

## Legal Services

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**Clackmannanshire Council**

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**Clackmannanshire Council  
Minor Works Building Contract with Contractor Design  
MWD/Scot 2013 Edition  
Schedule of Amendments**

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The proposed contract set out in the Invitation to Tender is let under the terms of the Minor Works Building Contract with Contractors Design for use in Scotland (MWD/Scot 2013 edition) subject to the following amendments below. Where a Recital, Article or Condition is not referred to below, the un-amended term in the MWD/Scot 2013 shall apply.

On the issue of the Award Letter (as after defined), the terms set out in this document shall have full force and effect:.

**Recitals**

**First -** The Employer wishes the works set out and specified in the Employers Requirements to be carried out ("the Works") under the direction of the Contract Administrator referred to in Article 3. The Employer by Contract Notice has advertised the required works and the Contractor has submitted the Tender. The Employer has accepted the Tender by issuing the Award Letter.

**Second -** The works specified in the First Recital include the design and construction of the Works specified as such within the Employers Requirements ("**the Contractor's Designed Portion**")

**Third -** The Employer has prepared the following documents:

- (i) the drawings (the "Contract Drawings");
- (ii) a Specification (the "Contract Specification")
- (iii) a Work Schedule and Bills of Quantities (the "Contract Bills")
- (iv) other documents showing or describing or otherwise stating his requirements for the design and construction of the Contractors Designed Portion

and such documents listed at (i) to (iv) as all attached to the electronic Contract Notice and published on the Public Contracts Scotland Portal and all together forming the "Employers Requirements" and which documents along with the Conditions are listed and incorporated within the Schedule by reference and those documents together with the Contract Particulars and if applicable a Schedule of Rates as referred to in the Fourth Recital collectively comprise "the Contract Documents".

**Fourth -** Where applicable and forming part of the Invitation to Tender, the Contractor as part of his Tender has submitted a Schedule of Rates

## **Articles**

### **Article 2 - Contract Sum**

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT exclusive sum of the amount stated in the Award Letter (the "Contract Sum") or such other sum as shall become payable under this Contract.

Where the Contractor makes any application for payment, it is a condition precedent to such an application must be supported by the purchase order number specified on the Award Letter. Failure to specify the purchase order shall entitle the Employer to withhold payment until such time as the Contractor submits an application for payment in accordance with this Article and section 5.3.

### **Article 3 - Contract Administrator**

For the purposes of this Contract, the Contract Administrator is the person specified in the Award Letter, or if he ceases to be the Contract Administrator, such other person as the Employer shall nominate for that purpose (such nomination to be made within 28 days of cessation) provided that no replacement Contract Administrator appointed for this Contract shall be entitled to disregard or overrule an certificate, opinion, decision, approval or instruction give by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

### **Article 4 - Quantity Surveyor**

The Quantity Surveyor for the purposes of this contract is the person specified within the Award Letter. Where no such specification is made, the Quantity Surveyor shall be a representative of the Employer, the name of whom will be notified to the Contractor in writing, or if he ceases to be the Quantity Surveyor, such other person as the Employer shall appoint.

### **Article 5 - CDM Co-ordinator**

The CDM Co-ordinator for the purposes of the CDM Regulations is the Contract Administrator, or such person nominated in writing by the Contract Administrator to the Contractor. In the event that this person ceases to be the CDM Co-ordinator, the CDM Co-ordinator shall be such person as the Employer shall nominate in writing to the Contractor pursuant to regulation 14(3) of those regulations.

### **Article 8 - Arbitration**

The provisions of Article 8 and section 8.3 of the Conditions do not apply where the dispute or difference exceeds the Claim Limit.

Where any dispute or difference between the parties of any kind whatsoever arising out of or in connection with this Contract falls below the Claim Limit, then the matter shall be referred to arbitration in accordance with section 8.3 of the Conditions. The exceptions to this Article 8 are:

- .1 any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences;
- .2 any disputes or differences in connection with the enforcement of any decision of an Adjudicator; or
- .3 where any dispute or difference exceeds the Claim Limit

### **Article 9 - Legal Proceedings**

Subject to Article 7 (and where it applies) to Article 8, the Commercial Court of the Court of Session shall have exclusive jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

### **Article 9A - Performance Bond**

Where specified in the Employers Requirements, it is a material suspensive condition of this Contract that the Contractor provides to the Employers a performance bond or some other satisfactory form of financial security amounting to 10% of the Contract Sum. On no account should the Contractor undertake any part of the Works until such time as the Employer has confirmed in writing that this suspensive condition has been met. If the Contractor proceeds to carry out any part of the Works prior to such confirmation, they do so at entirely their own risk.

Failure to provide this item shall amount to a material breach of contract and entitle the Employer to terminate the Contractors employment in accordance with clause 7 of the Conditions.

### **Article 10 - Registration**

The Contractor consents to registration hereof for preservation and execution and the Employer consents to registration hereof for preservation only.

## **Contract Particulars**

<b><u>Clause</u></b>	<b><u>Subject</u></b>	
Sixth Recital	CDM Regulations	The project [is]/ [is not] notifiable under the CDM Regulations
Article 8	Arbitration	Subject to the Claim Limit and the amendments set out herein, Article 8 and Schedule Part 1 apply.
2.3	Date for Commencement	The date falling 10 Business Days after the date of the Award Letter, or such other date that may be agreed in writing between the Employer and the Contractor.
2.3	Date for Completion	The date specified in the Award Letter, failing which the date falling [ ] weeks after the Commencement Date.
2.9	Liquidated Damages	The Employer reserves the right to recover all losses and expenses incurred as a result of late completion.
2.11	Rectification Period	12 months from the date of practical completion
5.3	Percentage of the total value of work	95%
5.4	Percentage of the total amount to be paid to the Contractor	97.5%
6.3.2	Contractor insurance: injury to persons or property - insurance cover (for any one occurrence or series of	£5 Million Pounds Sterling (£5,000,000).

	occurrences arising out of one event)	
6.4A, 6.4B and 6.4C	Insurance of the Works etc - alternative provisions	Clause 6.4B applies
6.5	Contractor Design Portion (CDP) - Professional Indemnity Insurance	£2 Million Pounds Sterling (£2,000,000) on an each and every claim basis
	Level of Cover (annual basis)	Exception for Pollution and Contamination claims for £2 Million Pounds (£2,000,000) in the aggregate only.
	Expiry of required period of CDP Professional Indemnity Insurance	12 years
8.2	Adjudication	
	Nominating Body	Nominator of the Adjudicator shall be made by the Chairperson of The Royal Institution of Chartered Surveyors in Scotland.
8.3	Arbitration	Arbitration is to be conducted in accordance with clause 8.3, Schedule 1 and the 2012 Rules insofar as not inconsistent with the Arbitration (Scotland) Act 2010.

## **Conditions**

### **Section 1 - Definitions and Interpretations**

The terms of Section 1.1 shall be amended as follows (and where applicable the terms below substituted in place of the terms contained therein):

**"Award Letter"** means the formal acceptance letter signed by the proper officer of the Employer accepting the Tender by the Contractor;

**"Claim Limit"** means the sum of One Hundred Thousand Pounds (£100,000) Sterling;

**"Contract Notice"** means the contract notice in respect of the proposed works published by the Employer on the Public Contracts Scotland Portal;

**"Contractor"** means the contractor selected by the Employer following a response to the Invitation to Tender advertised by a Contract Notice in the Public Contracts Scotland Portal and being the entity set out in the Invitation to Tender and as identified in the Award Letter;

**"Employer"** means Clackmannanshire Council, a local authority constituted by virtue of section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at Kilncraigs, Greenside Street, Alloa, FK10 1EB;

**"Interest Rate"** means a rate of 2% above the official dealing rate of the Bank of England current at the date that a payment due under this Contract becomes overdue;

**"Invitation to Tender"** means the invitation to tender sent out by the Employer to the Contractor (and such other candidates), such invitation which includes the Employers Requirements, Contract Particulars and the Contract Documents;

**"Public Contracts Scotland Portal"** means the national advertising portal maintained by the Scottish Government on behalf of (amongst others) the Employer;

**"Public Holiday"** means Christmas Day, Good Friday, a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in Scotland and any week day being a local holiday which the principal offices of the Employer are closed for business to the public;

**"Scottish Arbitration Rules"** means the rules set out in Schedule Part 1 (as amended therein);

**"Tender"** means the formal offer to carry out the works by the Contractor to the Employer in accordance with the requirements set out in the Invitation to Tender;



## **Section 2 - Carrying Out the Work**

### **2.1 Contractors Obligations**

- 2.1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in accordance with the Contract Administrators instructions, the Contract Documents, the Construction Phase Plan (where applicable) and other Statutory Requirements, and shall give all notices required by the Statutory Requirements. In relation to the Contractor's Designed Portion, the Contractor shall:
- 2.1.1 using reasonable skill, care and diligence, complete the design for the Contractor's Designed Portion, including, so far as not described or stated in the Employers Requirements, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works;
  - 2.1.2 not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them and, if an inadequacy is found in any design in the Employers Requirements then, subject to clause 2.6, the Employers Requirements shall be altered or modified by instructions under clause 4.6.1;
  - 2.1.3 comply with the Contract Administrator's directions for the integration of the design of the Contractors Designed Portion with the design of the works as a whole (including compliance with the terms of Schedule 5), subject to the provisions of clause 4.4.2;
  - 2.1.4 in complying with this clause 2.1, comply with regulations 11,12 and 18 of the CDM Regulations;
  - 2.1.5 without charge provide the Contract Administrator, as and when necessary, with two copies of such drawings or details, specifications of materials, goods and workmanship, and (if requested) related calculations and information, as are reasonably necessary to explain the Contractors Designed Portion; and
  - 2.1.6 not commence any work to which the documents referred to in clause 2.1.5 relate, before the expiration of 7 days from the date of their delivery.

### **2.2 Materials, goods and workmanship**

- 2.2.1 Where and to the extent that approval of the quality of materials or of the standards of workmanship is a matter for the Contract Administrator's opinion, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the Contract Documents nor stated to be a matter for such opinion or satisfaction, they shall in the case of the Contractor's Designed Portion

be of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works.

2.2.2 For the purposes of carrying out the Works the Contractor shall:

- .1 provide all the labour, materials and goods necessary. In providing such labour, the Contractor shall not contravene any of the provisions of the Equality Act 2010 in relation to the selection and recruitment of such labour;
- .2 provide, unless otherwise stated in the Contract Documents, the requisite plant and equipment for the proper execution of the Works, including scaffolding, tackle, machinery, tools or other appliances and everything necessary for the use of his workmen and shall be responsible for carrying them to the place where they are required, for any necessary erection and subsequent removal;
- .3 provide all items necessary to comply with the Statutory Requirements in respect of safety, health and welfare,

and for the purposes of the Contract shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

2.2.3 Where named product(s), goods, materials or equipment are specified in the Employers Requirements, the Contractor may propose an alternative specification where such specification is of an equivalent standard. The Contractor shall propose any such change in writing to the Contract Administrator stating the nature of the proposed change and how such a change will affect the Employer (including, without prejudice to the generality, the effect on whole life costing of the proposed change and/or the reduction in the Contract Sum).

2.2.4 Having considered a request under clause 2.2.3, the Contract Administrator may approve the Contractors proposed change, or in his absolute discretion, reject the proposed change.

2.2.5 Without prejudice to the other terms of the Contract, the Contractor shall only be entitled to exercise the rights under clause 2.2.4 where the Contract Administrator determines that the Procurement Regulations apply to the Contract and it is necessary for the compliance by the Employer with their community obligations under European law.

## 2.8 Extension of Time

If it becomes apparent that the Works will not be completed by the Date for Completion stated in the Contract Particulars (or any later date fixed in accordance with the provisions of this clause 2.8) the Contractor shall thereupon notify the Contract Administrator within 10 Working Days (time being of the essence). Where the delay occurs for reasons beyond the control of the Contractor (including compliance with Contract Administrators instructions that are not occasioned by a default of the Contractor, and any other act, omission, impediment or default of the Employer), the Contract Administrator shall give such an extension of time for completion as may be reasonable in the circumstances (or such time is required by virtue of clause 2.13.3). In determining whether such a later date for completion should be fixed, the Contract Administrator shall have regard to any instructions issued by him which vary the scope or nature of the Works shown upon, described by or referred to in the Contract Documents. Reasons within the control of the Contractor include any default of the Contractor or of others employed or engaged by or under him for or in connection with the Works and default of any supplier of goods or materials for the Works.

## 2.9 Damages for non-completion

Clause 2.9 shall be deleted and replaced with the following clause 2.9:

- 2.9.1 If the Works are not completed by the Date for Completion stated in the Contract Particulars or by any later Date for Completion fixed under clause 2.8 the Contractor shall be liable to the Employer and shall compensate the Employer for all losses and expenses incurred by him as a result of the delay between the Completion Date and the date of practical completion.
- 2.9.2 The Employer, on providing to the Contractor in writing a certificate of the losses and expenses incurred as a result of the Contractors failure to complete by the Completion Date shall be entitled to deduct the monies due in the certificate from any monies due to the Contractor under this Contract (provided that notice of deduction has been given under clause 5.5.4, 5.8.3 or 5.8.4.3) or recover such certified damages as a debt.
- 2.9.3 If the Employer intends to deduct any such damages from the sum stated as due in the final certificate, he shall additionally notify the Contractor of that intention not later than the date of issue of the final certificate.

## 2.13 Employer Right of Suspension

- 2.13.1 In the event that the Employer receives notification by an economic operator (within the meaning of the Procurement Regulations) that they intend to challenge the award of this Contract by the Employer to the Contractor, the Employer may on giving immediate written notice to the Contractor, suspend performance of the Works by the Contractor
- 2.13.2 In the event of a suspension pursuant to this section 2.13.1, no compensation, damages or other monetary payment shall be due by the Employer to the Contractor. The Contractor shall however have the ability to exercise the right of termination specified in clause [ ] in the event of such a suspension being ordered by the Employer.
- 2.13.3 The right of the Employer to suspend the Works in accordance with this section shall expire on the date occurring 4 months from the date of the Award Letter. The Contractor, in compliance with the requirements of clause 2.8, shall be entitled to an extension of time to complete the Works equivalent to the period of suspension ordered by the Employer under clause 2.13.1.

In this Contract::

**"Procurement Regulations"** means the Public Contracts (Scotland) Regulations 2012, the Local Government (Scotland) Act 1973 and any other legislation governing or regulating the purchase of goods, supplies and services by local authorities constituted under the Local Government etc (Scotland) Act 1994;

#### **Section 4 - Control of Work**

##### **4.1 Assignment**

Clause 4.1 is deleted and replaced with the following clause:

- 4.1 The Contractor shall not, without the consent of the Employer, assign this Contract. The Employer shall not assign this Contract without the consent of the Contractor, such consent not to be unreasonably withheld or delayed.

##### **4.3 Sub-contracting**

Clause 4.3 shall be deleted and substituted as follows:

- 4.3.1 The Contractor shall not without the Contract Administrator's consent sub-contract the whole or any part of the Works. Such consent shall not be required where the Contractor has detailed the proposed elements of the Works to be subcontracted in their Tender, and this has been accepted by the Employer, and in any other case shall not be unreasonably withheld or delayed. Notwithstanding any such consent being granted, the Contractor shall remain wholly responsible for

carrying out and completing the Works in all respects in accordance with clause 2.1 notwithstanding any such sub-contracting.

#### 4.5 Non Compliance with Instructions

Clause 4.5 shall be deleted and replaced with the following:

4.5.1 If within 7 days after receipt of a notice from the Contract Administrator requiring compliance with a Contract Administrators instruction the Contractor does not comply, the Employer at their sole option may take any of the steps set out in clauses 4.5.2 to 4.5.3 below.

4.5.2 The Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor a debt.

4.5.3 Where the Employer requires by virtue of any Procurement Regulations to advertise for other persons to execute any work whatsoever which may be necessary to give effect to that instruction, the Employer may serve notice on the Contractor specifying the sum of money which the Employer reasonably estimates to be the cost of remedying the Contractors failure to comply with this clause 4.5.1. On service of this notice, the Employer may then proceed to withhold or deduct the monies specified in such a notice due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

4.5.4 On completion of the works specified in clause 4.5.3, should the amount specified in any notice served under the aforesaid clause exceed the actual cost of the works and all administration expenses incurred by the Employer in complying with the Procurement Regulations, within 28 days of compiling a reconciliation account, the Employer shall make payment of any remaining balance to the Contractor. The Contractor shall not be entitled to any interest or any other sums on such a payment. In the event that any other sums remain due to the Employer by the Contractor under the Contract, the Employer shall be entitled to withhold payment of the sum described in this clause 4.5.4

### **Section 5 - Payment**

#### 5.3 Interim payments up to practical completion

The last sentence of clause 5.3 shall be held delete and replaced with the following:

"The final date for payment of the certified sum shall be 30 days from the due date."

At the end of clause 5.3, the following clause shall be inserted:

5.3.1A Any application for payment made by the Contractor under this clause 5.3.1 shall only be accepted by the Employer where it contains the purchase order number specified in the Award Letter. Any application made by the Contractor that does not comply with the provisions of this clause shall be invalid and there shall be no obligation on the Employer to make payment until such time as the application complies with this clause 5.3.1A.

The following provisions shall be inserted after clause 5.11 of the Conditions:

#### 5.12 Community Benefit Provision

5.12.1 Where the Contractor has offered within the Tender to provide Community Benefit Provision to the Employer (pursuant to the Employer's statutory powers under the Local Government in Scotland Act 2003), the Contractor shall be obliged to deliver the Community Benefit Provision in accordance with the Tender and any further requirements of the Employer and at no cost to the Employer as more particularly specified in the Employer's Requirements and Invitation to Tender.

5.12.2 In the event that the Contractor fails to provide the Community Benefit Provision in accordance with clause 4.8.1, the Employer reserves the right, on giving the Contractor not less than 7 days written notice, to either (i) provide the Community Benefit Provision directly; or (ii) employ others to carry out the Community Benefit Provision.

5.12.3 The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

In this clause 5.12:

**"Community Benefit Provision"** means, without prejudice to the generality, the provision of paid or unpaid work placements, modern or vocational apprenticeships or training and educational training to persons within the local government area of Clackmannanshire;

#### Section 7 - Termination for Default etc

Section 7.4.1 shall be deleted and replaced by the following term:

7.4.1 If, before practical completion of the Works, the Contractor:

- .1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor's Designed Portion; or
- .2 fails to proceed regularly and diligently with the Works or the design of the Contractor's Designed Portion; or
- .3 fails to comply with clause 4.9; or
- .4 fails to comply with any other obligation incumbent on the Contractor under this Contract,

the Contract Administrator may give to the Contractor a notice specifying the default or defaults (a "specified default")

Section 7.6 shall be held delete and replaced by the following conditions:

7.6 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment, under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him, or acting on his behalf shall have:

(i) Committed an offence under the Bribery Act 2010; or

(ii) Where the Employer is a Local Authority, shall have given any fee or reward the receipt of which is an offence under section 66 of the Local Government (Scotland) Act 1973 or any re-enactment thereof; or

(iii) Committed any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or

(iv) Committed any breach of the Data Protection Act 1998 by unlawful processing of personal data in connection with any blacklisting activities described at (iii) above.

At the end of section 7.10.5, insert the additional clause below:

" .6 the Employer suspends the Works in accordance with clause 2.13;"

At the end of section 7.11.2.3, insert the following:

"Declaring that the Contractor shall not be entitled to payments or compensation whatsoever in respect of any direct loss and/or damage caused where the Contractor exercises their right of termination under clause 7.10.6"

At the end of Section 7.11.2, the following additional section shall be inserted:

**7.12 Termination by the Employer - Procurement Challenge**

7.12.1 In the event that the Employer receives notification by an economic operator (within the meaning of the Procurement Regulations) that they intend to challenge the award of this Contract by the Employer to the Contractor, the Employer may on giving immediate written notice to the Contractor, terminate (i) the employment of the Contractor; or (ii) the Contract in its entirety.

7.12.2 In the event of termination pursuant to this section 7.11, no compensation, damages or other monetary payment shall be due by the Employer to the Contractor.

7.12.3 The provisions of section 7.2.1 shall not apply to any notice served under section 7.12.

7.12.4 The right of the Employer to terminate in accordance with this section shall expire on the date occurring 4 months from the date of the Award Letter.

**Section 8 - Settlement of Disputes**

Clause 8.1 shall not apply.

At the start of clause 8.3, insert the following words:

"Subject to the Claim Limit,"



## Schedules

### Schedule Part 1 - Arbitration

Schedule Part 1 clause 1 is deleted and replaced by the following provisions:

#### 1. Conduct of Arbitration

All arbitrations hereunder shall be conducted under the terms of the Chartered Institute of Arbitrators Scottish Short Form Arbitration Rules 2012 (the "2012 Rules"), with the following amendments:

Article 1.6 - Article 1.6 is deleted and replaced by the following term:

The Act also includes "default rules" which can be modified or dis-applied by the agreement of the parties. Default rules 1,2,5,6,40,41,53 and 69 shall not apply in their entirety to both parties. Default rules 22, 41 and 69 shall not apply in their entirety except where any respect of any dispute or difference has been raised by the Employer only, and references within the Default Rules shall be read accordingly. Except as set out herein, no other default rule is modified or dis-applied by these rules.

Article 1.8 - The figure £25,000 where it appears in the first and second sentence shall be substituted with the Claim Limit.

Article 3.4 - The word "parties" where it appears shall be deleted and replaced with "Contractor". At the end of article 3.4 the following wording shall be inserted:

"The Arbitrator shall have no power to request a reasonable deposit from the Employer in respect of his fees."

Article 6.1 - Article 6.1(ii) shall be deleted and replaced as follows:

"the parties' legal and other expenses, subject to an overall limit of 10% of the sum claimed and not exceeding 10% of the Claim Limit."

Article 7.1 - At the end of Article 7.1, the following term shall be inserted:

"The Parties agree that the manner that interest is to be calculated in should be simple interest and should not exceed the Interest Rate".

## **2. Notice of reference to arbitration**

Schedule Part 1, clause 2 shall be amended as follows:

The words "and in accordance with the provisions of the 2012 Rules" are to be inserted between "8" and "either" on the first line of the said clause 2.

## **3. Powers of arbitrator**

Schedule Part 1, clause 3 shall be amended as follows:

The words ", the 2012 Rules" are to be inserted between the words "2010" and "and" on the first line of the said clause 3 and the words "dis-application in whole or any part of any of the default rules" shall be deleted and replaced with the following:

"the dis-application of the default rules as set out in the 2012 Rules as amended in accordance with Schedule 1, clause 1".

#### **Schedule Part 4 - Contract Documents**

The Contract Documents comprise the documents, drawings and specifications all as attached to the Contract Notice advertised in the Public Contracts Scotland Portal.

## **Schedule Part 5 - Contractors Design Submission Procedure**

1. The Contractor shall prepare and submit two copies of each of the Contractor's Design Documents to the Contract Administrator in such format as is stated in the Employer's Requirement or the Contractor's Proposals and in sufficient time to allow any comments of the Contract Administrator to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the CDP Works.
2. Within 14 days from the date of receipt of any Contractor's Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Contract Administrator shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Contract Administrator considers that it is not in accordance with this Contract.
3. If the Contract Administrator does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
4. Where the Contract Administrator marks a Contractor's Design Document 'B' or 'C', he shall identify by means of a written comment why he considers that it is not in accordance with this Contract.
5. When a Contractor's Design Document is returned by the Contract Administrator:
  1. if it is marked 'A', the Contractor shall carry out the CDP Works in strict accordance with that document;
  2. if it is marked 'B', the Contractor may carry out the CDP Works in accordance with that document, provided that the Contract Administrator's comments are incorporated into it and an amended copy of it is promptly submitted to the Contract Administrator; or
  3. if it is marked 'C', the Contractor shall take due account of the Architect/Contract Administrator's comments on it and shall either forthwith resubmit it to the Architect/ Contract Administrator in amended form for comment in accordance with paragraph 1 or notify the Architect / Contract Administrator under paragraph 7.
6. The Contractor shall not carry out any work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the CDP Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'.

7. If the Contractor disagrees with a comment of the Contract Administrator and considers that the Contractor's Design Document in question is in accordance with this Contract, he shall, within 7 days of receipt of the comment, notify the Contract Administrator, in writing, that he considers that compliance with the comment would give rise to a Variation. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Contract Administrator shall, within 7 days, either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.
8. Provided always that:
  1. confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by either the Employer or the Contract Administrator that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Contract Administrator's comment would give rise to a Variation;
  2. where in relation to a comment by the Contract Administrator the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Variation; and
  3. neither compliance with the design submission procedure in this Schedule nor with the Contract Administrator's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and CDP Works are in accordance with this Contract.