council may lodge a complaint about the Contractor's performance of the Services with a Management Representative, if deemed appropriate having regard to the circumstances.
- 5.
- (a) In return for the provision of the Services, the Contractor shall be entitled to invoice the Council on a monthly basis, in arrears. Further, the Council shall meet all reasonable expenses incurred by the Contractor, provided that any expenditure incurred shall be approved in advance by the Council. Each invoice will clearly detail each charge that has accrued and shall separately detail any outlays and expenses incurred. In addition, each invoice shall detail any Value Added Tax exigible thereon.
 - (b) Invoices shall be submitted to the Council no later than 5 working days prior to the next scheduled Review Meeting. Payment shall be made no later than twenty-eight days after the date of the Review Meeting. Notwithstanding the foregoing, the Council shall be entitled to withhold the whole or part of any payment if there shall be any dispute or difference relating to the Services in respect of which payment is claimed. In the event of the dispute or difference being of minor character, the Council shall not retain a greater sum than reflects the cost of the area of dispute or difference. Any sum retained by the Council under this clause shall, if appropriate, be paid to the Contractor upon resolution of the dispute or difference.
6. Notwithstanding the terms of the Contract, the Council reserves the right to perform any aspect of the Services without reference to the Contractor and the Contractor acknowledges and accepts the ability of the Council to do same.
- 7.
- (a) The Services to be provided by the Contractor in accordance with the terms of the Contract shall be provided in a proper, skilful and professional manner to the complete satisfaction of the Council.
 - (b) The Contractor shall ensure that the Services conform to all and any codes of practice, performance ratings and quality standards all to the satisfaction of the Council.
 - (c) The Contractor shall be bound at all times to assign to the performance of the Contract employees with sufficient skill and expertise for the proper performance of the Services. In particular, the Contractor agrees
 - (i) that where any staffing or skill levels have been agreed as part of the Proposal, those levels will be maintained,
 - (ii) that where any named staff have been agreed to be provided as part of the Proposal, those staff will be assigned to the provision of the Services,

- (iii) that it has sufficient reserves of trained and competent staff within each skill level to carry out the Services provided for within the Proposal to the levels/standards required by the Council at all times, including sufficient reserves to provide cover for holidays, sickness or any other form of absence, and
 - (iv) that it will replace promptly any staff who are assigned to the performance of the Services and who cease to be in its employment or under its control for whatever reason and that such replacement will have the equivalent skill level and shall in every way be suitable for the performance of the Services.
- (d) The Contractor agrees that whilst allocated to the performance of the Services, all staff:-
 - (i) shall maintain strict discipline and good order and shall not engage in behaviour or activities that could be contrary to or detrimental to the Council's interest,
 - (ii) shall be effective and efficient workers competent in their particular profession or skills, and
 - (iii) shall abide by the standards, rules and regulations established by the Council for its own staff.
- (e) The Council reserves the right to require the removal from the performance of the Services any individual used by the Contractor, who, in the opinion of the Council –
 - (i) is not performing the Services in strict compliance with the Contract,
 - (ii) is or is deemed to be guilty of misconduct or negligence in the view of the Council,
 - (iii) is acting in a manner which is detrimental to the Council's interest,
 - (iv) is not medically fit to perform the Services required or provides a risk to the health of those with whom that person may come into contact during performance of the Services, and
 - (v) is not complying with the Council's policies for use of its buildings, for example, smoking in "no-smoking" areas and inappropriate dress or language.
- (f) Any individual removed as a consequence of sub-clause (e) above, will be replaced promptly with a properly qualified replacement in

such time as is acceptable to the Council and at no extra cost to the Council.

- (g) Save as aforesaid, the Contractor shall be entirely responsible for the employment and conditions of services of its own employees.
8. The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss or damage resulting from such cancellation if:-
- (i) The Contractor shall have offered, or given, or agreed to give to any person any gift, consideration, inducement or award of any kind for doing or not doing any action in relation to the Contract or any other agreement with the Council, or
 - (ii) Like acts shall have been done by any person employed by the Contractor or acting on behalf of the Contractor (whether with or without the knowledge of the Contractor), or
 - (iii) In relation to any agreement with the Council, the Contractor or persons employed by the Contractor or acting on behalf of the Contractor shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or have given any fee or reward, the receipt of which is an offence under any legislation pertaining to Local Authorities, or
 - (iv) The Contractor or its representative (whether with or without the knowledge of the Contractor) shall have practised collusion in tendering for the Contract or any other contract with the Council or shall have employed illegal practices either in obtaining or executing the Contract or any other contract with the Council.
9. The Council will not offer employment to any employee of the Contractor assigned to the performance of the Services or induce or solicit any such person to take up employment with the Council for a period of six months following the end of any involvement by that person with the Contract.
10. The Contractor shall not, without the prior written consent of the Council, advertise nor publicly announce that it is undertaking or has undertaken work for the Council and this shall continue in force notwithstanding the termination of the Contract.
11. The Contractor recognises that under this Contract it may receive confidential or proprietary information of the Council. The Contractor agrees not to divulge such information to any person, except to its own employees and then only to those employees who need to know the same for the performance of the Services, without the Council's prior written consent. Further, the Contractor shall prevent disclosure or access by any third party other than in accordance with Clause 29 below. The Contractor shall ensure that its employees are aware of and are

complying with the provisions of this Clause. This obligation will survive the termination of the Contract.

12. The Council authorises the Contractor to speak to or meet with any other person whom it may need to contact to perform the Services or whom the Council requests the Contractor to contact.
13. Copyright of all reports and data produced as a result of the Contract will be the property of the Council and may not be reproduced in whole, or in part, without the Council's prior written consent.
14. Subject to any specific provisions contained in the Contract, the Contractor shall be liable to the Council for any loss of business, income, profit, goodwill, use or anticipated services or for any special or indirect loss arising from or in connection with the performance of the Services and for any claim made by any third party, but that only in the event of negligence or breach in the part of the Contractor, their employees, and any other parties for whom they are responsible at law.
- 15 (a). The Council may terminate the Contract forthwith upon giving notice in writing to the Consultant –
 - (i) If the Contractor shall become bankrupt or make an arrangement with its creditors or go into liquidation or have a receiver appointed to its assets or any part thereof,
 - (ii) Upon discovery of a material misrepresentation by the Contractor either within the Proposal or during the performance of the Services,
 - (iii) If, at three consecutive assessments, the Council determine the performance of the Contractor to be unsatisfactory, and
 - (iv) If the Contractor is, in the opinion of the Council, in material breach of the terms of the Contract and in the event of a breach capable of being remedied, fails to remedy the breach within thirty days of receipt of notice thereof from the Council.
- (b) The Council may terminate the Contract by giving at least sixty days prior written notice to the Contractor.
- (c) The Contractor may terminate the Contract forthwith and on giving notice to the Council –
 - (i) subject to the provisions of Clause 5 (b), if the Council has failed to pay any sum due under the terms of the Contract and any such sum remains unpaid for fourteen business days from the date of service of a notice on the Council advising of such default and demanding payment of the sums due,

- (ii) if the Council is in serious breach of the terms of the Contract and, in the event of a breach capable of being remedied, fails to remedy the breach within thirty business days of receipt of a notice thereof from the Contractor.
 - (d) Any termination of the Contract (howsoever occasioned) shall not prejudice or effect any rights or liabilities, which have arisen on or before the date of termination.
 - (e) Any termination of the Contract shall discharge the parties from any liability for further performance of the Contract save as stated herein.
 - (f) Notwithstanding any termination of the Contract, the Clauses within the Contract relating to indemnity, confidentiality and publicity shall continue in full force and effect.
- 16
- (a). The Contractor shall provide a means of identification of its employees in a form to be approved by the Council, and shall require its employees to wear and keep visible such identification at all times whilst on Council's premises. All employees used by the Contractor for the performance of the Services shall carry such identification as the Council may require at all times and make it available for inspection on request by any officer of the Council who similarly discloses their identity. Entry to the Council's premises may be refused if the correct identification is not displayed. In this event, the Contractor shall be fully responsible for resultant delays or difficulties in the provision of the Services.
 - (b) In all Council premises, the employees of the Contractor assigned to the performance of the Services shall comply with all or any directions issued by the Council's security staff.
 - (c) The Contractor shall ensure that its staff are fully conversant with the Council's health and safety policy and that they take all such precautions as are necessary to protect the health and safety of the Council's staff and the public. The Contractor shall require its employees to comply with the Council's safety policy statement, the lawful requirements of the Council's safety advisors and any detailed safety policy specific to any individual premises of the Council whilst on those premises, provided that such information is provided to the Contractor's nominated Health and Safety representative. Without prejudice to the generality of the foregoing, the Contractor shall ensure that all employees assigned to the performance of the Contract are properly trained and instructed with regard to fire risks and fire precautions.
17. The Contractor shall notify the Council immediately in becoming aware of any possible conflict of interest which may arise between the interests of the Council and any other client and the Contractor shall take all reasonable steps to remove or avoid the cause of any such conflict of

interest all to the satisfaction of the Council. The provisions of this Clause shall continue in full force and effect and shall be enforceable by the Council for a period of twelve months after the expiry of the Contract for whatever reasons.

18. The Contractor shall be deemed to have satisfied itself as to the accuracy and sufficiency of the price quoted in the Proposal which shall, except in so far as otherwise provided in the Contract, cover all payment to the Contractor under the Contract. Further, the Contractor shall be deemed to have obtained all necessary information as to any risks, contingencies and other circumstances, which may reasonably influence or affect the Contract.
19. No liability will lie against the Council for any loss, damage, or injury howsoever incurred as a result of the Contractor's performance of the Contract by way of the means detailed in any documentation submitted by or to the Council as required or otherwise authorised by the Contract. Where consent or approval is referred to it is taken to be prior written consent and no claim shall lie against the Council in respect of any delay in processing or refusing to grant such consent. Further, no claims shall be made against the Council in respect of any actions taken by the Contractor following upon the grant of such consent or approval.
20. The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the performance of the Contract and shall indemnify the Council accordingly.
21.
 - (a) The Contractor shall provide a copy of its Equal Opportunities Policy, which upon execution of the Contract shall be deemed to be part hereof. The Contractor warrants that this policy complies with the statutory obligations set down in the Race Relations Act 1976 and the Sex Discrimination Act 1986 and that it shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin in relation to the decisions to recruit, train or promote staff.
 - (b) The Contractor shall observe as far as possible the commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 1983, which gives practical guidance to employers and other in the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities. If any court or tribunal, or the Commission for Racial Equality, should make any finding of unlawful discrimination against the Contractor, then the Contractor shall take all necessary steps to prevent recurrence of such unlawful discrimination.
22. If requested to do so by Council officers, the Contractor shall use reasonable endeavours to co-operate with the Council (including but not limited to the provision of documentation and statements from

employees) in connection with any third party legal proceedings, Ombudsman enquiries, inquiry, arbitration or court proceedings in which Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of the provision of the Services or the Contractor's presence on Council premises, and the Contractor shall give evidence in such enquiries, arbitrations, proceedings or hearings.

23. The Council and the Contractor hereby agree to ensure that they will at all times comply with the provisions and obligations imposed by the Data Protection Acts 1984 and 1998 and the Data Protection principles set out in those Acts in storing and processing data. Both parties agree to indemnify each other in respect of any unauthorised disclosure of personal data.
- 24 (a). The Contractor shall indemnify the Council and keep the Council fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Contractor or any of its employees assigned to the performance of the Services or any defect in the workmanship of the Contractor or any of its employees.
- (b) The Council shall indemnify the Contractor and keep The Contractor fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Council, its employees, agents or sub-contractors.
- (c) The respective liability of the Contractor and the Council under sub-clauses (a) and (b) above, shall be unlimited in respect of death or personal injury and in all other respects for each event or series of connected events shall not exceed TEN MILLION POUNDS (£10,000,000) STERLING.
- (d) The Contractor shall maintain the following insurances –
- (i) employer's liability insurance to comply with all relevant statutory requirements,
 - (ii) public liability insurance of not less than TEN MILLION POUNDS (£10,000,000) STERLING, and
 - (iii) professional indemnity insurance of not less than TWO MILLION POUNDS (£2,000,000) STERLING (each and every claim).
- (e) The Contractor shall, whenever required, produce for inspection by any officer authorised by the Council for that purpose, documentary evidence that all relevant insurances are properly maintained.

25.
 - (a). The Contractor is not and shall in no circumstances hold itself out as being servant or agent of the Council except in relation to the subject matter of the Contract and then only where authorised.
 - (b) The Contractor is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligations, except in relation to the subject matter of the Contract and then only where authorised.
 - (c) The Contractor's employees are not and shall not hold themselves as being, nor shall they be held out by the Contractor as being, servants or agents of the Council for any purpose whatsoever.
26. The Contract, including the annexations and Schedule attached, constitutes the entire Contracts between the parties. No variation of these terms will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of the Contract.
27. In the event that any of the terms or provisions shall become invalid, illegal or unenforceable, the remainder shall survive unaffected.
28. Failure or neglect by either party to enforce at any time any of the provisions of the Contract shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of the Contract nor prejudice that party's rights to take subsequent action.
29.
 - (a) The Contractor shall not assign, sub-contract, nor otherwise transfer the Contract or any of its rights or obligations under the Contract whether in whole or in part without the prior written consent of the Council.
 - (b) The Contractor shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. If requested by the Council the Contractor shall promptly provide the Council with copies of all sub-contracts and matters pertinent to that sub-contract.
30. All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Contract or such other address as the recipient may designate by notice given in accordance with the provision of this Clause. Any such notice may be delivered personally by hand, or first class recorded delivery pre-paid letter, telex or facsimile transmission and shall be deemed to have been served, if by hand when delivered, if by first class recorded delivery forty-eight hours after posting and if by telex or facsimile transmission when dispatched.
31. The Contract shall be governed by, and interpreted and construed in accordance with Scots Law. Aberdeen Sheriff Court shall have exclusive

jurisdiction to settle any disputes (including claims for set-off and counter claims) which may arise in connection with the validity, effect, interpretation or performance of the legal relationship established by the Contract or otherwise arising in accordance with the Contract.

32. Both parties consent to the registration of the Contract in the Books of Council and Session for preservation and execution IN WITNESS WHEREOF

