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Appendix A



**Joint Committee
Governance Agreement**

**Tay Cities Region Joint
Committee**

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INTRODUCTION

WHEREAS

- (A) **Angus Council**, the local authority for Angus constituted under the Local Government etc (Scotland) Act 1994 and having their principal offices at Angus House, Orchardbank Business Park, Forfar, Angus, DD8 1AN, **Dundee City Council**, the local authority for the City of Dundee constituted under the Local Government etc (Scotland) Act 1994 and having their principal offices at 21 City Square, Dundee, DD1 3BY, **Fife Council**, the local authority for Fife constituted under the Local Government etc (Scotland) Act 1994 and having their principal offices at Fife House, North Street, Glenrothes, Fife, KY7 5LT and **Perth and Kinross Council**, the local authority for Perth and Kinross constituted under the Local Government etc (Scotland) Act 1994 and having their principal offices at Council Building, 2 High Street, Perth, PH1 5PH (the “Constituent Councils”) entered into a Minute of Agreement (hereinafter referred to as “the MOA”) to form the Tay Cities Region Joint Committee (“the Joint Committee”).
- (B) The MOA, which is referred to for its terms and appended to this agreement at Schedule 1, resolved to create a separate formal agreement or agreements for the administration of the governance arrangements in respect of the functions as detailed in Recital Sixth of the MOA. Where the terms of this agreement differ from the MOA, this agreement shall be considered to have amended the MOA to that extent.
- (C) The Constituent Councils confirm that they have all the necessary powers and authority to enter into such a formal agreement.
- (D) The document (hereinafter referred to as the Joint Committee Governance Agreement) constitutes the separate formal agreement to establish the arrangements for the administration and governance of the functions of the Joint Committee.
- (E) The Constituent Councils may enter into further formal agreements to determine more detailed arrangements for the implementation of any of the functions should this be considered necessary by them or by the Joint Committee.

NOW THEREFORE the Constituent Councils agree as follows;-

We, Angus Council, the local authority for Angus constituted under the Local Government etc (Scotland) Act 1994 and having our principal offices at Angus House, Orchardbank Business Park, Forfar, Angus, DD8 1AN, Dundee City Council, the local authority for the City of Dundee constituted under the Local Government etc (Scotland) Act 1994 and having our principal offices at 21 City Square, Dundee, DD1 3BY, Fife Council, the local authority for Fife constituted under the Local Government etc (Scotland) Act 1994 and having our principal offices at Fife House, North Street, Glenrothes, Fife, KY7 5LT and Perth and Kinross Council, the local authority for Perth and Kinross

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constituted under the Local Government etc (Scotland) Act 1994 and having our principal offices at Council Building, 2 High Street, Perth, PH1 5PH each agree to become a Constituent Authority of the Tay Cities Region Joint Committee which is a Joint Committee constituted under Section 57 of the Local Government (Scotland) Act 1973. We each confirm that we have all necessary powers to participate as a Constituent Authority of the Tay Cities Region Joint Committee and that our membership of the Tay Cities Region Joint Committee and the operation of the Tay Cities Region Joint Committee and its functions shall be governed by the following terms and conditions:-

1 INTERPRETATION

1.1 In these terms and conditions the following expressions shall have the meanings respectively ascribed to them:-

"The Clerk" means the Head of Democratic and Legal Services of the Lead Authority.

"The Commencement Date" is set out in clause 2.1.

"Confidential Information" is defined in clause 14.2.

"Constituent Authorities" means Angus Council, Dundee City Council, Fife Council and Perth & Kinross Council

"Constituent Member Organisations" shall mean those members of the Joint Committee who are not Constituent Authorities as described in clause 3 of the MOA

"The Contribution Sum" means any sum payable by each Constituent Authority in accordance with these terms and conditions, calculated in accordance with clause 9.6 to meet each Constituent Authority's share of the budgeted costs of work of the Joint Committee, and such other costs as the Management Group shall determine. [The Management Group have asked that the proposed "cap" on contributions of £100K per annum over the next five years should be the subject of a separate discussion and separate written agreement/undertaking between the four Chief Executives]

"Functions" are as defined in clause 4.2 of this Agreement and as otherwise agreed by the Constituent Authorities.

"The Joint Committee" means the Tay Cities Region Joint Committee, a Joint Committee established under Section 57 of the Local Government (Scotland) Act 1973, the terms and conditions of which are set out herein.

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"The Lead Authority" means Dundee City Council (unless the Constituent Authorities agree otherwise) whose role and remit is more particularly described in clause 7.

"Management Group" shall mean the group comprising the four Chief Executives or their nominees of the Constituent Authorities and the nominees of the Constituent Member Organisations established in terms of clause 5 of this Agreement.

"MOA" means that minute of agreement between the parties hereto dated 30th November and 1st, 7th and 18th December 2017.

"The Programme Manager" means the officer appointed by the Management Group to lead and manage the Programme Management Office and have responsibility for coordinating the operational delivery of the TCD Programme

"The Programme Management Office" (the PMO) shall be the team of officers employed by or seconded to the Lead Authority to fulfil the operational tasks necessary to coordinate the delivery of the TCD Programme, whose role is more particularly described in clause 6.

"The Tay Cities Deal" is that to be agreed between the Constituent Authorities and the UK and Scottish Governments comprising the key themes of Inclusive Tay, Innovative Tay, International Tay and Connected Tay.

"The Tay Cities Region" means the local government areas of Angus Council, Dundee City Council and Perth & Kinross Council in their entirety, and in relation to Fife Council, the area of North East Fife.

"The TCD Programme" shall mean the programme of activities, projects and works in respect of the implementation of the Tay Cities Deal as detailed in Schedule 2.

"The Treasurer" means the Executive Director of Corporate Services of the Lead Authority.

1.2 In this Agreement:-

- (a) Reference to the Tay Cities Region Joint Committee are to be treated as references to the Joint Committee and vice versa;
- (b) References to contracts/grants entered into or awarded by the Joint Committee are references to contracts entered into or awarded on behalf of the Tay Cities Region Joint Committee by the Lead Authority on the instruction of the Joint Committee or any sub-committee or officer authorised to issue such an instruction.

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- 1.3 Words imparting the masculine gender only shall include the feminine gender and vice versa.
- 1.4 Words imparting the singular number shall, except where the context otherwise requires, include the plural number and vice versa.

2 COMMENCEMENT AND DURATION

- 2.1 The Agreement shall commence on the date these terms and conditions are received by the Lead Authority validly executed on behalf of all the Constituent Authorities. Subscription of these terms and conditions will not impose any legally enforceable rights or obligations on the body which has executed these terms and conditions until then.
- 2.2 Once validly executed, these terms and conditions shall be legally binding upon the Constituent Authorities, subject to any lawful variation thereof, unless and until this Agreement is terminated in accordance with clause 12.

3 MEMBERSHIP & VOTING RIGHTS

- 3.1 The Commencement Date and membership of the Joint Committee is stated in clause 3 of the MOA.
- 3.2 Any Local Authority other than those listed in the Introduction which wishes to become a member of the Joint Committee may apply for membership. Each existing Constituent Authority shall have a veto on this application which each may use entirely at their own discretion.
- 3.3 Each Constituent Authority shall appoint their Leader to be one of their representatives on the Joint Committee. It will, however, be open to each of the Constituent Authorities to replace its representatives on the Joint Committee at any time. The appointment of any substitutes and alterations to those substituted are a matter for each Constituent Authority provided that appropriate written notice is given to the Clerk of such appointment in advance
- 3.4 Upon formal execution of this document by the Constituent Authorities, all members of the Joint Committee as defined in the first part of clause 3 of the MOA, namely the Constituent Authorities and the Constituent Member Organisations (hereinafter referred to as "Voting Members") shall have full voting rights.

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- 3.5 Any Voting Member of the Joint Committee may be substituted by another member of their own authority or organisation. Any such substitute shall have the same powers at the meeting as the member whom he or she is substituting for.
- 3.6 A simple majority of those voting members present shall be required in all voting procedures with the exception of the suspension of the standing orders, which shall require a majority of two thirds.
- 3.7 The quorum for the Joint Committee shall be seven voting members representing no less than three of the four constituent Councils and one Constituent Member Organisation.
- 3.8 The Joint Committee may co-opt for an agreed period additional non-voting members to represent other interests or provide specialist expertise.

4 PURPOSE AND SCOPE

- 4.1 The Joint Committee has been established for the purpose of regulating the joint discharge of the Functions by the Constituent Authorities.
- 4.2 The Functions of the Joint Committee shall be as defined and agreed by the Constituent Authorities but shall include:-
- i. Implementation of the Tay Cities Deal, in particular:-
 - a. The approval and oversight of investments to be funded through the Tay Cities Deal;
 - b. The approval and reporting of business cases in respect of those investments;
 - c. Making recommendations to the Scottish and UK Governments of modified or substitute projects under the Tay Cities Deal as appropriate.
 - d. The monitoring, evaluation and reporting of progress in respect of projects being delivered;
 - e. Signing off on satisfactory completion of each project delivered under the Tay Cities Deal;
 - f. Acting as a strategic point of contact with the Scottish and UK Governments and to provide quarterly progress reports to them in relation to the Tay Cities Deal;
 - ii. Acting as a regional partnership for the Tay Cities Region;
 - iii. Regional economic development for the Tay Cities Region;
 - iv. Regional land use and strategic planning for the Tay Cities Region;

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- v. Regional infrastructure planning for the Tay Cities Region;
- vi. Support for regional transport planning for the Tay Cities Region;
- vii. Monitoring, evaluation and reporting in respect of regional economic performance;
- viii. Approving governance arrangements for the Joint Committee, the Management Group, sub-committees and procedural standing orders;
- ix. Establishing sub-committees and agreeing to the delegation of responsibilities of the Joint Committee to those bodies and to officers;
- x. Approval of the roles and remits of any sub-committees to whom areas of authority may be delegated by Constituent Authorities

4.3 The Joint Committee shall adopt standing orders relating to proceedings at their meetings and the meetings of any sub-committees.

5 THE MANAGEMENT GROUP

5.1 The Management Group shall undertake such activities as are delegated to it by the Joint Committee.

6 PROGRAMME MANAGEMENT OFFICE (PMO)

6.1 The PMO shall be the team of officers employed by or seconded to the Lead Authority to coordinate the operational tasks necessary to implement the delivery of the TCD Programme.

In particular the PMO will:-

- i. provide best practice styles and documentation to the Constituent Authorities;
- ii. scrutinise proposed business cases and make recommendations to the Joint Committee via the Management Group. Where necessary expertise does not exist within this team to fulfil this responsibility, external support may be commissioned and managed by the PMO;
- iii. assess and monitor progress, process, slippage and risks in respect of projects within the TCD Programme and report these to the Management Group;
- iv. *analyse* the impact of the delivery of the projects within the TCD Programme as well as the wider economic benefits as agreed in business cases and conditions of grant awards and to report the same to the Joint Committee to enable them to fulfil their reporting obligations to all in accordance with commitments made to the UK and Scottish Governments as part of the Tay Cities Deal;
- v. liaise with and co-ordinate programme delivery across other partners and National Bodies, including non-departmental public bodies, as long as such co-ordination advances the aims of the Tay Cities Deal and the functions of the Joint Committee; and
- vi. develop and implement communications and stakeholder engagement strategies.

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- 6.2 The Programme Manager shall be appointed by the Management Group to lead and manage the PMO and have responsibility for co-ordination of the operational delivery of the TCD Programme.
- 6.3 The Programme Manager shall be employed by or seconded to the Lead Authority.
- 6.4 The Programme Manager shall work under the direction of the Management Group and shall be accountable to the Joint Committee, through the Management Group, for the operational delivery of the TCD Programme.
- 6.5 Through the Management Group, the Programme Manager shall provide quarterly updates and an annual report to the Joint Committee advising on the progress, performance, slippage and risks in respect of all active projects within the TCD Programme.

7 LEAD AUTHORITY

- 7.1 The Constituent Authorities have agreed that Dundee City Council shall be the Lead Authority.
- 7.2 The Lead Authority shall be the employing or secondee authority for the Programme Manager, the PMO and any other person appointed by the Joint Committee.
- 7.3 The Clerk to the Joint Committee may appoint a depute or deputies as appropriate subject always to agreement by the Constituent Authorities.
- 7.4 The Treasurer to the Joint Committee may appoint a depute or deputies as appropriate subject always to agreement by the Constituent Authorities.
- 7.5 The Lead Authority shall provide administrative, professional and technical support services as may be required, which services shall include financial, legal, audit, human resources, information technology systems and security and any other professional or technical support services as required to enable the Joint Committee to deliver its functions.
- 7.6 In particular the Lead Authority shall:-
- i. develop, in consultation with the Heads of Legal Services or equivalent of the other Constituent Authorities, all necessary governance documents for the effective operation of the Joint Committee;
 - ii. ensure that the PMO budget and funding are used legally and appropriately;
 - iii. prepare regular consolidated budget monitoring statements for consideration of the Joint Committee;

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- iv. prepare the annual report and accounts for the Joint Committee and arrange for audit of the said accounts;
- v. ensure that any decisions in delivering the Functions conform with relevant legal requirements including equalities, environment, European Union legislation, sustainability and best value;
- vi. allocate and account for distribution of Tay Cities Deal grant income and enter into grant agreements on behalf of the Joint Committee with the relevant Constituent Authorities, Constituent Member Organisations and third parties in respect of the specified projects required to deliver the TCD Programme;
- vii. prepare and circulate all meeting agenda, reports and minutes;
- viii. publish the Joint Committee processes and outcomes;
- ix. facilitate engagement with the UK and Scottish Governments; and
- x. manage Joint Committee communications including the Tay Cities Deal website.

8 TAY CITIES DEAL FUNDING OBLIGATIONS

- 8.1 All funding in respect of a project under the TCD Programme shall be subject to a formal grant agreement, which shall be entered into by the Lead Authority on behalf of the Joint Committee, with the relevant Constituent Authority, Constituent Member Organisation or other third party ("Grant Recipient").
- 8.2 Where the Grant Recipient is a Local Authority, the terms of the grant agreement must comply with the requirements of the Financial Regulations and other relevant governance requirements of that Authority.
- 8.3 Grant Recipients shall deliver agreed projects under the TCD Programme in accordance with the terms of their grant agreement.
- 8.4 Where a Grant Recipient is failing to deliver a project under the TCD Programme in accordance with the terms of the grant agreement, the Grant Recipient shall report to the Management Group and agree mitigating actions to ensure successful completion of the project.
- 8.5 Grant Recipients shall provide all information requested of them within the prescribed timescales to enable the Joint Committee to fulfil its functions.
- 8.6 Should the Grant Recipient fail to comply with any relevant clause of this agreement or a material condition of the grant agreement, the Joint Committee will have the discretion to:-
 - i. Suspend any further payment of grant funding until suitable resolution is found;

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- ii. Terminate the relevant grant agreement;
- iii. Remove the particular project from the TCD Programme;
- iv. Recalculate the grant award; and
- v. Recover from the Grant Recipient any grant monies already paid and additional costs incurred or losses suffered by the Joint Committee or its Constituent Authorities arising from that failure.

9 JOINT COMMITTEE BUDGET & FUNDING

- 9.1 The Joint Committee shall as soon as reasonably practicable following the valid execution of this agreement approve a budget to 31 March 2019 in respect of the operational running costs of the Joint Committee (hereinafter referred to as the “JC Operational Costs”), which shall include the PMO costs and the reasonable costs, expenses and outgoings incurred by the Lead Authority in providing the administrative, professional and technical support services as outlined in clause 7 above.
- 9.2 Thereafter, in each year and prior to 31 March, the Joint Committee shall consider and approve a budget prepared jointly by the Programme Manager and the Treasurer in terms of the Lead Authority’s budgetary requirements, for the JC Operational Costs in the following financial year.
- 9.3 The Constituent Authorities shall defray the Joint Committee Operational Costs in accordance with these terms and conditions. The Contribution Sum shall be paid quarterly in advance in accordance with arrangements made by the Treasurer.
- 9.4 Since a significant proportion of the Tay Cities Deals will be to the benefit of the University of St Andrews, the University of Dundee, the University of Abertay, the University of the Highlands and Islands and the James Hutton Institute they have agreed to contribute to the JC Operational Costs incurred by the Constituent Authorities under clause 9.3 and said contribution will be the subject of a separate Agreement.
- 9.5 The Contribution Sum payable by the Constituent Authorities will be the total of the Joint Committee Operational Costs less the amount which is to be paid by the Universities and the Institute named in *Clause 9.4* above.
- 9.6 The Constituent Authorities each agree to pay their Contribution Sum fixed by the Joint Committee in accordance with this clause.

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- 9.7 The full Contribution Sum shall be payable by each Constituent Authority regardless of the use made by a Constituent Authority of the functions of the Joint Committee or a Constituent Authority's participation in the projects under the TCD Programme.
- 9.8 The Contribution Sum of the Constituent Authorities shall be a proportion of the JC Operational Costs. The proportion paid by Angus Council, Dundee City Council, Perth & Kinross Council and Fife Council shall be in the ratio 2: 2: 2: 1 respectively.
- 9.9 The Treasurer shall prepare the audited financial statement and accounts of the Joint Committee for approval by the Joint Committee prior to 30 September immediately following the financial year to which the accounts relate. Any deficit arising shall be paid by the Constituent Authorities in accordance with arrangements made by the Treasurer. Any surplus will be reimbursed to Constituent Authorities in accordance with the pro rata Contribution Sums.
- 9.10 The Contribution Sums of all Constituent Authorities shall be reviewed by the Treasurer at least once every 3 years to identify whether the Contribution Sum of any Constituent Authority should be adjusted to reflect changes in the size of the population within Constituent Authorities areas and changes to the size of the aggregated population within all Constituent Authorities areas. The requirement to review the Contribution Sums of Constituent Authorities contained in this clause shall not commence until April 2019.
- 9.11 No change to the Contribution Sums of any Constituent Authority may be made without prior approval of the Joint Committee following consultation with those Constituent Authorities whose Contribution Sum is affected.

10 DEFAULT IN PAYMENTS

- 10.1 In the event that any Constituent Authority fails to make any payment due under this Agreement, the PMO may determine that interest will run from the date following the date upon which the money became due and payable until paid at a rate of 2% per annum above the base rate of the Royal Bank of Scotland plc.
- 10.2 Where a Constituent Authority remains in default for more than one calendar quarter the terms of clause 8.6 shall apply.
- 10.3 The Lead Authority, on behalf of the Constituent Authorities, and the Constituent Authorities themselves individually, reserve the right to recover any outstanding sums due to them from a defaulting Constituent Authority.

11 INDEMNITY AND INSURANCE

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11.1 The Constituent Authorities and the Lead Authority shall indemnify each other in respect of any claim, demand, loss, damage, injury, cost or expense (including any liability to their legal advisers) arising from any act or omission of the other party or parties in the course of their obligations under this Agreement.

11.2 The Lead Authority shall arrange for the taking out of such policies of insurance as the Treasurer considers appropriate in relation to the carrying out of the functions on behalf of the Joint Committee which insurances shall include without prejudice to the foregoing generality, employers liability, public liability and professional indemnity insurance and the cost of taking out such policies shall be defrayed by the Constituent Authorities as part of the Contribution Sums with each Constituent Authority's share of the costs being calculated by reference to the Contribution Sums.

12 TERMINATION

12.1 This Agreement shall continue in full force and effect until the whole TCD Programme as defined in Clause 1 has been concluded.

12.2 The Treasurer shall keep or cause to be kept full and accurate accounts through the currency of this agreement, or any replacement thereof. The detailed records will be available for the following periods:

- (a) for the JC operational Costs detailed records will be held for a period of three years;
- (b) for Grant Receipt and allocation, detailed records will be retained for a period of twenty years.

12.3 The Constituent Authorities shall be entitled, on giving reasonable prior notice, to inspect such accounts and records and to make any examination which they may desire and for this purpose, the Treasurer shall forthwith on demand produce to the Constituent Authorities all relevant information or vouchers as a Constituent Authority may reasonably request.

13 PREMISES

13.1 The PMO shall be located in premises approved by the Joint Committee.

13.2 If applicable, the costs of any premises occupied by the PMO shall be met in accordance with this Agreement.

14 CONFIDENTIAL INFORMATION

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- 14.1 The Constituent Authorities shall at all times use their reasonable endeavours to keep confidential (and to procure that their respective employees, agents, consultants and sub-contractors shall keep confidential) all Confidential Information concerning the Joint Committee, the Functions of the Joint Committee or the business and affairs of the other Constituent Authorities which may now or at any time hereafter be in its possession and shall not disclose it except with prior written consent of the other Constituent Authorities or where the Confidential Information relates only to one Constituent Authority the consent of that Constituent Authority.
- 14.2 “Confidential Information” means information imparted to any of the Constituent Authorities or their employees, agents, consultants or sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Constituent Authorities on the basis that it was to be kept confidential or is of commercial value in relation to the Joint Committee but shall not include any information which is:
- i. already in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party; or
 - ii. already in the possession of the Receiving Party without restrictions as to its use; or
 - iii. the disclosure of which is required by statute or court order; or
 - iv. is provided for the purpose of obtaining professional advice; or
 - v. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - vi. which is information independently developed without access to the Confidential Information including audit and assessing best value.
- 14.3 This clause is subject always to the obligations of a Constituent Authority to comply with the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004, the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 and any other relevant legislation. A Constituent Authority shall not be in breach of this clause where information is released by that Constituent Authority to comply with the aforementioned legislation.

15 FREEDOM OF INFORMATION

- 15.1 Each Constituent Authority acknowledges that the other Constituent Authorities are subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (“FOI”).

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- 15.2 Each Constituent Authority shall assist and co-operate with other Constituent Authorities to enable the other Constituent Authorities to comply with their information disclosure obligations under FOI.
- 15.3 Where a Constituent Authority receives a request for disclosure of information under FOI which that Constituent Authority holds in connection with or as a result of its membership of the Joint Committee or its participation in any of the grants awarded through the Joint Committee, that Constituent Authority shall bring the receipt of such a request to the attention of the Clerk.
- 15.4 The Constituent Authority receiving a request under FOI shall be responsible for determining whether to disclose the information requested and where it is decided not to release any of the information requested, which of the exemptions in terms of FOI it is relying on. However, before making any determination in terms of this clause the Constituent Authority shall give the Clerk a reasonable opportunity of taking into account any statutory time limit for determining such a request to make representations regarding how the Clerk considers the request under FOI should be dealt with.
- 15.5 Where a Constituent Authority receives a request for information in relation to information which it is holding on behalf of any of the other Constituent Authorities in connection with its participation in the Joint Committee, it shall:-
- (a) transfer the request for information to the relevant Constituent Authority as soon as practicable after receipt; and
 - (b) provide all necessary assistance as reasonably requested by the relevant Constituent Authority to enable the Constituent Authority to respond to the request for information within the time for compliance set out in FOI.

16 GIFTS AND HOSPITALITY

- 16.1 Each member of the Joint Committee shall follow their respective council, organisation or body policies and procedures in relation to the acceptance of gifts and hospitality..

17 AUDIT AND SCRUTINY

- 17.1 The Lead Authority shall submit unaudited accounts to the auditor no later than 30th June immediately following the financial year to which they relate.
- 17.2 The Lead Authority shall submit to the Joint Committee the unaudited annual accounts as submitted to the auditor no later than 31st August immediately following the financial year to which the annual accounts relate.

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17.3 The Lead Authority shall have audited the accounts of the Joint Committee and prepare an annual report to 31st March in each year which will be submitted to the Joint Committee no later than 30th September following for approval.

17.4 The first audit will take place year ending 31st March 2019 and will subsequently take place on an annual basis.

17.5 Tay Cities Deal project income and expenditure which is accounted for within Constituent Authorities' own accounts will be subject to audit by an individual authority's own external auditors.

18 CONFLICTS OF INTEREST

18.1 The members of the Joint Committee will be expected to act in the interests of the Tay Cities Region as a whole when making decisions in relation to the TCD Programme.

18.2 Each member of the Joint Committee will be required to complete a register of interests. These will be collated by the Clerk for all members and substitutes and published on the Joint Committee website. At all meetings, members of the Joint Committee will be invited to declare any interests which may be relevant to decisions in relation to the TCD Programme.

18.3 A central appraisal team will be located within the PMO to assess individual business cases and make independent recommendations for decision to the Joint Committee. Investment decisions will ultimately remain the remit of the Joint Committee. As such, Constituent Authorities or other members who represent the project promoter for a business case will be asked to withdraw from decisions regarding that business case or the approval of a specific project.

19 MINUTE OF AGREEMENT

19.1 Except insofar as it is inconsistent with this Agreement, the Minute of Agreement among the Constituent Authorities which is attached as Schedule 1 will continue in full force and effect

20 VARIATION

20.1 These terms and conditions may only be varied by execution of a minute of variation signed by all of the Constituent Authorities.

21 RESOLUTION OF DISPUTES

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- 21.1 Any dispute between Constituent Authorities arising in connection with its membership of the Joint Committee which cannot be resolved by discussion between the Constituent Authorities in dispute shall be referred to an independent mediator appointed by the Law Society of Scotland. The fees and expenses of the mediator shall be borne equally by the parties involved in the mediation. In the event the parties fail to reach an agreement within 30 days after the commencement of the mediation, then the matter may be determined by an arbitrator.
- 21.2 Arbitration in terms of this clause may be initiated by any of the Constituent Authorities in dispute after the 30 day period referred to in clause 21.1. The arbitrator shall be mutually agreed by the parties in dispute failing which the arbitrator shall be approved by the Law Society of Scotland on the written application of any Constituent Authority.
- 21.3 The decision of the Arbitrator on the matter in dispute and on any award of expenses relating to the arbitration shall be final and binding on all parties involved in the arbitration.
- 21.4 The operation of Rule 69 of the Arbitration (Scotland) 2010 Act is excluded. The Constituent Councils also agree not to make a referral to the Outer House all in terms of Section 41 of the Arbitration Act 2010.

22 ASSIGNATION

- 22.1 No rights or obligations arising from these terms and conditions may be assigned except by the prior written consent of the Joint Committee.

23 SERVICE OF NOTICES

- 23.1 In any provision within the Agreement, where reference is made to the serving of notices if such notices are registered or recorded delivery post, receipt of such notices will be deemed to have occurred the day after the date of posting.

24 INCONSISTENCY

- 24.1 If any Constituent Authority shall find any discrepancy in or divergence between any of the following, including a divergence between parts of any one of them, namely:
- a) The Joint Committee Governance Agreement;
 - b) The MOA;
 - c) Any subsequent or ancillary agreements pursuant to the MOA and the Joint Committee Governance Agreement.

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The Constituent Authority shall without undue delay give to the Clerk a written notice specifying the discrepancy or divergence and the Constituent Authorities shall negotiate in good faith to agree any relevant modifications or amendments to the foregoing documents as may be required.

25 THIRD PARTY RIGHTS

- 25.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contract (Third Party Rights) (Scotland) Act 2017.

FINAL DRAFT

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This is the Schedule 1 referred to in the foregoing agreement between Angus Council, Dundee City Council, Fife Council and Perth & Kinross Council

Schedule 1

Copy MOA

This is the Schedule 2 referred to in the foregoing agreement between Angus Council, Dundee City Council, Fife Council and Perth & Kinross Council

Schedule 2

The TCD Programme

FINAL DRAFT