

## DUNDEE CITY COUNCIL

### CONDITIONS FOR THE PROVISION OF A SERVICES CONCESSION CONTRACT

#### GENERAL CONDITIONS

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

#### 1. DEFINITIONS

In these Conditions:

*'Grantor'* means Dundee City Council, 21 City Square, Dundee, DD1 3BY, notwithstanding that no money may pass from Dundee City Council to the Concessionaire under the Contract and that the consideration given by the Grantor includes the right to exploit the services to be provided by the Concessionaire under the Contract;

*'Apparatus'* means any and all apparatus and equipment to be installed by the Concessionaire on the Premises for the purposes of the benefit of the Grantor and its customers or tenants including without limitation all attachments fixings, cables, meters and other ancillary apparatus necessary to provide the Services or to allow the Concessionaire (or by any of the Concessionaire's sub-contractors) to exploit the Services pursuant to or in connection with this Contract;

*'Concessionaire'* means the person, firm or company to whom this Services Concession Contract is issued;

*'Services'* means the concession services to be provided as specified in the Specification of Requirements including the rights to exploit those Concession Services and shall, where the context so admits, include any materials, articles and goods to be supplied there under;

*'Premises'* means the location(s) where the Services are to be performed, as specified in the Specification of Requirements and as may be varied by agreement between the parties from time to time;

*"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 services concession contract between the Grantor and the Concessionaire consisting of the Specification of Requirements, these Conditions and other documents (or parts thereof) specified in the Specification of Requirements;

*'Specification of Requirements'* means the document setting out the Grantor's requirements for the Contract. Where the Contract proceeds on the basis of an invitation to tender issued by the Grantor this phrase means the invitation to tender and any document incorporated therein by reference as forming or comprising the

Contract between the Grantor and the Concessionaire. Where the contract between the Grantor and the Concessionaire proceeds only on a purchase order and acceptance of that order, this means the purchase order by which the Grantor orders the Services from the Concessionaire.

## **2. CHANGE TO CONTRACT REQUIREMENTS**

- 2.1 Subject to the same constituting a permitted variation in terms one of the first eight paragraphs of the Regulation referred to in Condition 17.3(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 Concessionaire and the Grantor in writing and until such an agreement is reached the contract will continue as previously constituted.
- 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 Grantor. All such orders shall be given in writing provided that if for any reason the Grantor shall find it necessary to give any such order orally in the first instance the Concessionaire shall comply with such oral order which must be confirmed in writing by the Grantor within 2 working days of the giving of such oral order by the Grantor, 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 Concessionaire in providing the Services, the Concessionaire will notify the Grantor in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Grantor, who shall take all of the facts into account (including such information as may be provided by the Concessionaire in respect of the effect which such variation has had or may have on the costs incurred by the Concessionaire in providing the service) and may authorise such alteration to the sums to be paid to the Concessionaire in accordance with the provisions of the Contract as are, in the Grantor's opinion, appropriate and reasonable in the circumstances.

## **3. INSPECTION OF PREMISES AND APPARATUS**

- 3.1 The Concessionaire is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.
- 3.2 The Grantor shall, at the request of the Concessionaire, grant such access as may be reasonable for this purpose.
- 3.3 The parties shall enter into such property wayleave or licence agreements with each other or with any third parties as the Grantor acting reasonably shall deem necessary to allow the Concessionaire to deliver the Services.
- 3.4 The Apparatus shall operate to the reasonable satisfaction of the Grantor and shall conform in all respects with any particulars specified in the Contract and in any variations thereto for the duration of the Contract.
- 3.5 The Apparatus shall be fit and sufficient for the purpose for which such apparatus is ordinarily used and for any particular purpose made known to the Concessionaire by the Grantor and the Grantor relies on the skill and judgement of the Concessionaire in the supply of the Apparatus and the execution of the Contract.
- 3.6 The Apparatus shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.
- 3.7 The Apparatus shall be installed, maintained, repaired and where necessary replaced by appropriately qualified and trained personnel of the Concessionaire or its approved sub-contractors for the duration of the Contract in accordance with and to best industry standards for the duration of the Contract.
- 3.8 Property and risk in the Apparatus shall remain with the Concessionaire for the duration of the Contract.
- 3.9 On termination of the Contract for any reason the Concessionaire shall be responsible for removing the Apparatus from the Premises, for restoring the Premises to (a) a wind and watertight, and to a good and proper condition. The Concessionaire shall be responsible for carrying out any repairs to the Premises caused by the installation, operation, failure or removal of the Apparatus to, at or from the Premises.

3.10 The Concessionaire shall be responsible for the disposal of all Apparatus during and on termination of the Contract in accordance with all relevant laws and regulations and that at the Concessionaire's cost.

3.11 In the event that the Concessionaire fails to carry out any of its undertakings set out in this clause 3. Within 30 days written notice from the Grantor to do so then the Grantor shall be entitled to carry out any necessary repairs to Apparatus or to the Premises or other property as may be necessary and/or remove and/or dispose of the Apparatus and thereafter shall be entitled to recover any and all costs or expenses reasonably incurred by the Grantor in doing so from the Concessionaire.

#### **4. CONCESSIONAIRE'S STATUS**

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

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

#### **5. CONCESSIONAIRE'S PERSONNEL**

5.1 The Concessionaire shall take the steps reasonably required by the Grantor to prevent unauthorised persons being admitted to the Premises. If the Grantor gives the Concessionaire 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 Concessionaire shall take all reasonable steps to comply with such notice and if required by the Grantor the Concessionaire shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

5.2 If and when instructed by the Grantor, the Concessionaire shall give to the Grantor 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 Grantor may reasonably require.

5.3 The decision of the Grantor 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 Concessionaire has furnished the information or taken the steps required of the Concessionaire by this Condition.

5.4 The Concessionaire shall bear the cost of any notice, instruction or decision of the Grantor under this Condition.

#### **6. MANNER OF CARRYING OUT THE SERVICES**

6.1 The Concessionaire shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Grantor's prior consent.

6.2 Access to the Premises shall not be exclusive to the Concessionaire but only such as shall enable the Concessionaire to carry out the Services concurrently with the execution of work by others. The Concessionaire shall co-operate with such others as the Grantor may reasonably require.

6.3 The Grantor 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 Grantor 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 therefore of any work which, in respect of material or workmanship is not in the opinion of the Grantor in accordance with the Contract.

6.4 The Concessionaire shall forthwith comply with any order made under Condition 6.3.

6.5 On completion of the Services or on the termination of the Contract the Concessionaire shall at the Concessionaire's sole expense remove and dispose of the Concessionaire's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises and each of them in a neat and tidy condition. The disposal of the Concessionaire's plant equipment and unused equipment shall be in accordance with all relevant legislation (including Statutory Instruments, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Grantor, whether specifically or generally.

## **7 HEALTH AND SAFETY**

The Concessionaire 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 requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Grantor, whether specifically or generally. The Concessionaire shall indemnify the Grantor against all actions, suits, claims, demands, losses, charges, costs and expenses which the Grantor may suffer or incur as a result of or in connection with any breach of this Condition. This indemnity shall be limited to the minimum insurance value specified at 14.3b below.

## **8. TIME OF PERFORMANCE**

The Concessionaire 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 Grantor may by written notice require the Concessionaire to execute the Services in such order as the Grantor may decide. In the absence of such notice the Concessionaire shall submit such detailed programmes of work and progress reports as the Grantor may from time to time require. The Grantor shall act reasonably in implementing its powers under this Condition and shall take cognisance of representations by the Concessionaire.

## **9. PAYMENT**

9.1 Unless otherwise stated in the Contract, payments to be made (if any) will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Grantor.

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

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

## **10. FREE-ISSUE MATERIALS**

Where the Grantor for the purpose of the Contract issues materials free of charge to the Concessionaire such materials shall be and remain the property of the Grantor. The Concessionaire shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Concessionaire shall notify the Grantor of any surplus materials remaining after completion of the Services and

shall dispose of them as the Grantor may direct. Waste of such materials arising from bad workmanship or negligence of the Concessionaire or any of the Concessionaire's servants, agents or sub- Contractors shall be made good at the Concessionaire's expense. Without prejudice to any other of the rights of the Grantor, the Concessionaire shall deliver up such materials whether processed or not to the Grantor on demand.

#### **11. AUDIT**

The Concessionaire shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Grantor of all expenditures which are reimbursable by the Grantor and of the hours worked and costs incurred in connection with any employees of the Concessionaire paid for by the Grantor on a time charge basis. The Concessionaire shall on request afford the Grantor or the Grantor's representatives such access to those records as may be required by the Grantor in connection with the Contract. The Grantor shall treat any data provided under this Condition as confidential data of the Concessionaire and shall not supply it to any third party except where under a legal obligation to do so.

#### **12. CORRUPT GIFTS OR PAYMENTS**

The Concessionaire shall not offer or give, or agree to give, to any employee or representative of the Grantor 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 Grantor 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 Concessionaire is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

#### **13. PATENTS, INFORMATION AND COPYRIGHT**

13.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Grantor, that nothing done by the Concessionaire 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 Concessionaire shall indemnify the Grantor against all actions, claims, demands, costs and expenses which the Grantor may suffer or incur as a result of or in connection with any breach of this Condition. The Grantor agrees to provide prompt notice of such claims and allow the Concessionaire to assume responsibility for any legal proceedings and negotiations.

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

- (a) furnished to or made available to the Concessionaire by the Grantor shall remain vested in the Grantor absolutely.
- (b) prepared by or for the Concessionaire for use, or intended use, exclusively by the Grantor or its customers in relation to the performance of this Contract are hereby assigned to and shall vest in the Grantor absolutely, and (without prejudice to Condition 16.2) the Concessionaire shall not and shall procure that the Concessionaire's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Grantor 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 Concessionaire 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 Concessionaire shall not refer to the Grantor or the contract in any advertisement without the Grantor's prior written consent which consent will not be unreasonably refused or delayed.
- (c) for the avoidance of doubt all patents, trade marks, registered designs, copyrights or other rights in the nature of intellectual property pertaining to the Apparatus or any part of it shall remain vested in the Concessionaire or its licensors save that the Concessionaire shall procure that the Grantor and its customers or tenants shall have any necessary licence rights to use the Apparatus for the duration of the Contract.
- (d) upon payment of the charges, all final versions of material, reports and presentations prepared by the Concessionaire for delivery to the Grantor (the "Deliverables") shall be provided for the use of and shall be owned by the Grantor (and for the avoidance of doubt non-final versions shall not so vest in the Grantor).

The Grantor agrees that it will not, without first obtaining the Concessionaire's approval, which the Concessionaire will not unreasonably withhold, redistribute the Deliverables outside of its organisation in any manner that makes attribution of the Deliverables to the Concessionaire, except as required by law.

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

#### 14. INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the Grantor the Concessionaire shall indemnify the Grantor against all actions, suits, claims, demands, losses, charges, costs and expenses which the Grantor 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 Concessionaire or any defect in Apparatus supplied, or in the installation, maintenance, servicing or repair of the Apparatus, during the whole Contract period.

14.2 The indemnity contained in Condition 14.1 shall not (a) apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Grantor or any servant or agent of the Grantor and (b) except for liability for death or personal injury which shall be unlimited, for any single event or series of related events exceed £5million.

14.3 The Concessionaire 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.

14.4 The policy or policies of insurance referred to in Condition 14.3 shall be shown to the Grantor whenever the Grantor requests. But in the first instance, satisfactory evidence of a certificate of insurance shall be deemed sufficient.

#### 15. DISCRIMINATION

The Concessionaire 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 Grantor. The Concessionaire shall take all reasonable steps to secure the observance of this Condition by all employees and representatives of the Concessionaire.

#### 16. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

16.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time relating to access to public authorities information, details of any matters relating to the Contract, unless any such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including but not limited to the Grantor or the Concessionaire or such details fall within such other exemption as may be applicable at the discretion of the Grantor, in terms of the Act. The Concessionaire shall facilitate the

Grantor's compliance with the Grantor's obligations under these provisions and comply with any request from the Grantor for that purpose. No term of the Contract either shall preclude the Grantor from sharing pricing and other information under the Contract with other UK public bodies for the purpose of proposed joint procurement of these services along with those bodies in the future and subject to a reciprocal obligation of confidence upon such other public bodies as is imposed on the Grantor in terms of Condition 16.2(b).

16.2 Subject to Condition 16.1:-

- (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 with the receiving 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.

16.3 Where and insofar as provision of the Services by the Concessionaire under the Contract does or may involve the Concessionaire processing personal data on behalf of the Grantor, the following terms of this Condition 16.3 shall apply during the continuance of this Contract and after its termination, however arising:-

16.3.1. The Concessionaire 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 Concessionaire acts as the Data Processor and the Grantor 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 16.3 are without prejudice to any obligations and duties imposed directly on the Concessionaire under the Data Protection Laws and the Concessionaire hereby agrees to comply with those obligations and duties.

16.3.2 The Concessionaire will, in conjunction with the Grantor 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.

16.3.3 The Concessionaire 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.

16.3.4 The Concessionaire must:

16.3.4.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Grantor (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 Concessionaire is subject; in which case the Concessionaire must, unless prohibited by that law, inform the Grantor 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 Concessionaire's obligations under this Contract or as is required by the Law;

16.3.4.2 subject to Condition 16.3.4.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Grantor's prior written consent;

16.3.4.3 take all reasonable steps to ensure the reliability and integrity of any Concessionaire Representatives who have access to the Personal Data and ensure that the Concessionaire Representatives:

- (a) are aware of and comply with the Concessionaire's duties under this Condition;

- (b) are subject to appropriate confidentiality undertakings with the Concessionaire 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 Grantor or as otherwise permitted by this Contract; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

- 16.3.5 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.
- 16.3.6 The Concessionaire shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Grantor. In the case of general written authorisation, the Concessionaire must inform the Grantor of any intended changes concerning the addition or replacement of any other sub-contractor and give the Grantor an opportunity to object to such changes.
- 16.3.7 If the Concessionaire engages a sub-contractor for carrying out Processing activities on behalf of the Grantor, the Concessionaire 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 Concessionaire shall remain fully liable to the Grantor for the performance of the sub-contractor's performance of the obligations.
- 16.3.8 The Concessionaire must provide to the Grantor reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Concessionaire must notify the Grantor 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.
- 16.3.9 Taking into account the nature of the Processing and the information available, the Concessionaire must assist the Grantor in complying with the Grantor'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 Grantor with communication of a personal data breach to a Data Subject;
  - (d) supporting the Grantor with preparation of a data protection impact assessment;
  - (e) supporting the Grantor with regard to prior consultation of the Supervisory Authority.



- 16.3.10 At the expiry or termination of the Contract the Concessionaire must, on written instruction of the Grantor, delete or return to the Grantor all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 16.3.11 The Concessionaire must:  
(a) provide such information as is necessary to enable the Grantor to satisfy itself of the Concessionaire's compliance with this Clause 16;  
(b) allow the Grantor, 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 16 and contribute as is reasonable to those audits and inspections;  
(c) inform the Grantor if, in its opinion, an instruction from the Grantor infringes any obligation under the Data Protection Laws.
- 16.3.12 The Concessionaire 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 Grantor containing the information set out in Article 30(2) of the GDPR.
- 16.3.13 If requested, the Concessionaire must make such records referred to Clause 16.3.11 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 16.3.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 16.3.12 with minimum disruption to the Concessionaire's day to day business.
- 16.3.15 Without prejudice to the terms of **Clause 18**, the Concessionaire shall indemnify the Grantor against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Grantor may incur arising out of any breach of this Clause 16 by the Concessionaire;
- 16.3.16 In the event of a breach of this Clause 16 by the Concessionaire, the Concessionaire shall be bound to remedy the breach within five working days of the breach coming to the attention of the Concessionaire or the breach being notified to the Concessionaire by the Grantor, whichever is earlier. In the event that the breach is not resolved timeously, the Grantor will be entitled to terminate the Contract forthwith.
- 16.3.17 In this Condition 16, "data" shall mean all information relating to the Grantor'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 Grantor to the Concessionaire during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Grantor.
- 16.4 The provisions of this Condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 16.5 The Concessionaire will provide the Grantor with such management information on delivery of the Services as the Grantor 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**

## The nature and purpose of the Processing of Personal Data

### The type of Personal Data to be processed

### The categories of Data Subject to whom Personal Data relates

The obligations and rights of the Grantor as the Data Controller are set out in Condition 16 of the Contract.

## 17. TERMINATION

- 17.1 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 30 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.
- 17.2 Without prejudice to any other rights or remedies of the Grantor under the Contract the Grantor shall have the right (in relevant and appropriate circumstances as the Grantor may determine) forthwith to terminate the Contract by written notice to the Concessionaire or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator, administrator or other representative of the Concessionaire:
- (a) where the Concessionaire is an individual and if a petition is presented for the Concessionaire's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Concessionaire, or the Concessionaire is apparently insolvent, or 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 Concessionaire's affairs or if the Concessionaire shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000; or
  - (b) where the Concessionaire 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 Concessionaire to be wound up as an unregistered company; or
  - (c) where the Concessionaire is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 17.3 The Grantor 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 Concessionaire 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 Concessionaire 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.
- 17.4 The Grantor may also terminate the Contract in the event of a failure by the Concessionaire to comply in the performance of the Services with legal obligations in the field of environmental, social and employment law.

17.5 Termination under Conditions 17.1, 17.2, 17.3 or 17.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Grantor and shall not affect the continued operation of Conditions 14 and 16.

## **18. RECOVERY OF SUMS DUE**

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

## **19. ASSIGNATION AND SUB-CONTRACTING**

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

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

19.3 Where the Concessionaire enters into a sub-contract the Concessionaire must ensure that a provision is included in it which:

19.3.1 requires payment to be made of all sums due by the Concessionaire 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 Grantor has made payment to the Concessionaire 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 Concessionaire 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 Concessionaire, payment must be made to the sub-contractor without deduction;

19.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Grantor 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 Grantor; and

19.3.3 in the same terms as the set out in the condition 19.3 (including for the avoidance of doubt this Condition 19.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Concessionaire and sub-contractor as the case may be.

19.4 The Concessionaire shall also include in every sub-contract:

19.4.1 a right for the Concessionaire 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 17.3 occur; and

19.4.2 a requirement that the sub-contractor includes a provision having the same effect as 19.4.1 above in any sub-contract which it awards.

In this condition 19.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Grantor 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.

## **20. BLACKLISTING**

The Concessionaire 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 Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Grantor to terminate the Contract.

## 21. 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, telemesssage, 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 therefore, 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.

## 22. DISPUTE RESOLUTION

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

22.2 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.

22.3 Any arbitration under 22.2 is subject to the Arbitration (Scotland) Act 2010

## 23. HEADINGS

The headings to Conditions shall not affect their interpretation.

## 24 COMPLIANCE WITH THE LAW ETC.

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

24.1 all applicable law

24.2 any applicable requirements of regulatory bodies; and

24.3 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 Concessionaire under the same or similar circumstances.

## 25. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Concessionaire 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 Grantor to take proceedings against the Concessionaire 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)

### SUPPLEMENTARY NOTICE

#### 1. PROTECTING THE ENVIRONMENT

Concessionaires to the purchasing authorities are requested to satisfy themselves that no product will be supplied

#### 2. LATE PAYMENT OF INVOICES

Concessionaires to the purchasing authorities are requested to address complaints regarding late payment of

or used in the Supply of Goods to the Grantor 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.

invoices to, in the first instance, the addressee of the invoice and, in the second instance to Dundee City Council orders, the Director of Corporate Service, Dundee City Council, Floor 4, Dundee House, 50 North Lindsay Street, Dundee, DD1 1NZ; Telephone 01382-433555; e-mail [generalfinance@dundeecity.gov.uk](mailto: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 Concessionaires' legal rights.

**THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT**

**Version: March 2023**