

**CONDITIONS OF CONTRACT FOR THE PURCHASE OF CONSULTANCY SERVICES
(Non Works)**

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

In these Conditions:

- 'Client' means Registers of Scotland;
- 'Consultant' means the person or organisation to whom the Contract is issued;
- 'Project' means the services to be provided as specified in the Purchase Order;
- 'Premises' means the location where the Project is to be performed, as specified in the Purchase Order;
- 'Contract' means the contract between the Client and the Consultant consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Purchase Order;
- 'Purchase Order' means the document setting out the Client's requirements for the Contract.

2. THE PROJECT

- 2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.
- 2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.
- 2.3 The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 18.

3. CONSULTANT'S PERSONNEL

- 3.1 The Consultant shall make available for the purposes of the Project any individuals named on the Purchase 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 concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars, and evidence of identity and other supporting evidence, as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this paragraph.
- 3.2 The decision of the Client shall be final and conclusive as to whether any person is or is not to become involved in or to be removed from involvement in the Project, or as to the designation or approval of key personnel, or as to whether the Consultant has furnished the information or taken the steps required of him by this Condition.
- 3.3 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.
- 3.4 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.
- 3.5 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

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4 ASSIGNATION AND SUB-CONTRACTING

- 4.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to him under the Contract or these conditions.
- 4.2 Notwithstanding condition 4.1 of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of fees or any part thereof due to the Consultant under this Contract. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of fees or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary its arrangements for payment of fees or for handling invoices.
- 4.3 Where the Consultant enters into a sub-contract for the purpose of performing the Contract, the Supplier shall cause a term to be included in such sub-contract:
- 4.4 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.
- 4.4.1 which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, for the purpose of payment alone, where the Client has made payment to the Consultant and the sub-contractor's invoice includes Services in relation to which payment has been made by the Client then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction;
- 4.4.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Registers of Scotland 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 Head of Procurement Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh EH8 7AU; and
- 4.4.3 in the same terms as that set out in this clause 4.4 (including for the avoidance of doubt this clause 4.4.3) 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."

5 CHANGE TO CONTRACT REQUIREMENTS

- 5.1 The Client may order any variation to any part of the Project that for any other 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 Clause 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 Consultant shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 5.3 Where any such variation of the Project made in accordance with Clauses 5.1 and 5.2 has affected or may affect the costs incurred by the Consultant in providing the Project, 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.

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6 FEES AND EXPENSES

- 6.1 The Client shall pay to the Consultant fees and expenses at the rate specified in the Purchase 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 its 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 in arrears, for work completed to the satisfaction of the Client.
- 6.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 6.5 Notwithstanding Condition 15 of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 14 of this Contract and (ii) all the related rights of the Client under this Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary the Client's arrangements for payment of the fees or expenses or for handling invoices.

7 AUDIT

The Consultant shall keep and maintain until 2 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 Prevention of Corruption Acts 1889 to 1916.

9 PATENTS, INFORMATION AND COPYRIGHT

- 9.1 It shall be a condition of the Contract that, except to the extent that the Project incorporates designs furnished by the Client, nothing done by the Consultant in the performance of the Project shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Consultant shall indemnify the Client and the Crown against all actions, claims, demands, costs and expenses which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 9.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models, designs, whether in writing or on magnetic or other media:
- (a) furnished to or made available to the Consultant by the Client shall remain vested in the Crown absolutely,
 - (b) prepared by or for the Consultant for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Crown absolutely, and (without prejudice to

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Condition 14.2) the Consultant shall not, and shall procure that the Consultant's servants and agents shall not (except to the extent necessary for the implementation of this Contract.), without the prior written consent of the Client use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Consultant may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Consultant shall not refer to the Client or the contract in any advertisement without the Client's prior written consent.

- 9.3 The provisions of this Condition 8 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, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client or the Crown, its servants or agents in respect of any loss or damage or personal injury (including death) which directly 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 or other wrongful act of the Consultant, its servants or agents.
- 10.2 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.
- 10.3 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 the sum of £1 million at least in respect of any one incident and unlimited in total, unless otherwise agreed by the Client in writing.
- 10.4 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 DATA PROTECTION

- 12.1 The Consultant recognises that the Client is the Data Controller (in terms of the Data Protection Act 1998) of all information and data collected by the Consultant in the course of its duties under the Contract as the research is being carried out on the Client's behalf.
- 12.2 The Consultant will have due regard to the provisions of the Data Protection Act 1998 when carrying out the Project and comply with the provisions of the Act as if it was the Data Controller under its terms. However in recognition of the fact that the Consultant is not the Data Controller the operation of this clause shall in no way prevent, or be used by the Consultant to prevent the transfer of any or all personal data to the Client by the Consultant should the Client require such data.
- 12.3 The Consultant shall collect personal data in a way compliant with the provisions of the Data Protection Act 1998. The Consultant shall notify the data subjects, on or before the time of collection of any personal data, the reasons for the collection of the personal data, the use to which such data may be put, and that such data is collected on behalf of the Client and may be passed to the Client for their use in accordance with the reasons for collection given to the data subjects by the Consultant.
- 12.4 The Consultant shall ensure that only such of its employees who may be required by the Consultant to assist it in meeting its obligations under this Contract shall have access to the personal data. The Consultant shall ensure that all employees used by it to provide these research services have undergone training in the law of data protection and in the care and handling of personal data.
- 12.5 The Consultant undertakes to process personal data in accordance with the laws of the United Kingdom. Where data is transferred to any employee, representative or agent of the Consultant or to the Client, the

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Consultant will ensure that all reasonable safeguards are used to ensure that the data is transferred securely.

- 12.6 The Consultant hereby agrees to assist the Client with all subject information requests which may be received from the data subjects of the personal data.
- 12.7 The Consultant undertakes that it shall not use the personal data for any purposes which may be inconsistent with those notified to the data subjects on or before the time of collection.
- 12.8 The Consultant undertakes not to disclose the personal data to a third party in any circumstances other than at the specific request of the Client.
- 12.9 The Consultant will allow its data processing and storage facilities, procedures and documentation to be subjected for scrutiny by the auditors or representatives of the Client in order to ascertain compliance with the relevant laws of the United Kingdom and the terms of this Contract.
- 12.10 The Consultant warrants that it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised access, loss, disruption, theft, use or disclosure of the personal data. The Consultant warrants to the Client that in relation to this Contract it shall comply strictly with all requirements of the Data Protection Act 1998 together with any subsequent re-enactment.
- 12.11 The Consultant shall indemnify the Client against all losses, costs, expenses, damages, liabilities, demand claims, actions or proceedings which the Client may incur arising out of any breach by the Consultant of the above clauses.
- 12.12 In this Condition 12 any reference to "data", "personal data", "data subject" and "processing" shall have the meaning given in Section 1 of the Data Protection Act 1998.

13 DISCRIMINATION

The Consultant shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Consultant shall take all reasonable steps to secure the observance of this Condition by all employees and representatives of the Consultant.

14 OFFICIAL SECRETS ACTS, CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION

- 14.1 The Consultant undertakes to abide and procure that its employees abide by the provisions of The Official Secrets Acts 1911 to 1989.
- 14.2 The Consultant shall keep secret and not disclose and shall procure that its employees 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.
- 14.3 All information related to the Contract with the Consultant will be treated as confidential by the Client except that:
- (a) The Consultant may disclose any information as required by law or judicial order to be disclosed.
- (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

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- restrictions upon the information that the Client provides to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MP's). Such disclosure shall not be treated as a breach of this agreement.
- 11.4 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 14.5 All information related to the Contract with the Consultant will be treated as commercial in confidence by the Purchaser except that:
- 14.6 The Consultant may disclose any information as required by law or judicial order to be disclosed. Under the terms of the Freedom of Information (Scotland) Act 2002 the Purchaser may be required to publicly disclose any information as requested by the Commissioner or, where disclosure is required by other Acts or judicial order, further they may disclose all information obtained by them 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 they see fit disclose such information but is unable to impose any restrictions upon the information that they provide to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MP's) such disclosures shall not be treated as a breach of this agreement.
- 14.7 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

15 TERMINATION

- 15.1 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 he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
 - (b) where the Consultant is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or
 - (c) where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 15.2 On the occurrence of any of the events described in paragraph 15.1, or if the Consultant shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Client in writing to do so, or, where the Consultant is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Client shall be entitled to hold this Contract terminated with immediate effect, regardless of notice to that effect being served.
- 15.3 In addition to its rights of termination under paragraph 15.2, 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.

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- 15.4 Termination under paragraphs 15.1 to 15.3 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 10 and 14

14. RECOVERY OF SUMS DUE

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

16. RETURN OF DOCUMENTS

- 16.1 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.
- 16.2 Where the Contract has been terminated pursuant to paragraph 15.3, the Consultant may retain any documents papers, materials or information which shall be required by him to prepare any report required under that paragraph. Promptly upon submission of any 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.

17. 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 telex, teletext, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefore, 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.

18. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Consultant the servant of the Client or the *Crown*.

19. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decisions of the Client is under the Contract to be final and conclusive, shall be referred to a sole arbiter to be mutually chosen by the parties or, failing agreement (within 28 days of either party requesting the other to do so, nominated by the President of the Law Society of Scotland for the time being on the application of either party. The arbitration shall be seated in Scotland and the Arbitration (Scotland) Act 2010 shall apply.

20. HEADINGS

The headings to Conditions shall not affect their interpretation.

21. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish 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.

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SUPPLEMENTARY NOTICE

LATE PAYMENT OF INVOICES

Suppliers to the Registers of Scotland are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Financial Accounting Director, Room No. 546, Meadowbank House, 153 London Road, Edinburgh EH8 7AU. Telephone 0131-659-6111. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT