

TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

These Terms and Conditions (“these Conditions”) may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

“Contract” means the contract between the Purchaser and the Supplier consisting of the Order, these Conditions and other documents (or parts thereof) specified in the Order as varied (where applicable) pursuant to Condition 2;

“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Request” have the meanings given in the Data Protection Laws;

“Data Protection Laws” means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR;

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“Intellectual Property Rights” means all copyright and related rights, patents, rights to inventions, trademarks, service marks, design rights database rights, topography rights, rights in computer software and any other right in the nature of intellectual property whether or not registered and including all applications for and all renewals or extensions of such rights, in any materials or works in whatever form (including any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Supplier;

“Order” means the order, letter of appointment or other document issued by the Purchaser to the Supplier in respect of the provision of the Services;

“Parties” means the Purchaser and the Supplier and “Party” means either of them;

“Personal Data” has the meaning given in the Data Protection Laws;

“Premises” means the location or locations where the Services are to be performed or provided, as specified in the Order;

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

“Purchaser” means Crown Estate Scotland a body corporate constituted by The Crown Estate Scotland Order 2017 and having its principal place of business at 6 Bell’s Brae Edinburgh EH4 3BJ acting in exercise of the powers conferred on it by the Scotland Act 1998 (as amended) and The Crown Estate Act 1961;

‘Services’ means the services to be provided as specified or referred to in the Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

“Service Specifications” means the specifications, descriptions and instructions for the Services agreed between the Parties as part of the tender process or other negotiations preceding the Order and/or contained or referred to in the Order, or as otherwise stipulated by the Purchaser (including any timescales for completion of all or any part of the Services);

‘Supervisory Authority’ has the meaning given in the Data Protection Laws; and

“Supplier” means the person, firm or company to whom the Order is issued.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 words importing the singular number shall include the plural and vice versa and words importing any gender shall include all other genders;

1.2.2 any headings are for convenience only and shall not affect the construction or interpretation hereof;

1.2.3 any reference to a statutory provision shall be deemed to include any statutory modification or re-enactment thereof;

1.2.4 references to one gender shall be deemed to refer to any gender and references in the singular shall be deemed to include references to the plural; and

1.2.5 any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

2. CHANGE TO CONTRACT REQUIREMENTS

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

- 2.2 Save as otherwise provided herein, no variation of the Services shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 2.3 Where any such variation of the Services made in accordance with Condition 2.1 and/or 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Services) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

3. INSPECTION OF PREMISES

- 3.1 Where the Premises are owned or occupied by the Purchaser, the Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.
- 3.2 The Purchaser shall, at the request of the Supplier, grant such access to the Premises as may be reasonable for this purpose.

4. SECURITY AND ACCESS TO PURCHASER'S PREMISES

- 4.1 Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 4.2 The Supplier must comply with the Purchaser's policies concerning Personnel Security Standard checks and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.
- 4.3 The Supplier must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Personnel Security Standard clearance.

- 4.4 At the Purchaser's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are involved with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 4.5 The Supplier must ensure that any individual Supplier Representative entering the Purchaser's premises has completed the process for obtaining Personnel Security Standard clearance. The Supplier acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Personnel Security Standard clearance.
- 4.6 In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Supplier Representatives for the purposes of meetings, notwithstanding that the process for obtaining Personnel Security Standard clearance has not commenced or completed.
- 4.7 The Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Supplier Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 4.8 The Purchaser must provide advice and assistance, acting reasonably, to the Supplier to facilitate the Supplier's compliance with this Condition.
- 4.9 All decisions of the Purchaser under this Condition are final and conclusive.
- 4.10 Breach of this Condition by the Supplier is a material breach for the purposes of Condition 19.2 (Termination).

In this Condition 4 the following terms have the meanings given to them below:

'Personnel Security Standard' means the Purchaser's controls and standards in respect of the access of personnel to its premises and the security of personnel, property and information within its premises and elsewhere.

'Supplier Representatives' means all persons engaged by the Supplier in the performance of its obligations under the Contract including:

- ✦ its employees and workers (including persons employed by a third party but working for and under the control of the Supplier);
- ✦ its agents, suppliers and carriers; and
- ✦ any sub-contractors of the Supplier (whether approved under Condition 21 (Assignment and sub-contracting) or otherwise).

5. SUPPLIER'S STATUS

- 5.1 In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

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

5.2 Where the Supplier is an individual, nothing in the Contract shall have the effect of making the Supplier an employee of the Purchaser.

6. SUPPLIER'S PERSONNEL

- 6.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 6.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time involved with the Services or any part of them, specifying the capacities in which they are so involved, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 6.3 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 6.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

7. MANNER OF CARRYING OUT THE SERVICES

- 7.1 The Supplier shall provide the Services in accordance with the Contract and warrants to the Purchaser that:
 - 7.1.1 it will ensure that the Services are provided in accordance with the Service Specifications and with best practice in the Supplier's industry, profession or trade;

- 7.1.2 any materials, articles or goods to be supplied as part of the Services will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), fit for any purpose made known (expressly or by implication) to the Supplier by the Purchaser and free from any defects in design, material and workmanship; and
- 7.1.3 comply with the requirements of Condition 23.
- 7.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.
- 7.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.
- 7.4 The Purchaser shall have the power at any time during the progress of the Services to order in writing:
- (a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or
 - (b) the substitution of proper and suitable materials, and/or
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract.
- 7.5 The Supplier shall forthwith comply with any order made under Condition 7.4.
- 7.6 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

8. HEALTH AND SAFETY

The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally. The Supplier shall indemnify the Purchaser and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

9. TIME OF PERFORMANCE

The Supplier shall begin performing the Services on the date stated in the Order and shall complete the Services by the date stated in the Order or continue to perform them for the period stated in the Order (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

10. PAYMENT

- 10.1 The Purchaser shall pay to the Supplier the fees or charges for the Services (and, where applicable, reasonable and properly vouched expenses) as specified in the Order.
- 10.2 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 Purchaser.
- 10.3 All invoices submitted by the Supplier must include:
- 10.3.1. the Purchaser's purchase order number;
 - 10.3.2. the period the invoice covers;
 - 10.3.3. invoice number;
 - 10.3.4. the Supplier's VAT number;
 - 10.3.5. the amount before VAT, the amount of VAT and the rate of VAT: and
 - 10.3.6. the date (tax point).

11. FREE-ISSUE MATERIALS

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's employees, agents or sub-contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

12. AUDIT

- 12.1. The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the

Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.

- 12.2. The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

13. CORRUPT GIFTS AND PAYMENTS

The Supplier shall not offer or give, or agree to give, to any officer, member, employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser 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 Supplier is drawn to the criminal offences created by the Bribery Act 2010.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in any materials including reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, software, computer codes, patents, patterns, models, designs, photographs, graphics, logos and typographical arrangements which are created or developed by the Supplier on behalf of the Purchaser for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract are hereby assigned to and shall vest in the Purchaser absolutely.
- 14.2 The Supplier waives, and undertakes to procure that its employees, agents and sub-contractors waive, absolutely and irrevocably any and all moral rights in the materials referred to in Condition 14.1 to which they are now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including the right to be identified, the right of integrity and the right against false attribution.
- 14.3 The Supplier hereby undertakes, at the request of the Purchaser (whether during the continuance of the Contract or thereafter), to execute, or procure that its employees, agents and sub-contractors execute, all documents necessary to give effect to Conditions 14.1 and 14.2 above.
- 14.4 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.
- 14.5 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. The Supplier shall indemnify the Purchaser against all actions, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 14.5.

15. INDEMNITIES AND INSURANCE

- 15.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligence, breach of contract or other wrongful act or omission of the Supplier or the Supplier's employees, agents or sub-contractors.
- 15.2 The Purchaser shall indemnify the Supplier in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Supplier acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Supplier-
- (a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with Condition 28.11(c) of this Contract; or
 - (b) fails to comply with any other obligation under the Contract.
- 15.3 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 15.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser or any employee or agent of the Purchaser) the indemnity contained in Condition 15.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser or any employee or agent of the Purchaser.
- 15.4 The Supplier shall have in force and shall require any sub-Contractor to have in force:
- (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and
 - (b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.
- 15.5 The policy or policies of insurance referred to in Condition 15.4 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

16. DISCRIMINATION

The Supplier must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser.

17. BLACKLISTING

The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.

18. CONFIDENTIALITY

- 18.1 The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees, agents and sub-contractors keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 18.2 All information related to the Contract will be treated as commercial in confidence by the parties except that:
- (a) the Supplier may disclose any information as required by law or judicial order to be disclosed; and
 - (b) the Purchaser may disclose any information as required by law or judicial order to be disclosed. Further, the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Contract.
- 18.3 The provisions of this Condition 18 shall apply during the continuance of this Contract and for a period of five years following its termination howsoever arising.

19. TERMINATION

- 19.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or 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 the Supplier's affairs; or
- (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
- (c) where the Supplier is a company, a limited liability partnership or other body corporate, if the Supplier ceases to trade or passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or is the subject of an administration order or a winding-up order, or makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed in respect of the Supplier by a creditor or by the court, or possession is taken of any of the Consultant's property under the terms of a floating charge or if any analogous event occurs in any other jurisdiction.

19.2 On the occurrence of any of the events described in Condition 19.1 (whether or not notified by the Supplier to the Purchaser) or, if the Supplier 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 Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Purchaser shall be entitled to terminate this Contract with immediate effect by notice to the Supplier. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all or any materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

19.3 The Purchaser may terminate the Contract in the event that:

- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with

regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

- (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- 19.4 The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law.
- 19.5 In addition to the Purchaser's rights of termination under Conditions 19.2, 19.3 and 19.4, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days' notice to that effect.
- 19.6 Termination under Condition 19.2, 19.3, 19.4 or 19.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 7.1, 8 (Health and Safety), 11 (Free-Issue Materials), 12 (Audit), 14 (Intellectual Property Rights), 15 (Indemnities and Insurance), 18 (Confidentiality), 27 (TUPE), 28 (Data Protection) or of any other provision of these Conditions which, expressly or by implication, is intended to operate after the termination of the Contract.
- 19.7 The Supplier will return to the Purchaser promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Purchaser or any Government Department in connection with the Contract, or extracted from such documents, papers, materials or information.

20. RECOVERY OF SUMS DUE

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

21. ASSIGNMENT AND SUB-CONTRACTING

- 21.1 The Supplier shall not assign or sub-contract all or any part of the Contract without the prior written consent of the Purchaser. Sub-contracting of all or any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.
- 21.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser immediately it is issued.
- 21.3 Where the Supplier enters into a sub-contract must ensure that a provision is included which:
- 21.3.1 requires payment to be made of all sums due by the Supplier to the sub- contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a valid right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;
- 21.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and
- 21.3.3 is in the same terms as that set out in this Condition 21.3 (including for the avoidance of doubt this Condition 21.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.
- 21.4 The Supplier shall also include in every sub-contract:
- 21.4.1 a right for the Supplier to terminate that sub-contract if the relevant sub- contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 19.3 occur; and
- 21.4.2 a requirement that the sub-contractor includes a provision having the same effect as 21.4.1 above in any sub-contract which it awards.

In this Condition 21.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

- 21.5 The Purchaser may assign, transfer, novate or otherwise pass all or any of its rights and/or obligations under the Contract to any party, governmental department, agency or authority to whom all or part of the functions of the Purchaser may at any time be transferred.

22. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission and if so sent or transmitted to the address of the party shown on the Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

23. COMPLIANCE WITH THE LAW ETC.

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

- 23.1 all applicable law;
- 23.2 any applicable requirements of regulatory bodies; and
- 23.3 Good Industry Practice.

In this Condition, 'Good Industry Practice' means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances.

24. DISPUTE RESOLUTION

- 24.1 If any dispute or difference arises out of or in connection with the Contract, including any question regarding its existence, validity or termination ("a Dispute") the Parties must attempt in good faith to resolve it.
- 24.2 If the Dispute remains unresolved the Supplier or the Purchaser shall refer it to mediation in line with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure in force at the time. Unless the Supplier and the Purchaser agree otherwise, the mediator will be nominated by CEDR. To initiate the mediation, the Purchaser or the Supplier will give the other written notice (the "mediation notice") asking for mediation. A copy of the request will be sent to CEDR. The mediation will start within 60 days of the date of the mediation notice.
- 24.3 The following principles will apply to the mediation:

- 24.3.1 Unless the Purchaser and the Supplier agree otherwise, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to either party's rights in any future proceedings.
 - 24.3.2 If the Supplier and the Purchaser settle the dispute, the settlement agreement will be recorded in writing and be binding on both parties when it is signed by the Purchaser's and the Supplier's duly authorised representatives.
 - 24.3.3 If the Supplier and the Purchaser cannot settle the Dispute, the Purchaser and the Supplier may invite the mediator to provide a non-binding but informative written opinion if the Purchaser and the Supplier agree to this in writing. That opinion will be provided on a without prejudice basis and will not be used in evidence in any proceedings relating to this appointment, unless the Supplier and the Purchaser agree otherwise in writing.
- 24.4 If the Supplier and the Purchaser fail to settle the Dispute by the conclusion of the mediation, the Supplier or the Purchaser can refer the Dispute to be settled by arbitration. To do this, the Supplier or the Purchaser must give written notice to the other asking for the arbitration.
- 24.5 If the Dispute is referred to arbitration:
- 24.5.1 the arbitration will be governed by the Arbitration (Scotland) Act 2010;
 - 24.5.2 the matter will be considered by a sole arbitrator who will, unless the Supplier and the Purchaser agree otherwise, be appointed by the President for the time being of the Law Society of Scotland; and
 - 24.5.3 the arbitration will be governed by, and interpreted in accordance with, Scots law.
- 24.6 Unless the Purchaser notifies the Supplier otherwise in writing, the Supplier's obligations under this appointment will not end, be suspended or delayed, by referring a Dispute to any of the Dispute resolution procedures under this clause 24.
- 24.7 Nothing in this clause 24 prevents:
- 24.7.1 the Supplier or the Purchaser applying to an appropriate court for an interim order preventing the other from doing something or compelling the other to take particular action; or
 - 24.7.2 the Supplier or the Purchaser joining the other as a party in any court proceedings, or bringing any court proceedings against the other, if:
 - (i) a third party has brought court proceedings against the Supplier or the Purchaser; or
 - (ii) the Supplier or the Purchaser have brought court proceedings against a third party; and

- (iii) the Supplier or the Purchaser reasonably consider, acting reasonably, that the subject matter of those court proceedings has a material connection with this appointment.

25. HEADINGS

The headings to Conditions shall not affect their interpretation.

26. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

27. TUPE

- 27.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) may (a) transfer to the Supplier on the commencement of the Contract; (b) transfer to the Purchaser or to another supplier on the termination or expiry of the Contract (a “New Supplier”).
- 27.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:
 - (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
 - (b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
 - (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
 - (d) details of pensions entitlements, if any.

- 27.3 The Supplier shall permit the Purchaser to use the information disclosed under Condition 27.2 for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 27.4 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Condition.
- 27.5 In the event that the information provided by the Supplier in accordance with this Condition becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.
- 27.6 The Supplier will indemnify and keep indemnified the Purchaser (for the benefit of the Purchaser and any New Supplier) against all losses, liabilities, claims, demands, proceedings, costs or expenses which the Purchaser or any New Supplier may suffer or incur resulting from the transfer under TUPE to the Purchaser or a New Supplier (as the case may be) of any liability relating to a claim or demand made by, on behalf of or in respect of any person employed by the Supplier or any sub-contractor of the Supplier and engaged in providing the Services (a "Transferred Employee") and which relates to circumstances or events occurring or arising on or before the relevant transfer including without limitation any losses arising in connection with the Supplier or its subcontractors employing or ending the employment of any Transferred Employee, or in connection with the Purchaser or any New Supplier ending, or being alleged to have ended, the employment of any of any Transferred Employee. The Supplier will, and will procure that its subcontractors will, at the request of the Purchaser, enter into a deed of indemnity with any New Supplier to give such New Supplier the same protection the Purchaser has under this Condition 27.6.
- 27.7 The provisions of this Condition 27 shall apply during the continuance of this Contract and after its termination howsoever arising.

28. DATA PROTECTION

- 28.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Services under this Contract. For the purposes of any such Processing, the

Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.

- 28.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 28 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 28.3 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 28.4 The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 28.5 The Supplier must:
- 28.5.1 agree and comply with the terms of the data processing provisions set out in the Schedule (Data Protection);
 - 28.5.2 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the law;
 - 28.5.3 subject to Condition 28.5.2 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
 - 28.5.4 take all reasonable steps to ensure the reliability and integrity of any personnel of the Supplier or any of its agents or sub-contractors ("Supplier Personnel") who have access to the Personal Data and ensure that the Supplier Personnel:
 - (a) are aware of and comply with the Supplier's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant agent or sub-contractor;

- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

28.5.5 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

28.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.

28.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.

28.8 The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12- 23 of the GDPR. The Supplier must notify the Purchaser if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or

- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

28.9 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
- (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
- (d) supporting the Purchaser with preparation of a data protection impact assessment;
- (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

28.10 At the end of the provision of Services relating to processing the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

28.11 The Supplier must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Condition 28;
- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 28 and contribute as is reasonable to those audits and inspections;
- (c) inform the Purchaser, if in its opinion, an instruction from the Purchaser infringes any obligation under the Data Protection Laws.

- 28.12 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
- 28.13 If requested, the Supplier must make such records referred to Condition 28.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 28.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 28.14 with minimum disruption to the Supplier's day to day business.
- 28.15 In this Condition 28, the terms "Personal Data" and "Supervisory Authority" have the meanings given to them in the GDPR and the term "Data Subject Access Request" means a request by a data subject to exercise the right of access conferred by Article 15 of the GDPR.

29. WAIVER, REMEDIES AND SEVERABILITY

- 29.1 Any delay or inaction by the Purchaser or failure of the Purchaser to enforce any right under or provision of the Contract shall not be construed as a waiver or relinquishment of the future exercise of any such right or provision.
- 29.2 The rights, powers and remedies reserved to the Purchaser under any provision of the Contract shall be in addition and without prejudice to any other rights or remedies available to the Purchaser by statute, common law or otherwise.
- 29.3 A determination that any provision of the Contract (including any of these Conditions) is unenforceable or invalid shall not affect the enforceability or validity of any of the remainder of the Contract.

30. SUPREMACY OF THESE CONDITIONS

The Supplier accepts and agrees to adhere to these Conditions, which supersede and take precedence over any and all previous oral or written arrangements in connection with the Services and/or any other terms that the Supplier may seek to impose or incorporate, including any differing terms or conditions which may appear on the Supplier's acknowledgement forms or similar documents, or which might be implied by trade, custom, practice or course of dealing and shall be deemed to be the only terms tabled and binding in respect of the Contract. No deletions, modifications, variations, alterations of, or additions to, these to these Conditions shall be effective unless binding in writing and signed by both Parties.

SCHEDULE (Data Protection)

Data Processing provision as required by Article 28(3) GDPR.

This Schedule includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are [insert description here].

The nature and purpose of the Processing of Personal Data

[Include description here]

The type of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Condition 28 of the Contract.

February 2018

