

TERMS AND CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

These Terms and Conditions (“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.

1. DEFINITIONS

1.1 In these Conditions:

“Contract” means the contract between the Client and the Consultant consisting of the Order, these Conditions and any other documents (or parts thereof) specified in the Order, as varied (where applicable) pursuant to Condition 5;

“Client” 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;

“Consultant” means the person, firm or company to whom the Order is issued;

“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 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, trade-marks, 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 in connection with the Project by or on behalf of the Consultant;

“Order” means the order, letter of appointment or other document issued by the Client to the Consultant in respect of the Project;

“Parties” means the Client and the Consultant 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 Project is to be performed or the Services are to be provided, as specified in the Order;

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

“Project” means the services to be provided as specified in the Order;

“Services” means the services specified or referred to in the Order and/or as to be provided by the Consultant pursuant to the Contract;

“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 Client (including any timescales for completion of all or any part of the Project); and

“Supervisory Authority” has the meaning given in the Data Protection Laws.

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. THE PROJECT AND THE SERVICES

2.1 The Consultant shall carry out and complete the Project in accordance with the Contract and warrants to the Client that it will:

2.1.1 perform the Services with all the skill, care, diligence and professionalism expected of a leading consultant experienced in carrying out services of a similar size, scope and complexity to the Services;

- 2.1.2 use personnel who are suitably qualified and have the appropriate skills, experience perform the tasks assigned to them;
- 2.1.3 ensure that the Services are carried out in accordance with the Service Specifications and with best practice in the Consultant's industry, profession or trade; and
- 2.1.4 comply with the requirements of Condition 20.
- 2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals and in such form as the Client may from time to time require.
- 2.3 The Consultant 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 Project and/or any other terms that the Consultant may seek to impose or incorporate, including any differing terms or conditions which may appear on the Consultant'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.

3. CONSULTANT'S PERSONNEL

The Consultant shall make available for the purposes of the Project any individuals named on the Order 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 involved in the Project or any part of it, specifying in each case the capacities in which they are so involved 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 involved in 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.

- 3.1 The Consultant shall take the steps reasonably required by the Client to prevent unauthorised persons being admitted to the 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.
- 3.2 The decision of the Client 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 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 the Consultant by this Condition.

- 3.3 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

4. SECURITY AND ACCESS TO THE CLIENT'S PREMISES

- 4.1 Any access to, or occupation of, the Client's premises which the Client may grant the Consultant from time to time is on a non-exclusive licence basis free of charge. The Consultant must use the Client's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Client's premises to such individuals as are necessary for that purpose.
- 4.2 The Consultant must comply with the Client's policies concerning Personnel Security Standard checks and such modifications to those policies or replacement policies as are notified to the Consultant from time to time.
- 4.3 The Consultant must notify the Client of any matter or other change in circumstances which might adversely affect future Personnel Security Standard clearance.
- 4.4 At the Client's written request, the Consultant must provide a list of the names and addresses of all persons who may require admission to the Client's premises in connection with the Project, specifying the capacities in which they are involved with the Project and giving such other particulars as the Client may reasonably request.
- 4.5 The Consultant must ensure that any individual Consultant Representative entering the Client's premises has completed the process for obtaining Personnel Security Standard clearance. The Consultant acknowledges that the Client 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 Client's policies concerning visitor access, entry to the Client's premises may be granted to individual Consultant Representatives for the purposes of meetings, notwithstanding that the process for obtaining Personnel Security Standard clearance has not commenced or completed.
- 4.7 The Client may, by notice to the Consultant, refuse to admit onto, or withdraw permission to remain on, the Client's premises any Consultant Representative whose admission or continued presence would, in the opinion of the Client acting reasonably, be undesirable.
- 4.8 The Client must provide advice and assistance, acting reasonably, to the Consultant to facilitate the Consultant's compliance with this Condition.
- 4.9 All decisions of the Client under this Condition are final and conclusive.
- 4.10 Breach of this Condition by the Consultant is a material breach for the purposes of Condition 14.2 (Termination).

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

“Personnel Security Standard” means the Client’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.

“Consultant Representatives” means all persons engaged by the Consultant 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 Consultant);
- its agents, consultants and carriers; and
- any sub-contractors of the Consultant (whether approved under Condition 17 (Assignment and sub-contracting) or otherwise).’

5. CHANGE TO CONTRACT REQUIREMENTS

- 5.1 The Client may order any variation to any part of the Contract that for any reason shall in the Client’s opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Project and changes in quality, form, character, kind, timing, method or sequence of the Project.
- 5.2 Save as otherwise provided herein, no variation of the Project as provided for in Condition 5.1 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 Contractor 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.
- 5.3 Where any such variation of the Project made in accordance with Conditions 5.1 and 5.2 has affected or may affect the costs incurred by the Consultant in providing the Services, the Consultant will 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 providing the service) 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 the Client’s opinion, appropriate and reasonable in the circumstances.

6. FEES AND EXPENSES

- 6.1 The Client shall pay to the Consultant fees and expenses at the rate specified in the Order.
- 6.2 The Consultant shall be entitled to be reimbursed by the Client only for

expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.

- 6.3 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.
- 6.4 All invoices submitted by the Consultant must include:
- 6.4.1 the Client's purchase order number;
 - 6.4.2 the period the invoice covers;
 - 6.4.3 invoice number;
 - 6.4.4 the Consultant's VAT number;
 - 6.4.5 the amount before VAT, the amount of VAT, and the rate of VAT; and
 - 6.4.6 the date (tax point).

7. AUDIT

The Consultant shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Client of 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 the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

8. 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, 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 Bribery Act 2010.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 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 Consultant on behalf of the Client for use, or intended use, in relation to the performance by the Consultant of its obligations under the Contract are hereby assigned to and shall

vest in the Client absolutely.

- 9.2 The Consultant 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 9.1 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.
- 9.3 The Consultant hereby undertakes, at the request of the Client (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 9.1 and 9.2 above.
- 9.4 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.
- 9.5 The Consultant must not infringe any Intellectual Property Rights of any third party in carrying out the Project or otherwise performing its obligations under the Contract. The Consultant shall indemnify the Client against all actions, claims, demands, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition 9.5.
- 9.6 The provisions of this Condition 9 shall apply during the continuance of this Contract and after its termination howsoever arising.

10. INDEMNITIES AND INSURANCE

- 10.1 The Consultant shall indemnify and keep indemnified the Client, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence, breach of contract or other wrongful act of the Consultant, or the Consultant's employees, agents or sub-contractors.
- 10.2 The Client 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 Consultant acting in accordance with the Client's specific written instructions. This indemnity provision shall not apply if the Consultant-
 - (a) acts on the Client's specific written instructions but fails to notify the Client in accordance with Condition 24.11(c) (Data Protection) of this Contract; or
 - (b) fails to comply with any other obligation under the Contract.

- 10.3 The Consultant (if an individual) represents that the Consultant is regarded by both the Inland Revenue and the Department of Social Security 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.
- 10.4 The Consultant shall effect with an insurance company or companies acceptable to the Client a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Consultant contained in this Contract in at least the sum specified in the Order or the Service Specifications in respect of any one incident and unlimited in total, unless otherwise agreed by the Client in writing.
- 10.5 If requested, by the Client the Consultant shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

11. DISCRIMINATION

The Consultant 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 Client.

12. BLACKLISTING

The Consultant 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 Client to terminate the Contract.

13. CONFIDENTIALITY

- 13.2 The Consultant shall keep secret and not disclose and shall procure that the Consultant's employees, agents and sub-contractors shall keep secret and do not disclose any information of a confidential nature obtained by the Consultant by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 13.3 All information related to the Contract with the Consultant will be treated as commercial in confidence by the parties except that:
- (a) the Consultant may disclose any information as required by law or judicial order to be disclosed; and
 - (b) the Client may disclose any information as required by law or judicial order to be disclosed. Further, the Client may disclose all information obtained by the Client 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 Client shall, if the Client sees fit, disclose such information but is unable to impose any restrictions upon the information that the Client 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.

- 13.4 The provisions of this Condition 13 shall apply during the continuance of this Contract and for a period of five years following its termination howsoever arising.

14. TERMINATION

- 14.1 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 the Consultant's estate or a criminal bankruptcy order is made against the Consultant, or the Consultant 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 Consultant's 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) where the Consultant is a company, a limited liability partnership or other body corporate, if the Consultant ceases to trade or passes a resolution for winding-up 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 Consultant 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.
- 14.2 On the occurrence of any of the events described in Condition 14.1 (whether or not notified by the Consultant to the Client), or if the Consultant shall have committed a material breach of the 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 the Consultant 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 Client shall be entitled to terminate this Contract with immediate effect by notice to the Consultant.

- 14.3 The Client 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 Consultant 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 Consultant 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.

- 14.4 The Client may also terminate the Contract in the event of a failure by the Consultant to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.
- 14.5 In addition to rights of termination under Conditions 14.2, 14.3 and 14.4, the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 7 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.
- 14.6 Termination under Conditions 14.2, 14.3, 14.4 or 14.5 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 7 (Audit), 9 (Intellectual Property Rights), 10 (Indemnities and Insurance), 13 (Confidentiality), 24 (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.

15. RETURN OF DOCUMENTS

- 15.1 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 or any Government Department in connection with the Contract, or extracted from such documents, papers, materials or information.
- 15.2 If the Contract has been terminated pursuant to Condition 14.5, the Consultant may retain any documents papers, materials or information

which shall be required by the Consultant to prepare any report required under that paragraph. Promptly upon submission of the report to the Client, the Consultant will return any documents, papers, materials or information which the Consultant may have retained in terms of this paragraph.

16. 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 may become due, to the Consultant under this Contract or under any other agreement or contract with the Client.

17. ASSIGNATION AND SUB-CONTRACTING

- 17.1 The Consultant shall not assign or sub-contract all or any part of the Contract without the prior written consent of the Client. Sub-contracting of all or any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract.
- 17.2 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.
- 17.3 Where the Consultant enters into a sub-contract, it must ensure that a provision is included which:
- 17.3.1 requires payment to be made of all sums due by the Consultant 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 Client has made payment to the Client in respect of the Project and the sub- contractor's invoice relates to such Project then, to that extent, the invoice must be treated as valid and, provided the Consultant 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 Consultant, payment must be made to the sub-contractor without deduction;
- 17.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Client 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 Client; and
- 17.3.3 is in the same terms as that set out in this Condition 17.3 (including for the avoidance of doubt this Condition 17.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Consultant and sub-contractor as the case may be.
- 17.4 The Consultant shall also include in every sub-contract:
- 17.4.1 a right for the Consultant 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 14.3 occur; and

- 17.4.2 a requirement that the sub-contractor includes a provision having the same effect as 17.4.1 in any sub-contract which it awards.

In this Condition 17.4, 'sub-contract' means a contract between two or more contractors, at any stage of remoteness from the Client 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.

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

18. 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.

19. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Consultant an employee of the Client or the Crown.

20. COMPLIANCE WITH THE LAW ETC.

In carrying out the Project and otherwise when performing the Contract, the Consultant must comply in all respects with:

- 20.1 all applicable law;
- 20.2 any applicable requirements of regulatory bodies; and
- 20.3 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 Contractor under the same or similar circumstances.

21. DISPUTE RESOLUTION

- 21.1 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.
- 21.2 If the Dispute remains unresolved the Consultant or the Client 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 Consultant and the Client agree otherwise, the mediator will be nominated by CEDR. To initiate the mediation, the Client or the Consultant 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.
- 21.3 The following principles will apply to the mediation:
- 21.3.1 Unless the Client and the Consultant 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.
- 21.3.2 If the Consultant and the Client settle the dispute, the settlement agreement will be recorded in writing and be binding on both parties when it is signed by the Client’s and the Consultant’s duly authorised representatives.
- 21.3.3 If the Consultant and the Client cannot settle the Dispute, the Client and the Consultant may invite the mediator to provide a non-binding but informative written opinion if the Client and the Consultant 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 Consultant and the Client agree otherwise in writing.
- 21.4 If the Consultant and the Client fail to settle the Dispute by the conclusion of the mediation, the Consultant or the Client can refer the Dispute to be settled by arbitration. To do this, the Consultant or the Client must give written notice to the other asking for the arbitration.
- 21.5 If the Dispute is referred to arbitration:
- 21.5.1 the arbitration will be governed by the Arbitration (Scotland) Act 2010;
- 21.5.2 the matter will be considered by a sole arbitrator who will, unless the Consultant and the Client agree otherwise, be appointed by the President for the time being of the Law Society of Scotland; and
- 21.5.3 the arbitration will be governed by, and interpreted in accordance with, Scots law.
- 21.6 Unless the Client notifies the Consultant otherwise in writing, the Consultant’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 21.

21.7 Nothing in this clause 21 prevents:

21.7.1 the Consultant or the Client applying to an appropriate court for an interim order preventing the other from doing something or compelling the other to take particular action; or

21.7.2 the Consultant or the Client 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 Consultant or the Client; or
- (ii) the Consultant or the Client have brought court proceedings against a third party; and
- (iii) the Consultant or the Client reasonably consider, acting reasonably, that the subject matter of those court proceedings has a material connection with this appointment.

22. HEADINGS

The headings to Conditions shall not affect their interpretation.

23. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scots law and the Consultant 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 Client to take proceedings against the Consultant 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.

24. DATA PROTECTION

24.1 The Consultant acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Project under this Contract. For the purposes of any such Processing, the Parties agree that the terms of this Condition 24 will apply where the Consultant acts as the Data Processor and the Client acts as the Data Controller.

24.2 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 the Data Protection Laws. The provisions of this Condition 24 are without prejudice to any obligations and duties imposed directly on the Consultant under the Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.

- 24.3 The Consultant will, in conjunction with the Client and in its own right and in respect of the Project, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 24.4 The Consultant will provide the Client 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.
- 24.5 The Consultant must:
- 24.5.1 agree and comply with the terms of the data processing provisions set out in the Schedule (Data Protection);
- 24.5.2 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Client (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 Consultant is subject; in which case the Consultant must, unless prohibited by that law, inform the Client 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 Consultant's obligations under this Contract or as is required by the law;
- 24.5.3 subject to Condition 24.5.2 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Client's prior written consent;
- 24.5.4 take all reasonable steps to ensure the reliability and integrity of any personnel of the Consultant or any of its agents or sub-contractors ("Consultant Personnel") who have access to the Personal Data and ensure that the Consultant Personnel:
- (a) are aware of and comply with the Consultant's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Consultant 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 Client or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 24.5.5 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.

- 24.6 The Consultant shall not engage a sub-contractor to carry out Processing in connection with the Project without prior specific or general written authorisation from the Client.

In the case of general written authorisation, the Consultant must inform the Client of any intended changes concerning the addition or replacement of any other sub- contractor and give the Client an opportunity to object to such changes.

- 24.7 If the Consultant engages a sub-contractor for carrying out Processing activities on behalf of the Client, the Consultant 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 Consultant shall remain fully liable to the Client for the performance of the sub-contractor's performance of the obligations.

- 24.8 The Consultant must provide to the Client reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Consultant must notify the Client 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 Client from time to time.

- 24.9 Taking into account the nature of the Processing and the information available, the Consultant must assist the Client in complying with the Client'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 Client without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - (c) assisting the Client with communication of a personal data breach to a Data Subject;
 - (d) supporting the Client with preparation of a data protection impact assessment;
 - (e) supporting the Client with regard to prior consultation of the Supervisory Authority.
- 24.10 At the end of the Contract in relation to any processing carried out by the Consultant in respect of the Project, the Consultant must, on written instruction of the Client, delete or return to the Client all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 24.11 The Consultant must:
- (a) provide such information as is necessary to enable the Client to satisfy itself of the Consultant's compliance with this Condition 24;
 - (b) allow the Client, 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 24 and contribute as is reasonable to those audits and inspections;
 - (c) inform the Client if, in its opinion, an instruction from the Client infringes any obligation under the Data Protection Laws.
- 24.12 The Consultant must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Client containing the information set out in Article 30(2) of the GDPR.
- 24.13 If requested, the Consultant must make such records referred to Condition 24.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 24.14 The Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 24.13 with minimum disruption to the Consultant's day to day business.

- 24.15 In this Condition 24, 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.

25. WAIVER, REMEDIES AND SEVERABILITY

- 25.1 Any delay or inaction by the Client or failure of the Client to enforce 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.
- 25.2 The rights, powers and remedies reserved to the Client under any provision of the Contract shall be in addition and without prejudice to any other rights or remedies available to the Client by statute, common law or otherwise.
- 25.3 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.

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 Project:

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 Client

The obligations and rights of the Client as the Data Controller are set out in Condition 24 of the Contract.