

DOCUMENT C - PROPOSED TERMS AND CONDITION OF CONTRACT

1. General

1.1 These terms and conditions shall apply to the work procured by the Don District Salmon Fishery Board, unless the proposal refers to a specific contract in which case that specified contract shall apply in conjunction with these terms and conditions in the order of priority identified in the specified contract; subject only to any minor changes to these terms and conditions which are set out in the procurement arrangement.

1.2 Any purchase by the Buyer is conditional upon acceptance of these terms and conditions by the Provider. If the Provider does not wish to accept these terms and conditions, then the Provider should not accept the contract, and should inform the Buyer immediately.

2. Definitions

'Buyer' means The Don District Salmon Fishery Board.

'Contract' means the contract between the Buyer and the Provider, expressly incorporating the Form of Tender, the Terms and Conditions of Contract, the Specification, the Proposal (where applicable) and any Contract Drawings or similar.

'Commercially Sensitive Information' means the information relating to the Provider, which the Provider has indicated in writing to the Buyer is of a commercially sensitive nature and which if disclosed by the Buyer, would cause the Provider significant commercial disadvantage or material financial loss.

'Environmentally Sensitive Information' means data and other information on wildlife and their habitat and environment, the disclosure of which could harm, put at risk or otherwise prejudice wildlife and/or their habitat and environment and so are capable of being excluded from disclosure under the EIRs.

'EIRs' means the Environmental Information (Scotland) Regulations 2004, as amended or replaced from time to time.

'FOISA' means the Freedom of Information (Scotland) Act 2002, and any subordinate legislation made under the Act as in each case amended or replaced from time to time.

'Goods' means all or any of the items set out in the contract which are to be supplied to the Buyer by the Provider.

'Parties' means the Buyer and the Provider.

'Provider' means the person, firm or company named as such in the contract (or its successors in title).

'contract' means any procurement offer placed by the Buyer under which the Provider agrees to supply Goods and/or Services to the Buyer in accordance with the specification

'Services' means the Services to be performed by the Provider for the Buyer as described in the contract and anything created or produced as a result of the Services.

'Specification' means the requirements to which the Goods and/or Services supplied shall conform to the Tender Specification as detailed in the contract.

'Working Day' means the Buyer's usual working days, which exclude weekends, bank holidays, some other days published by the Buyer, or such other days as may be notified to the Provider by the Buyer.

2. Assignment and Sub-contracting

2.1 The Provider shall not assign, transfer, sublet or subcontract in whole or in part any of the contract without the prior written consent of the Buyer and any such written consent shall be conditional upon the Provider providing a

statement in writing assuming liability for the works of the subcontractor. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to it under the Contract.

2.2 The Buyer may at any time assign, transfer, or deal in any other manner with any or all of its rights and obligations under the Contract and the insurances referred to in Condition 7.

Notwithstanding Condition 5, the Provider may disclose to a proposed assignee any information in its possession that relates to the Contract or its subject matter, which it is reasonably necessary to disclose for the purposes of the proposed assignment.

3. Corruption

The Provider shall not do anything, or omit to do anything, which may be considered to be an inducement to any employee of the Buyer. Any such inducement shall be deemed to be a breach, which shall be considered incapable of remedy.

4. Intellectual Property

4.1 Intellectual property and other rights in the Goods and/or Services shall vest in the party from whom the Goods and/or Services originate unless the Goods and/or Services are produced for the Buyer as bespoke. If the latter applies such rights shall vest in the Buyer upon their creation and the

Provider shall do all such things and execute all such documents as the Buyer may require in order to perfect such vesting. The Provider shall ensure that it includes corresponding provisions in its contracts with its own sub-contractors and providers.

4.2 In the event of any breach of any such intellectual property rights the Provider shall indemnify the Buyer, unless the Buyer is responsible for the breach in question.

5. Confidentiality, Data Protection and Freedom of Information

5.1 The Provider shall keep secret and not disclose, and shall procure that its employees, agents and sub-contractors keep secret and do not disclose, any information of a confidential nature obtained by it by reason of the Contract. The Provider shall not disclose any Environmentally Sensitive Information which the Provider may receive or have access to by reason of the Contract, irrespective of whether this Environmentally Sensitive Information is in the public domain or not.

5.2 Subject to the terms of these Conditions and without prejudice to that generality, Commercially Sensitive Information related to the Contract will be kept in confidence by the Buyer.

5.3 The Provider acknowledges and agrees that references may be sought by the Buyer from banks, existing or past clients, or other referees proposed by the Provider.

5.4 The Provider shall ensure that all data and information produced in the course of the Contract or relating to the Contract is retained and shall permit the Buyer to inspect such records as requested from time to time.

5.5 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Buyer may nevertheless be obliged to disclose Provider's Confidential Information in accordance with this Condition 5.

5.6 The provisions of this Condition 5 shall apply during the continuance of the Contract and indefinitely after its termination, howsoever arising.

6. Price Variation

The prices in the contract shall apply (without variation) for both the period and/or stated quantity of the Goods and/or Services, unless specifically otherwise agreed in writing by the Parties.

7. Liability

7.1 Neither party excludes or limits liability to the other for death or personal injury as a result of its negligence.

7.2 The Provider's liability for breach of confidentiality or infringement of intellectual property rights shall be unlimited unless otherwise agreed in writing by the Parties.

7.3 The liability of either party for direct loss of, or damage to, the tangible property of the other shall be limited to five million pounds per claim unless otherwise stated in the Contract.

7.4 The Provider will ensure that it has insurance in place and shall maintain such insurance throughout the period covered by this contract to cover its liabilities under the Contract, to include professional indemnity insurance for a minimum of £5,000,000 (where Services are to be provided), public liability insurance for a minimum of £5,000,000, and employer's liability insurance (where relevant) for a minimum £10,000,000 (unless otherwise agreed in writing between the Parties).

7.5 Where the interests of a third party are potentially vulnerable to damage in respect of works carried out under the contract the Buyer may notify The Provider and request that the interests of the third party are endorsed upon the policy.

8. Documents

8.1 All advice notes, invoices and packing notes issued by the Provider shall be clearly marked by the Provider with the Provider's name and address, the contract name, the item code, date of despatch, a description of the Goods and/or Services, the address of their intended destination and the due delivery date.

9. Quality and Performance

The Provider shall:

9.1 perform the Services using reasonable due care, skill, diligence and expertise and using suitably qualified and experienced personnel in sufficient number to ensure that the Provider's obligations are fulfilled in accordance in accordance with the Contract, and complying with any performance standards referred to or set out in the Contract or that are generally accepted as industry norm.

9.2 co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;

9.3 ensure that the Goods and Services will conform with all descriptions and specifications set out in the Tender Specification, and that the Goods/Deliverables shall be fit for any purpose expressly or impliedly made known to the Provider by the Buyer;

9.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

9.5 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;

9.6 observe, obtain and at all times maintain, all necessary licences and consents, and comply with all applicable laws and regulations;

9.7 observe all health and safety rules and regulations and any other security requirements that should apply at the Site;

9.8 hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Provider in safe custody at its own risk, maintain the said materials in good condition until returned to the Buyer, and not dispose or use the said materials other than in accordance with the Buyer's written instructions or authorisation;

9.9 not do or omit to do anything which may cause the Buyer to lose any funding, licence, authority, consent or permission upon which it relies or from which it benefits.

9.10 on completion of the services remove its plant, equipment and unused materials and clear away from the site all rubbish arising out of the Services and leave the site in a neat and tidy condition.

10. Extension of Time, Rescheduling or Cancellation

10.1 If, for any cause beyond the reasonable control of the Provider, delivery of the Goods, or performance of the Services, is delayed, then unless time is of the essence the time for delivery/performance may be rescheduled by the Buyer (acting reasonably). Delay for any other reason shall be at the sole discretion of the Buyer, in which case the Provider shall be responsible for any additional costs.

10.2 Notification of any anticipated or actual delay must be immediately communicated in writing to the Buyer by the Provider specifying the reasons for the delay.

10.3 If in the reasonable opinion of the Buyer it is inappropriate to reschedule delivery of the Goods and/or performance of the Services then the Buyer may cancel the contract without incurring any liability for such cancellation.

11. Completion & Terms of Payment

11.1 The Provider shall notify the Buyer in writing when the contracted works are completed. The Buyer shall then have 30 days from the receipt of the said notice to inspect the works and if the Buyer is satisfied that the works have been completed in accordance with the Contract then the Buyer shall issue a Notice of Acceptance in writing to the Provider. If the Buyer is unable to issue a Notice of Acceptance then the Buyer shall issue the Provider with details in writing of any further works necessary to complete the works in accordance with the Contract. The Provider may issue an invoice to the Buyer on receipt of the Notice of Acceptance.

11.2 The Buyer agrees to pay the Provider either, the total price for the Goods and/or Services which is stated in the contract (or otherwise agreed in writing between the Parties) within 30 Working Days of the date of receipt of a valid and undisputed invoice, which (if the Provider determines that VAT is payable) must comply with the requirements of H.M. Revenue and Customs for VAT purposes.

11.3 All prices and rates which are stated in the contract are inclusive of VAT (unless otherwise stated in the contract).

11.4 If requested to do so by the Buyer, the Provider shall accept payment of monies due by electronic funds transfer through BACS or other electronic payment means, as good discharge of the Buyer's indebtedness under the contract.

11.5 If any undisputed monies are not paid by the due date, then the Provider or the Buyer (as applicable) may charge interest on such undisputed monies on a day to day basis from the date falling 30 Working Days from when payment fell due, (or such other date as may be agreed in writing between the Parties), to the date of payment (both dates inclusive) at the rate of eight per cent per annum. The Parties agree that this condition provides each of the Parties with a substantial remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998).

11.6 For the period of one year from the date of the issuance of the notification of acceptance under condition 11.1 the Goods and materials used will remain free from defects in materials and workmanship under normal use and service. The sole remedy of the Buyer in the event of breach of this condition shall be to require the Provider free of charge to the Buyer to make good the defect whether by replacement, repair or adjustment provided that the Buyer shall have given the Provider reasonable notice of the defect and the circumstances in which it arose.

12 Dispute Resolution

12.1 The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between the parties. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Scottish Chartered Institute of Arbitrators.

12.2 If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be Scotland. The arbitration shall be governed by both the Arbitration (Scotland) Act 2010 and Rules as agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Scottish Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.

13 Indemnity

Without prejudice to any rights or remedies of the Buyer, the Provider shall indemnify the Buyer against all actions, claims, damages, demands, losses (direct and indirect), charges, costs and expenses which the Buyer may suffer or incur as a result of the breach by the Provider of its obligations under the Contract, and 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 Contractor.

14 Termination

14.1 the Buyer may, without prejudice to any other right or remedy which it may have, terminate the Contract with immediate effect by Written notice to the Provider in the event that:

(a) phase one has completed; or

(b) the Provider commits (knowingly or otherwise) any breach of the Contract; or

(c) if the Provider is a limited company, it becomes unable to pay its debts or is otherwise insolvent; or a liquidator, administrator, administrative receiver, manager, or receiver is appointed to it, or over all or any part of its property and undertaking of it, or it passes a resolution or a Court makes an order that it be wound up; or

(d) if the Provider is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984; or a petition is presented for bankruptcy or the sequestration of the estate of the Provider; or he is apparently insolvent or makes any arrangement with or for the benefit of creditors; or makes any conveyance or assignation or composition for the benefit of creditors; or if a trustee is appointed to manage his estate or affairs; or

(e) if the Provider is a partnership or firm or a number of persons acting in whatever capacity, any of the events referred to in Condition 14.1(b) or (c) occur in respect of the partnership or firm or any such person, or a petition is presented that the Provider be wound up as an unlimited company.

14.2 Upon termination in accordance with Condition 14.1, without prejudice to any other of its rights, the Buyer may itself procure the Goods and/or complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Provider) all materials, plant and equipment on the Site belonging to the Provider, and the Buyer shall not be liable to make any further payment to the

Provider until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Provider the costs thereof incurred by the Buyer (including the Buyer's own costs). If the total cost to the Buyer exceeds the amount (if any) due to the Provider, the difference shall be recoverable by the Buyer from the Provider.

14.3 Termination under Condition 14.1 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Buyer

15. Change to Contract Requirements

15.1 The Buyer may order any variation to any part of the Goods and/or Services that for any reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations and substitutions to the Goods and Services, and changes in quality, form, character, kind, timing, method or sequence of the Goods and Services.

15.2 Save as otherwise provided herein, no variation of the Goods and/or Services as provided for in Condition 15.1 hereof shall be valid unless given or confirmed in Writing by the Buyer, provided that if for any reason the Buyer shall instruct such variation orally in the first instance, the Provider shall comply with such oral instruction but it must be confirmed in Writing by the Buyer within 2 working days of the giving of such oral instruction, failing which the variation made by such oral instruction shall cease to have effect on the expiry of the said 2 working day period.

15.3 Where any such variation of the Goods and/or Services made in accordance with Conditions 15.1 and 15.2 has affected or may affect the costs incurred by the Contractor in providing the Goods and/or Services, the Provider will notify the Buyer in Writing of the effect which it has had or may have on said costs and such notification shall be considered by the Buyer, taking all of the facts into account (including such information as may be provided by the Provider in respect of the effect which such variation has had or may have on the costs incurred by the Provider in providing the Goods and/or Services) and may authorise such alteration to the sums to be paid to the Provider in accordance with the provisions of the Contract as are, in its opinion, appropriate and reasonable in the circumstances.

16. Compliance

The Provider and its personnel shall at all times comply with all applicable laws, including statutes, regulations and bye-laws of local or other competent authorities.

17. Entire Agreement

These terms and conditions and the contract shall (unless expressly agreed otherwise in writing by the Parties) comprise the entire terms and conditions of the contract in relation to the subject matter of the contract (subject to condition 1.1) and the Provider's terms and conditions of contracting are expressly excluded. The contract and these terms and conditions shall therefore take priority over any other arrangements, communications (whether verbal or written), or any other documents (including, but not limited to, other contracts, or other terms and conditions) except if the contract is displaced pursuant to an over-riding contract pertaining to the Goods and/or Services either, issued by, or referred to, by the Buyer.

18. No Agency

This contract does not either, create a partnership between the Buyer and the Provider, or make one of the Parties the agent of the other for any purpose.

19. Publicity

The Provider shall not, without the prior written permission of the Buyer, advertise or disclose to any third party that it is providing Goods and/or Services to the Buyer.

20. Governing Law

This contract shall be governed by Scots law and the Parties shall submit to the exclusive jurisdiction of the Scottish courts.

