

Dear Supplier,

**INVITATION TO QUOTE FOR: Moray Business Property Needs Study**  
**QUOTE Ref: 18/0794**

You are invited by Moray Council to quote for the provision of Business Property Needs Survey detailed in the attached brief documentation. Your quotation must be received by **12:00 noon, 04<sup>th</sup> January 2023**. It is the responsibility of all suppliers to ensure that their quotation response is received no later than the appointed time. Moray Council may undertake not to consider quotations received after that time.

Moray Council are not bound to accept the lowest priced or any quote and shall not be bound to accept the supplier as sole supplier. Prices quoted shall remain firm for the duration of the contract. Value Added Tax (VAT) should be shown separately and the VAT registration number given.

The quotation will be evaluated using the following criteria and weightings:

<b>Evaluation Criteria</b>	<b>Weighting</b>
Quality	80%
Price	20%

By providing us with a quotation you agree to be bound by **The Moray Council's** Terms and Conditions contained within the Quote Brief. These terms and conditions will apply to any contract awarded to you after you have provided us with our quotation.

Enquiries and returns regarding this Invitation To Quote should be addressed through the PCS messaging service.

Regards,

Rowena MacDougall  
Senior Planning Officer, Strategic Planning and Development



## MORAY COUNCIL INVITATION TO QUOTE

MORAY BUSINESS PROPERTY NEEDS STUDY

STAGE ONE

**Right Rationale**

STAGE TWO

**Right Route**

STAGE THREE

**Right Result**

STAGE FOUR

**Right Reward**

<b>Timetable</b>	<b>Date</b>
Last date for questions from suppliers	12:00 noon, 16 <sup>th</sup> December 2022
<b>Final submission time and date</b>	<b>12:00 noon, 4<sup>th</sup> January 2023</b>
Evaluation of submissions	12 <sup>th</sup> January 2023
Award to Preferred Supplier(s)	14 <sup>th</sup> January 2023
Commencement of contract	16 <sup>th</sup> January 2023

## **Section 1 - Requirements**

### **Introduction**

Moray Council wish to appoint a consultant to undertake a Business Property Needs Study that provides up to date information and analysis of current and future demand for commercial property (buildings and land) in Moray. The study will include a review of sites designated in the current Local Development Plan 2020 and their suitability to meet demand. The aim of the study is to ensure that the supply of employment sites within Moray reflects the needs of current and future businesses. The study will be used to inform strategy, policy and designations within the next Moray Local Development Plan.

### **Background**

Elgin is Moray's primary centre, with the largest population and business concentration, and the main centre for retail, commercial and leisure provision. Buckie, Forres and Elgin are the main focal point for industrial, engineering and distribution activity. In Keith development of the Blackhillock Substation has resulted in demand for battery storage whereas historically demand has generally been associated with distilling, agriculture and other local businesses. With the announcement surrounding ScotWind and the decision by Ocean Wind to use Buckie Harbour and its immediate surrounding infrastructure for Operations and Maintenance, there is significant investment across regional partners to stimulate the renewables industry.

Moray has developed concentrated activity in particular sectors reflecting available natural and human resources and available markets. The region has a particularly strong manufacturing sector, particularly through the food and drinks industry, with several large companies such as Baxter's, Walkers Shortbread, and numerous whisky distilleries prominently located in the area. Around 60% of Scotland's single malt whisky production is found within Moray. The manufacturing sector accounts for more than double the share of employment in Moray (15.4%) than regionally (6.1%) and nationally (6.5%). Alongside manufacturing, the other of the top 3 employment sectors in Moray are human health and

social (15.4%) and wholesale and retail (14.6%). Together the three sectors account for around 17,500 jobs.

The Moray Growth Deal includes eight strategic projects that build on the existing strengths of Moray's culture, tourism, and manufacturing sectors, while also addressing transport and housing challenges to facilitate economic growth. The projects include the Moray Aerospace, Advanced Technology and Innovation Campus (MAATIC), a Manufacturing Innovation Centre for Moray (MICM), Business Enterprise Hub and creation of a National Digital Health and Care Innovation Centre. Other projects include developing a vibrant Cultural Quarter in Elgin, Housing Mix Delivery, Early Years STEM and Bus Revolution.

The Moray Economic Strategy provides a context, focus and direction of travel for the Moray Economic Partnership. The Economic Strategy identifies key opportunities around the Moray Growth Deal; the transition to net zero; space, aerospace and emerging engineering and technology; and community wealth building. The strategy identifies Supporting Productivity Growth as a key priority for action, through providing an environment to increase the number of start-ups and the speed with which they are able to scale, as well as the infrastructure required to ensure enhance productivity.

Employment Land Audits (ELA) are carried out annually by the Council to review of all designated sites within the LDP. The annual ELA includes a meeting with HIE and the Council's Estates Manager to discuss the previous year, current projects and perceptions of demand.

The last study of this type was in 2013 and was commissioned by HIE for the Inner Moray Firth and Moray Region. In 2016 the Council Estates team surveyed the Council's industrial tenants, Chamber of Commerce members, Business Gateway clients, HIE tenants and the Federation of Small Businesses regarding future property needs.

## **Objectives**

### **a. Scope of Services**

The primary purpose of the Business Needs Study is to support Moray Council in the preparation of the next Local Development Plan but will also be used to inform other Council strategies. The study will cover the Moray Council area.

The study objectives are to:

- Understand and project demand for business/commercial property (land and buildings) in Moray for the Moray Local Development Plan 2027 plan period.
- Test demand against the available supply.
- Identify gaps in provision and highlight market failures.
- Highlight specific sectors with expansion and replacement needs, especially in relation to the growing renewables sector and opportunities available to Moray businesses through the Just Transition Fund

The study is anticipated to include:

- An economic review including for locations and sectors.
- A review of historic property and land take up.
- Assessment of future demand informed by economic and employment forecasts, workshops with Moray Business Resilience Forum, a comprehensive survey of businesses (with focus on Class 4, 5, 6 and also large national retailers) and other key stakeholders including local property agents.
- An appraisal of designated land (including brownfield land) and assessment of this against projected demand.
- Recommendations on the amount, location and type of additional land and buildings required to meet projected demand and implications for the next Local Development Plan. This will include an estimated annual land requirement.

Moray Business Resilience Forum includes representatives from Moray Council, Highlands and Islands Enterprise, Moray Chamber of Commerce, Moray Business Women, Elgin BID, Visit Moray Speyside, Business Gateway Moray, Skills Development Scotland, Scottish Whisky Association, Federation of Small Business, Scottish Council for Development and Industry, and Department for Work and Pensions.

Regular liaison and meetings to discuss the study as it progresses will be required with officers from Strategic Planning and Development.

#### **b. Outputs and Milestones**

- A project plan must be prepared setting out key tasks and demonstrate how the project will be delivered by **22<sup>nd</sup> March 2023**.
- Project initiation meeting to held with Council project leads (Senior Officer Economic Strategy and Development and Senior Planning Officer)
- Regular liaison (at least monthly) with Council project leads
- Draft study report to be provided to Council with meeting with Council project leads to review prior to finalisation.
- Final study to be provided in pdf format with any survey data to be provided as a separate document.
- Identification of any risks associated with the study including in respect of timing.

#### **c. Fees and Costs**

Rates and prices shall be deemed inclusive of all additional expenses howsoever incurred.

#### **Capability/Selection Criteria**

<b>Capability/Selection Criteria</b>
Previous recent and relevant experience of same/similar requirements

## **Award Criteria**

<b>Award/Technical Criteria</b>	<b>Weighting</b>
Provide a statement to demonstrate your understanding of the requirements.	40%
Provide a statement detailing the methodology and proposed approach for meeting this requirement.	40%
Provide a project plan with milestones detailing your ability to meet the project deadline	20%
<b>Total Award/Technical Criteria Weightings</b>	<b>100%</b>
<b>Pricing Schedule</b>	
Price	<b>100%</b>

Submissions will be evaluated using the following matrix:

<b>0</b>	Nil or inadequate response with little or no understanding of requirement or evidence of compliance.
<b>1</b>	Minimal or poor response providing little evidence of understanding or compliance.
<b>2</b>	Average response providing some indication of understanding and compliance.
<b>3</b>	Good response providing clear evidence of understanding and compliance and may evidence some elements of innovation.
<b>4</b>	Excellent response demonstrating clear understanding and comprehensive ability to fulfil requirements, outlining added value, innovation and is equal to or improves on the specification.

The Moray Council collects and stores personal information to carry out its legal functions. Where necessary it will share this information within and outside the Council. Full details of our Data Protection policy and how we may use and share your information can be found on our [Data Protection](#) page. The Procurement Privacy Notice is available [here](#).

## **Additional information**

Intellectual Property Rights for all design work remains with the Moray Council.

## **Conditions of Contract**

### **CONSULTANCY STANDARD CONDITIONS**

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## **1 DEFINITIONS**

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

In these conditions:

"Brief" means the document setting out the Client's requirements for the Contract.

"Client" means Moray Council constituted in terms of the Local Government etc (Scotland) Act 1994 and having its Principal Offices at High Street, Elgin, together with their successors and assignees whomsoever.

"Consultant" means the person(s), firms or companies whose Tender is accepted by the Council.

"Contract" means the binding agreement between the parties constituted by the Tender and the other Contract Documents as completed by the Consultant which have been submitted to the Client and in respect of which the Client has approved acceptance thereof by virtue of the Client's Letter of Appointment to the Consultant.

"Contract Documents" means the Brief, the Instructions for Return of Tender, the Conditions of Tender, the Conditions of Contract, the Questionnaire – Race Relations Act, the Tender Proposal and the Tender Offer letter.

"Contract Sum" means the Contract Sum specified in the Pricing Schedule.

"Letter of Acceptance" means the letter from the Client accepting the Consultant's Tender Proposal.

"Premises" means the location where the Project is to be performed, (if any) as specified in the Brief.

"Project" means the services to be provided as specified in the Brief and Tender Proposal.

"Tender Proposal" means the information, including prices, required to be submitted by the Consultant with his/her Tender in accordance with the Brief.

## **2 THE PROJECT**

2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the requirements of the Brief and the Tender Proposal.

2.2 It shall be a condition of the engagement of the Consultant that they shall comply with the Client's Financial Regulations.

2.3 The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.

2.4 The Client reserves the right by notice to the Consultant to modify its requirements in relation to the Project and any alteration to the Contract fee or 3 the completion date arising by reason



of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 18.

- 2.5 The Contract shall commence on such a date as may be specified in the Client's Letter of Acceptance and shall endure until the end of the contract period or such alternative date as may be agreed between the parties in writing.

### **3 CONSULTANT'S PERSONNEL**

- 3.1 The Consultant shall make available for the purposes of the Project any individuals named in the Tender Proposal as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all others regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this paragraph.
- 3.2 The Consultant shall take the steps reasonably required by the Client to prevent unauthorised persons being admitted to any Council Premises. If the Client gives the Consultant notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice.
- 3.3 The decision of the Client as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

### **4 CHANGE TO CONTRACT REQUIREMENTS**

- 4.1 The Client may order any variation to any part of the Project 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 to be provided in terms of the Project and changes in quality, form, character, kind, timing, method or sequence of such services.
- 4.2 Save as otherwise provided herein, no variation to the Project as provided for in Clause 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Consultant shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

- 4.3 Where any such variation to the Project made in accordance with Clauses 4.1 and 4.2 has affected or may affect the costs incurred by the Consultant in executing the Project, the Consultant shall notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account (including such information as may be provided by the Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in executing the Project) and may authorise such alteration to the sums to be paid to the Consultant in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

## **5 PAYMENT**

- 5.1 The Client shall pay to the Consultant the Contract Sum as set out at the rate specified in the Contract Documents.
- 5.2 The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by him in the performance of his duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.
- 5.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.
- 5.4 Prices shall be constant for the period of the Contract and any renewal provided for in the Contract.
- 5.5 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. In this Condition, "VAT" means the value added tax in terms of the Value Added Tax Act 1983 (as amended).
- 5.6 Any sum due to the Consultant under the Contract shall be regarded as exclusive of any VAT, and the Client shall pay to the Consultant any VAT properly chargeable in terms of the relevant legislation in respect of the provision of the Project to the Client under this Contract.
- 5.7 The Consultant shall be solely responsible for calculating the amount of VAT chargeable on accounts rendered by him under this Contract and shall indemnify the Client against the loss occasioned by any omission, error, overstatement or understatement of VAT on any invoice submitted by him under this Contract.

## **6 AUDIT**

The Consultant shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Client all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or his representatives such access to those records as may be required by the Client in connection with the Contract.

## **7 CORRUPT GIFTS OR PAYMENTS**

The Consultant shall not offer or give or agree to give, to any member, employee or representative of the Client 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, 5 any act in relation to the obtaining or execution of this or any other contract with the Client or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Consultant is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

## **8 PATENTS, INFORMATION AND COPYRIGHT**

8.1 It shall be a condition of the Contract that except to the extent that the Project incorporates designs furnished by the Client, that nothing done by the Consultant in the performance of the Contract shall infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Consultant shall indemnify the Client against all actions, claims, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.

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

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

(b) prepared by or for the Consultant for use or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Client absolutely, and (without prejudice to Condition 11.2) the Consultant shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Client use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Consultant may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Consultant shall not refer to the Client or the contract in any advertisement without the Client's prior written consent.

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

## **9 INDEMNITIES AND INSURANCES**

9.1 The Consultant shall be liable for and shall indemnify the Client, its officers, employees and agents against any expense, liability, loss, claim, costs or proceedings whatsoever arising under statute or at common law in respect of:-

(a) any loss of or damage to property, heritable or moveable including any infringement of Third Party patents, copyrights and registered designs arising out of or in the course of the execution of the Contract by the Consultant or his staff and;

- (b) any illness, disease or injury to persons including illness, disease or injury resulting in death and any other loss, injury, death, disease or damage to any party arising out of or in the course of or in connection with the execution of the Contract by the Consultant or his staff and;
- (c) any failure in compliance with the statutes, orders, regulations, bylaws and other provisions to be observed in connection with the execution of the Contract; provided that the Consultant shall not be liable for nor be required to indemnify the Client against any liability, loss or claim resulting wholly from any act, default or negligence on the part of the Client or its employees or agents not being the Consultant or employed by the Consultant.

9.2 Without prejudice to the foregoing generality the Consultant shall effect and maintain such insurances as are necessary to cover:-

- (i) liability to employees under statute and at common law with a minimum limit of indemnity of £5,000,000; and
- (ii) liability to third party property and injury to third parties with a minimum limit of indemnity of £5,000,000 for any one incident and any one period of insurance

The insurances shall be properly maintained and the relative policy or policies and premium payment receipts must be produced to the Client whenever required.

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

9.4 Without prejudice to the generality of the above, the professional indemnity insurance held by the Consultant in terms of this condition shall be maintained for a period of five years from the date of termination of the Contract unless such insurance cover ceases to be commercially available in which event the Consultant will notify the Client immediately.

## **10 DISCRIMINATION AND HEALTH AND SAFETY**

10.1 The Consultant shall comply with any law which prohibits discrimination in relation to employment on the grounds of sex, disability, colour, race, ethnic or national origin or religion or any statutory modification or re-enactment thereof relating to discrimination in employment. The Consultant shall comply with any law relating to the Health and Safety of the Consultant's own employees, including members of the public or any statutory modifications or re-enactment thereof relating to Health and Safety.

10.2 The Consultant shall take all reasonable steps to ensure the observance of the provisions of paragraphs 10.1 and 10.2 above by all servants, employees or agents of the Consultant and all subcontractors employed in the execution of the Contract.

## **11 FREEDOM OF INFORMATION**

11.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time

relating to access to public authorities information, details of any matters relating to the Contract, unless any such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including but not limited to the Consultant or the Client or such details fall within such other exemption as may be applicable at the discretion of the Council, in terms of the Act. The Consultant shall facilitate the Client's compliance with the Council's obligations under these provisions and comply with any request from the Council for that purpose.

11.2 The Consultant shall not without prior consent from the Client advertise or announce details of the relationship between the Consultant and the Client.

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

## **12 TERMINATION**

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

- (a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Consultant or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
- (b) where the Consultant is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company, or
- (c) in the event of a Contractor becoming apparently insolvent pursuant to Section 7 of the Bankruptcy (Scotland) Act 1985 or where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

12.2 On the occurrence of any of the events described in paragraph 12.1 or if the Consultant shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Client in writing to do so, or, where the Consultant 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, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

12.3 In addition to its rights of termination under paragraph 12.2 the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 28 days' notice to that effect. In the event of such termination, the Consultant shall, if required to do so by the Client, prepare and submit to the Client a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

- 12.4 The Client shall be entitled to terminate the employment of the Consultant with immediate effect under this or any other Contract, if the Consultant shall have offered, or given, or agreed to give to any person, any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done or forborne to do any action in relation to the obtaining or execution of this or any other Contract with the Client or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Contract with the Client if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Consultant) shall have committed any offence under the prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under sub-section 2 of section 68 of the Local Government (Scotland) Act 1973 or any re-enactment thereof.
- 12.5 In addition to its rights of termination under paragraph 12.2, 12.3 and 12.4, the Client shall be entitled to terminate the Contract forthwith without any notice upon any of the following events:
- Submission of false invoices.
  - Unauthorised publication of information relating to the assignment.
  - Excessive delay.
  - Use of key staff other than those who attended interview or were named in the proposal unless prior written agreement has been obtained from Moray Council.
  - Non-approved expenditure.
- 12.6 Termination under paragraphs 12.2, 12.3, 12.4 or 12.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 8 and 11.
- 12.7 In the event of the employment of the Consultant being terminated by the Client in accordance with paragraphs 12.2, 12.3, 12.4 or 12.5 the Client may employ and pay other persons to carry out and complete the Project. The Consultant shall be liable for the costs incurred by the Client in the exercise of the Client's powers in terms of this paragraph.

### **13 RETURN OF DOCUMENTS**

- 13.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Client in connection with the Contract, or extracted from such document, papers, materials or information.
- 13.2 Where the Contract has been terminated in terms of clause 12.3 hereof the Consultant may retain any documents papers, materials or information which shall be required under that paragraph. Promptly upon submission of the report to the Client, the Consultant shall return any documents, papers, materials or information which he may have retained in terms of this paragraph.

### **14 RECOVERY OF SUMS DUE**

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

## **15 ASSIGNATION AND SUB-CONTRACTING**

- 15.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to him under the Contract or these conditions.
- 15.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Consultant to the Client immediately it is issued.
- 15.3 Where the Consultant enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

## **16 NOTICES**

- 16.1 In any provision within the Contract Documents where reference is made to the serving of notices by registered or recorded delivery post, receipt of such notices will be deemed to have occurred the day after the date of posting.
- 16.2 In any provision within the Contract Documents where reference is made to a notice being sent to a registered office then if the Consultant does not have a registered office the notice must be sent to the Consultant's main or head office.
- 16.3 All notices to be served on the Client must be served on the Chief Legal Officer, Moray Council, Council Buildings, High Street, Elgin, Moray, IV30 1BX.

## **17 STATUS OF CONSULTANT**

Nothing in the Contract shall have the effect of making the Consultant the servant, agent or employee of the Client.

## **18 ARBITRATION**

- 18.1 If any dispute or difference concerning this Contract shall arise between the Client and the Consultant, then negotiations to resolve such dispute or difference shall be entered into by the Chief Legal Officer and the Consultant.
- 18.2 In the event of a failure to reach agreement following negotiations as provided for in Condition 18.1 then the dispute or difference concerning the Contract shall be referred to a single independent arbiter mutually agreed by both parties which arbiter's decision on the matter and any issue relating to the expenses of such arbitration shall be final. Unless and until the arbiter directs otherwise, the fees payable to and the expenses incurred by the arbiter shall be borne by the Client and the Consultant in equal shares until the dispute is resolved.
- 18.3 The arbiter's final award shall be final and binding on the parties except that the parties reserve their rights in terms of Section 3(1) of the Administration of Justice (Scotland) Act 1972.

## **19 DEFAULT IN PERFORMANCE**

- 19.1 At any time from the commencement date the Client may investigate any instance where, in his opinion, the Consultant has failed to execute the Project in accordance with the provisions of the Contract Documents.
- 19.2 Where the Client is satisfied that the Consultant has failed to execute the Project in accordance with the provisions of the Contract Documents, then the Client will be entitled at his sole discretion to instruct the Consultant in writing to remedy the failure or failures in order to comply with the stated requirements of the Contract Documents. Such rectification must be carried out at the sole expense of the Consultant and must be carried out within a time, or times, stated on the instruction(s) given by the Client.
- 19.3 If the Consultant, for whatever reason, fails to provide or execute the Project in accordance with the terms of the Contract Documents, then without prejudice to any other remedy contained herein, the Client may, by its own or other work persons, provide and execute the Project or part thereof in which the Consultant has failed. The costs and charges incurred by the Client in so doing shall be paid by the Consultant to the Client on demand, or may be deducted by the Client from any monies due or which may become due to the Consultant.

## **20 HUMAN RIGHTS**

- 20.1 The Consultant shall at all times comply strictly with the requirements of the Human Rights Act 1998 (“the HRA 1998”) together with any subsequent amendment or re-enactment thereof and of all secondary legislation made under the HRA 1998 or any subsequent amendment thereto or re-enactment thereof.
- 20.2 The Consultant shall take all reasonable steps to ensure the observance of this Condition by all servants, employees or agents of the Consultant and all Sub-Consultants employed by the Consultant where permitted in terms of this Contract.
- 20.3 The Consultant shall indemnify the Client against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Client may incur arising out of a breach of this condition by the Consultant.
- 20.4 The Client will monitor the Consultant’s compliance with the HRA 1998 at periodic intervals during the performance of the Contract.

## **21 SECURITY CONDITION**

As the parties to this Contract must enter into an agreement in terms of paragraph 12 of Part II of schedule 1 to the Data Protection Act 1998 (“the DPA 1998”) in order to regulate the processing of data (as defined in the DPA 1998) under this Contract, the parties therefore agree as follows:

- 21.1 Both parties warrant to the other that, in terms of this Contract, the Council as Data Controller and the Consultant as Data Processor shall comply strictly with all of the requirements of the DPA 1998, together with any subsequent amendment or re-enactment thereof and of all secondary legislation made under the DPA 1998 or any subsequent amendment thereto or re-enactment thereof.



- 21.2 Without prejudice to the foregoing generality of Clause 21.1, the Consultant warrants that it has read and that it shall comply strictly with the seventh principle of the Act, namely that it shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss of destruction of, or damage to, personal data.
- 21.3 No sub-contractor shall be appointed by the Consultant in connection with the processing of any data relative to this Contract without the prior written approval of the Council. The Consultant will enter into an equivalent agreement with any such approved sub-contractor in terms of paragraph 12 of Part II of Schedule 1 of the DPA 1998.
- 21.4 The Consultant undertakes to keep all data disclosed to it by the Council under this contract confidential and to process all such data strictly and only in accordance with the Council's instructions from time to time; all instructions given by the Council will be in accordance with the laws of Scotland.
- 21.5 The Consultant shall ensure that only such of its employees who may be required by the Consultant to assist it in meeting its obligations under this Contract shall have access to the data. Where the Consultant is providing third party system support to the Council, whether remotely or on site, the Consultant and any Sub-Contractor appointed in terms of this Contract must act reasonably and must access only such information as is required to enable the Consultant or Sub-Contractor to carry out the support required. The Consultant also agrees to comply with the Council's Access Procedures for External Support, a copy of which is available on request from the Council's Director of Information Technology.
- 21.6 The Consultant agrees to assist the Council with any subject information requests which may be received by the Council under the DPA 1998 within the time limits imposed by the DPA 1998.
- 21.7 The Consultant undertakes not to use the data for a purpose which is inconsistent with the purposes notified to the data subjects by the Council or to disclose the data to a third party other than at the specific request of the Council.
- 21.8 The Consultant confirms that it has a written security policy for the processing of data and that it will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Council and to allow the Council to visit the Consultant to ensure that the terms of this condition are being complied with.
- 21.9 The Consultant shall indemnify the Council against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Council may incur arising out of any breach of this condition by the Consultant.
- 21.10 On termination of this Contract, the Consultant shall cease to process the data and shall arrange for the prompt and safe return of all data belonging to the Council to the Council, together with all copies of the data in its possession or control, including all copies with any agreed sub-contractor.
- 21.11 In this condition, "data" shall mean all information relating to the Council's clients and prospective clients, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Council's business affairs including all information of a confidential nature or imparted by whatever nature by

the Council to the Consultant during the currency of the contract. All right, title and interest in and to the data shall vest solely in the Council.

## **22 HEADINGS**

The headings to these Conditions shall not affect their interpretation.

## **23 STATUTORY REQUIREMENTS AND STANDING ORDERS**

Throughout the duration of the Contract the Consultant shall ensure that in carrying out the Project, he complies with all relevant primary and secondary legislation and the Client's Standing Orders and Financial Regulations.

## **24 ALTERATIONS TO CONTRACT**

Except as herein elsewhere specifically provided, the terms and conditions of the Contract shall be subject to variation only by written agreement between the Client and the Consultant following a request for such variation stating the proposed terms of such variation in full.

## **25 WAIVER**

Failure by the Client at any time to enforce a provision of the Contract or to require performance by the Consultant of any of the provisions of the Contract shall not be constructed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Client to enforce any provision in accordance with the terms of the Contract.

## **26 SEVERANCE**

If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision of the Contract all of which will remain in full force and effect.

## **27 DATA PROTECTION**

The Authority and the Contractor hereby agree to ensure that they will at all times comply with Data Protection Legislation. Data Protection Legislation means the Data Protection Act 1998, and from the 25<sup>th</sup> May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") and any subsequent enactments and amendments.

The Authority and the Contractor as Data Controllers will comply with the obligations imposed on them by the Seventh Principle of the Data Protection Act 1998 and Article 5 (1) (f) of the (Regulation (EU) 2016/679) by taking appropriate technical, security and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Both parties agree to indemnify each other in respect of any unauthorised disclosure or other processing of personal data. All personal data collected during the provision of the service is the property of the Authority and the Contractor will release all data to the Authority within forty business days as and when requested to do so.

## **28 NOTICES**

All notices which are required to be given in terms of this Agreement shall be in writing and shall be sent to the Contractor at their Registered Office or address as detailed in this Agreement and to the Authority at Moray Council, Council Office , High Street, Elgin IV30 1BX for the attention of the Authority's representative detailed in condition 6 of this Agreement. Notices will be validly served if served by any of the following:- recorded delivery; first or second class mail; personal delivery or personal service to any of the above-mentioned locations.

A notice will also be validly served by email to the following addresses: For the Contractor

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and for the Authority [Chris.Muir@moray.gov.uk](mailto:Chris.Muir@moray.gov.uk) or such other email addresses as may be notified from time to time. Notices by email will be deemed to have been received at the time and date of sending. The Contractor shall notify the Authority of any change of address, billing address, email and telephone contact details in writing. Likewise, the Authority shall notify the Contractor of any change of Representative or contact details in writing.

## **29 LAW OF SCOTLAND.**

This Agreement shall be governed by and interpreted and construed in accordance with Scots Law. Both parties agree to accept and implement any new relevant legislation applying to the contract throughout the lifetime of the contract. The Scottish Courts shall have exclusive jurisdiction to settle any disputes (including claims for set-off and counter claims) which may arise in connection with the validity, effect, interpretation, or performance of the legal relationship established by this Agreement or otherwise arising in accordance with this Agreement.

## **Section 2 – Suppliers Response**

<b>Title</b>	<b>Moray Business Property Needs Study</b>
<b>BASIC DETAILS OF YOUR ORGANISATION</b>	
Name of the organisation in whose name the quote is being submitted:	
Contact name for enquiries about this bid:	
Contact position (Job Title):	
Address: Post Code:	
Telephone number:	
E-mail address:	
Website address (if any):	

### **Capability/Selection Criteria**

<b>Capability/Section Criteria</b>	
Requirement 1	Please provide examples of previous recent and relevant experience of same/similar requirements
Supplier Response:	

**Award Criteria**

<b>Award/Technical Criteria</b>	
Requirement 1:	Provide a statement to demonstrate your understanding of the requirements as detailed in the above specification.
Supplier Response:	
Requirement 2:	Provide a statement detailing the methodology and proposed approach for meeting the requirements as detailed herein.
Supplier Response:	

Requirement 3:	Provide a project plan to include all of the milestones leading up to the project deadline
Supplier Response:	
<b>Pricing Schedule</b>	
Price	