

REGISTERS OF SCOTLAND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES RoSTC3

These Conditions may be varied only by 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

In these Conditions:

- 'Baseline Personnel Security Standard' means the pre-employment screening of civil servants, members of the armed forces, temporary staff and government contractors as set out in "Government Baseline Personnel Security Standard v4.0 April 2014" (as the same may be modified or replaced from time to time)
- "Charges" means the charges payable for the Services as specified in the Purchase Order
- 'Contract' means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and other documents (or parts thereof) specified in the Purchase Order
- "Data Protection Legislation" means (i) unless and until it is no longer directly applicable in the UK, the General Data Protection Regulation (*Regulation (EU) 2016/679*) and any applicable national implementing laws, as amended from time to time (ii) the Data Protection Act 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; and (iii) any applicable laws relating to processing of personal data and privacy.
- "Date of Delivery" means that date by which the Goods must be Delivered to the Purchaser, as specified in the Purchase Order;
- "Deliver" means hand over the Goods to the Purchaser at the address and on the date specified in the Purchase Order. Delivered and Delivery shall be construed accordingly.
- "Dispute Resolution Procedure" means the dispute resolution procedure set out in Condition 28.
- "Expiry Date" means the date for expiry of the Contract as set out in the Purchase Order.
- "Goods" means the goods to be provided by the Supplier to the Purchaser as specified in the Purchase Order;
- "Personnel" means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents and sub-contractors used in the performance of its obligations under the Contract.
- "Procurement Rules" means all procurement legislation and statutory guidance applicable in Scotland at the relevant time, including (without limitation) the Public Contracts (Scotland) Regulations 2015 and the Procurement Reform (Scotland Act) Act 2014.

- 'Premises' means the location where the Services are to be performed and the Goods are to be Delivered, as specified in the Purchase Order;
- 'Purchase Order' means the document setting out the Purchaser's requirements for the Contract and the specification of the Services (including as to quantity, description and quality).
- 'Purchaser' means The Keeper of the Registers of Scotland;
- "Registers of Scotland Data" means all data, text, drawings diagrams or images (together with any database made up of any these, including without limitation, any registers owned by or under the control of the Purchaser) which are embodied in any electronic or tangible medium, and which are supplied to, or in respect of which access is granted to, the Supplier by the Purchaser under this Contract , or which the Supplier is required to generate under the Contract
- 'Services' means the services to be provided by the Supplier to the Purchaser as specified in the Purchase Order.
- "Schedule" means the Data Protection Schedule referred to in Condition 23.
- 'Supplier' means the person, firm or company who provides the Services under the Contract.

2 TERM

- 2.1 The Contract shall take effect on the date specified in the Purchase Order and shall expire on the Expiry Date unless terminated early in accordance with the provisions of this Contract.

3 SUPPLY OF GOODS

- 3.1 The Supplier shall supply the Goods to the Purchaser subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier shall co-operate with the Purchaser in all matters relating to the supply of Goods and comply with all the Purchaser's instructions.
- 3.3 The Supplier shall supply the Goods in conformity with the quantity, quality and specification set out in the Purchase Order. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Contract shall:
- 3.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
 - 3.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - 3.3.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;

3.3.4 be free from design defects;

3.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Purchaser of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause

3.4 The Supplier shall not unreasonably refuse to take any steps necessary to comply with any request by the Purchaser to inspect or test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and to provide the Purchaser with any facilities reasonably required by the Purchaser for inspection or testing.

3.5 If as a result of inspection or testing the Purchaser is not satisfied that the goods will comply in all respects with the Contract, and the Purchaser so informs the Supplier within seven days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.

4 CANCELLATION

4.1 The Purchaser shall have the right to cancel an order for Goods, or any part of the Goods, which have not yet been Delivered to the Purchaser. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Purchaser shall pay such Charges as may be due for (i) Goods which have been Delivered to the Purchaser; (ii) Goods which, on the deemed date of service of the notice of cancellation, are already in transit, and (iii) the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt the Purchaser shall not be liable for any loss of anticipated profits or any consequential loss.

5 DELIVERY

5.1 The Supplier shall Deliver the Goods to the Purchaser on or by the Date of Delivery. Unless otherwise agreed in writing by the Purchaser, Delivery shall be to the address specified in the Purchase Order. Delivery of the Goods shall be completed once the unloading of the Goods from the transporting vehicle at the Delivery address has taken place and the Purchaser has signed for the Delivery.

5.2 The time of delivery of the Goods is of the essence of the Contract.

5.3 Any access to the Purchaser's premises and any labour and equipment that may be provided by the Purchaser in connection with Delivery of the Goods shall be provided without acceptance by the Purchaser of any liability in respect of any claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Purchaser or its servant or agent. The Supplier shall indemnify the Purchaser in respect of any claims, demands, losses, charges, costs and expenses, which the Purchaser may incur as a result of or in connection with any damage or injury occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier.

- 5.4 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered. For the avoidance of doubt, the signing of a delivery note by the Purchaser is not an acknowledgement of the condition or quantity of the Goods. The Purchaser shall not be deemed to have accepted the Goods until the Purchaser has had a reasonable time to inspect the Goods following Delivery.
- 5.5 Unless otherwise stipulated by the Purchaser in the Purchase Order, Deliveries shall only be accepted by the Purchaser during normal business hours.
- 5.6 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, the Purchaser shall be entitled:
- 5.6.1 to terminate the Agreement;
 - 5.6.2 to request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Purchaser;
 - 5.6.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 5.6.4 to buy the same or similar Goods from another supplier and
 - 5.6.5 to recover any expenses incurred in respect of buying the Goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

6 RISK AND OWNERSHIP

- 6.1 Without prejudice to any other rights or remedies of the Purchaser, title and risk in the Goods shall pass to the Purchaser when Delivery of the Goods is complete.

7 LABELLING AND PACKAGING

- 7.1 The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Purchase Order, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this Condition 7.1
- 7.2 The Supplier shall use its best endeavours to ensure that all packaging is made from recycled materials and/or is recyclable or can be incinerated for energy recovery.
- 7.3 The Supplier shall ensure that any hazardous Goods have prominent and suitable, warnings and are handled by appropriately trained personnel in compliance with statutory requirements.

8 SUPPLY OF SERVICES

- 8.1 The Supplier shall supply the Services to the Purchaser for the duration of the Contract, subject to and in accordance with the term and conditions of the Contract.
- 8.2 In supplying the Services, the Supplier shall:
- 8.2.1 perform the Services with all due skill, care and diligence in accordance with good industry practice in the Supplier's industry, profession or trade, and to the Purchaser's reasonable satisfaction;
 - 8.2.2 use Personnel who are suitably skilled and experienced to perform the Services, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - 8.2.3 ensure that the Services shall conform in full with the requirements and specifications set out in the Contract. Time of delivery of the Services is of the essence of the Contract;
 - 8.2.4 comply with all applicable laws; and
 - 8.2.5 provide all plant, equipment, tools and materials as are required to provide the Services.
- 8.3 The Supplier is deemed to have inspected the Premises before accepting a Purchase Order, or submitting a quote or tender (as applicable), and to be satisfied in relation to all matters connected with the provision of the Services at the Premises. The Purchaser shall, at the request of the Supplier, grant such access to the Premises as may be reasonable for this purpose.

9 ACCESS TO PREMISES

- 9.1 If necessary, the Purchaser shall provide the Supplier with reasonable access at all reasonable times to the Premises for the purpose of supplying the Services.
- 9.2 The Purchaser shall be responsible for maintaining the security the Premises in accordance with its standard security requirements. While on the Premises the Supplier shall, and shall procure that all Personnel shall, comply with all the Purchaser's security requirements (including the carrying, display and return of security passes).
- 9.3 The Supplier shall:
- 9.3.1 comply with the Baseline Personnel Security Standard;
 - 9.3.2 ensure that all Personnel requiring access to the Premises have completed the process for obtaining Baseline Personnel Security Standard clearance and promptly notify the Purchaser of any matter or change of circumstance which may adversely affect any Personnel Baseline Personnel Security Standard clearance;
 - 9.3.3 On request, provide the Purchaser with a list of the names and addresses (and any other relevant information) of all persons who may require access to the Premises in connection with this Contract

- 9.3.4 comply with, and ensure that its Personnel comply with, all rules, regulations and requirements reasonably specified by the Purchaser.
- 9.4 If the Supplier supplies all or any of the Services at or from the Premises, on completion of the Services or termination or expiry of the Contract (whichever is the earlier) the Supplier shall vacate the Premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Premises which is caused by the Supplier or any Personnel, other than fair wear and tear.

10 MATERIALS AND EQUIPMENT

- 10.1 The Supplier shall supply, and maintain in a safe and serviceable condition, all materials, plant and equipment required to provide the Services.
- 10.2 The Supplier shall obtain the prior consent of the Purchaser before delivering any materials, plant and equipment to the Premises. The Supplier shall be responsible for the security of all such materials, plant and equipment, and the Purchaser shall have no liability for any loss of or damage to any property belonging to the Supplier or any Personnel unless, and to the extent that, the Supplier can show that such loss or damage was caused or contributed to by the Purchaser or any of its employees.
- 10.3 If requested by the Purchaser, the Supplier shall immediately remove from the Premises any materials, plant or equipment which the Purchaser considers to be hazardous or noxious and shall replace them with a suitable substitute.
- 10.4 Any materials and equipment provided to the Supplier by the Purchaser free of charge for use in the provision of the Services shall remain the property of the Purchaser and shall be used by the Supplier solely in connection with this Contract. Under no circumstances shall the Supplier have a lien or any other interest in such materials and equipment. If practicable, such materials and equipment should be stored separately but in any event the Supplier shall ensure that they are clearly identified as belonging to the Purchaser. The materials and equipment shall be returned promptly to the Purchaser on expiry or earlier termination of the Contract.
- 10.5 Materials and equipment supplied by the Purchaser shall be deemed to be in good condition when received by the Supplier unless the Purchaser is notified otherwise in writing within 5 days. The Supplier shall reimburse the Purchaser for any loss or damage to the materials and equipment (other than fair wear and tear arising from normal and proper use).

11 CHANGE CONTROL

- 11.1 Subject always to compliance with the applicable Procurement Rules (of which the Purchaser shall be the sole judge), the Purchaser may at any time request the Supplier to modify any aspect of the Services, reduce the Services or to provide

additional services. The request will normally be in writing (“the Contract Change Notice”) except in relation to minor or non-material changes, where the request may be given orally by the Purchaser. The Contract Change Notice will provide the Supplier with full particulars of any requested change and any further information it may reasonably require to enable it to provide a written estimate of the impact of the change (“the Estimate”).

- 11.2 As soon as practicable, and in any event within 10 working days of receipt of the Contract Change Notice, the Supplier will deliver the Estimate to the Purchaser, which will include details of:
- 11.1.1 any reduction or increase in the Charges in respect of the change;
 - 11.1.2 any impact on the provision of the Services
- 11.3 As soon as practicable after the Purchaser receives the Estimate, the Purchaser will discuss and agree with the Supplier the issues set out in the Estimate, including any change to the Charges. In such discussions the Purchaser may modify the Contract Change Notice, and the Supplier will advise of any consequential changes to the Estimate.
- 11.4 If the contents of the Estimate are not agreed within a reasonable period of time then any dispute may, at the Purchaser’s option, be determined in accordance with the Dispute Resolution Procedure.
- 11.5 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined in accordance with Dispute Resolution Procedure, the Purchaser will either:
- 11.5.1 confirm in writing acceptance of the Estimate; or
 - 11.5.2 withdraw the Contract Change Notice
- 11.6 If the Estimate is accepted then the Change, including any adjustments to the Services and/or the Charges will be implemented by the parties as soon as practicable or on the date specified by the Purchaser in the Change Notice.
- 11.7 If the Purchaser does not confirm the Estimate in writing within 20 working days of the contents of the Estimate having been agreed or determined then the Contract Change Notice will be deemed to have been withdrawn.
- 11.8 For the avoidance of doubt, the Supplier will comply with any minor or non-material changes to the Services which the Purchaser may request. Such changes will be effective immediately in accordance with the terms of any oral or written notification provided by the Purchaser to the Supplier, and will not be subject to the Change Control procedures set out in this Condition 11.

12 SUPPLIER'S STATUS

- 12.1 The Supplier shall at all times act as an independent contractor. The Supplier shall not (and shall procure that its Personnel do not) act in any way which may give the

impression to any other person that it is the partner, employee, agent or representative of the Purchaser.

13 SUPPLIER'S PERSONNEL

- 13.1 If the Purchaser reasonably considers that any of the Personnel are unsuitable to undertake work in respect of the Contract, the Purchaser may give the Supplier written notice that any of its Personnel are not to be admitted to or are to be removed from the Premises or are not to become involved in or are to be removed from involvement in the performance of the Contract, and 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.
- 13.2 The decision of the Purchaser shall be final and conclusive as to whether any Personnel are to be admitted to or removed from the Premises or removed from involvement in the performance of the Contract. The Supplier must ensure that it continues to carry out the Services on time and as specified in the Contract, and will not be entitled to any additional costs which may arise out of compliance with this Condition.
- 13.3 Key Personnel will be those of the Supplier's Personnel (if any) specified as such in the Contract as being essential to the proper provision of the Services, and/or any of the Supplier's Personnel which the Purchaser notifies to the Supplier in writing during the Contract are to be treated as Key Personnel.
- 13.4 The Key Personnel will be made available by the Supplier to carry out the Services and the Supplier will not make any change or replacement to Key Personnel (unless due to long term sickness, maternity/paternity leave, termination of employment, or other extenuating circumstance) unless the Purchaser has agreed to that change or replacement. Any replacement will be of at least equal status and equivalent experience and skills. The Supplier will notify the Purchaser as soon as it becomes aware that any change or replacement to Key Personnel may be required.

14 COMPLIANCE

- 14.1 The Supplier shall:
- 14.1.1 perform the Services whilst on the Premises in a safe manner and in a way which will not cause any risk to the health or safety of any of the Purchaser's employees or any other persons. The Supplier will comply with all relevant health & safety statutory requirements, codes of practice and the Purchaser's health and safety policies (available on request).
- 14.1.2 immediately inform the Purchaser of any health and safety hazard or any incident occurring in the performance by the Supplier of the Services at the Premises where that incident causes any personal injury or damage to property which may give rise to personal injury.

- 14.2 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. The Supplier shall take all reasonable steps to ensure observance of this Condition 9.2 by all Personnel.
- 14.3 The Supplier shall
- 14.3.1 comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the goods or any other matter which is subject to the Contract.
- 14.3.2 where possible, ensure that any materials use in the delivery of the Services are able to be re-used, re-cycled or incinerated for energy recovery, and make every effort to reduce the amount of materials used and ensure that the provision of the Services minimises the impact on the environment.
- 14.4 The Supplier shall comply with, and shall ensure that all Personnel comply with, the provisions of the Official Secrets Acts 1911 to 1989.

15 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE

- 15.1 In consideration of the supply of the Services by the Supplier, the Purchaser shall pay the Charges. Unless otherwise agreed in writing by the Purchaser, the Charges as set out in the Purchase Order shall include every cost and expense directly or indirectly incurred by the Supplier in connection with the performance of the Services.
- 15.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 15.3 The Supplier shall invoice the Purchaser as specified in the Purchase Order. Each invoice shall include such supporting information as is reasonable required by the Purchaser to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period. , Payment of all sums properly due will be made by the Purchaser within 30 days of receipt of a valid and undisputed invoice.
- 15.4 If there is a dispute between the Parties as to the amount invoiced, the Purchaser shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services. Any disputed amounts may, at the Purchaser's option, be referred to the Dispute Resolution Procedure.
- 15.5 If a valid and undisputed invoice is not paid by the Purchaser by the due date, the Supplier is requested to address complaints regarding late payment of invoices in the first instance to the addressee of the invoice and, in the second instance to the Financial Accounting Director, Meadowbank House, 153 London Road, Edinburgh EH8 7AU. Interest shall be payable by the Purchaser on the late payment of any undisputed sums due and properly invoiced at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

- 15.6 The Purchaser shall be entitled to set off against the Charges, or against any sums owed to the Supplier under any other agreement or contract with the Purchaser, any sums owed to the Purchaser by the Supplier.

16 REPORTING AND AUDIT

- 16.1 The Supplier shall:

16.1.1 attend performance review meetings with the Purchaser at the frequency and times specified by the Purchaser and shall ensure that its representatives are suitably qualified to attend such meetings; and

16.1.2 submit progress reports to the Purchaser at the times and in the format specified by the Purchaser.

- 16.2 The Supplier shall keep and maintain until 5 years after the Contract has been completed (or such longer or shorter period as may be agreed between the parties) full and accurate records 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 reasonably be required by the Purchaser in connection with the Contract.

- 16.3 The provisions of this Condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

17 CORRUPT GIFTS OR PAYMENTS

- 17.1 The Supplier shall not offer or give, or agree to give, to any 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 Contract 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..

- 17.2 The Supplier must not commit or attempt to commit any offence:

17.2.1 under the Bribery Act 2010; or

17.2.2 of fraud, uttering, or embezzlement at common law.

- 17.3. Breach of this Condition 17 is a material default which shall entitle the Purchaser to terminate the Contract with immediate effect.

18 INTELLECTUAL PROPERTY RIGHTS

- 18.1 In this Condition “Intellectual Property Rights” means copyright, patents, trademarks, design rights (whether registerable or otherwise), database rights, domain names, trade or business names, moral rights and other similar rights or obligations.
- 18.2 All Intellectual Property Rights in any materials provided by the Purchaser to the Supplier for the purposes of this Contract shall remain the property of the Purchaser but the Purchaser hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Supplier to perform its obligations under the Contract.
- 18.3 All Intellectual Property Rights in any materials created or developed by the Supplier pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Supplier.
- 18.4 The Supplier hereby grants to the Purchaser:
- 18.4.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the materials created or developed pursuant to the Contract and any Intellectual Property Rights arising as a result of the provision of the Services; and
- 18.4.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- (a) any Intellectual Property Rights vested in or licensed to the Supplier on the date of the Contract; and
 - (b) any intellectual property rights created during the Contract period but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services

including any modifications to or derivative versions of any such Intellectual Property Rights, which the Purchaser reasonably requires in order to exercise its rights and take the benefit of the Contract and the Services provided.

- 18.5 The Supplier shall indemnify, and keep indemnified, the Purchaser in full against all costs, expenses, damages and losses (whether direct or indirect), including any reasonable legal and other professional fees awarded against or incurred or paid by the Purchaser as a result of or in connection with any claim made against the Purchaser for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any of its Personnel.

19 LIABILITY

- 19.1 Neither party excludes or limits liability to the other party for:
- (a) death or personal injury caused by its negligence;

- (b) fraud or fraudulent misrepresentation by it; or
 - (c) any other matter which, by law, may not be excluded or limited
- 19.2 Subject always to Conditions 19.1 and 19.5 the annual aggregate liability of the Supplier under or in connection with this Contract shall not exceed:
- 19.2.1 for all defaults resulting in direct loss to the Purchaser's property (including technical infrastructure, assets or equipment but excluding IPR and Registers of Scotland Data) the sum of []
 - 19.2.2 for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Registers of Scotland Data or any copy of such Data, the sum of []
 - 19.2.3 in respect of all other defaults, claims, losses or damages howsoever caused, whether arising from breach of contract, negligence, breach of statutory duty or otherwise, a sum equal to 125% of the annual Charges paid or payable to the Supplier
- 19.3 The Supplier's liability under the indemnity in Condition 18.5 shall be unlimited.
- 19.4 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Purchaser if and to the extent that it is caused by the negligence or wilful misconduct of the Purchaser or by breach by the Purchaser of its obligations under the Contract.
- 19.5 In no event shall the Supplier be liable to the Purchaser for any:
- (a) loss of profits, business, revenue or goodwill; and/or
 - (b) indirect or consequential loss or damage;
- providing however that the Supplier shall be liable to the Purchaser for any additional costs incurred by the Purchaser in accordance with Condition 24.4
- 19.6 The Supplier shall (and shall ensure that any subcontractor shall) have in force insurance with a reputable insurance company to an adequate level of cover in respect of all risks which may be incurred by the Supplier arising out of the Contract, including death or personal injury, loss or damage to property or any other loss. On request the Supplier shall immediately show to the Purchaser the insurance policy(s) or a broker's verification of insurance to demonstrate that appropriate cover is in place, together with evidence that the most recent premiums have been paid.

20 FORCE MAJEURE

- 20.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the party affected. Each party shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue

for a continuous period of more than [two months], either party may terminate the Contract by written notice to the other Party

21 BLACKLIST

- 21.1 The Supplier must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities.
- 21.2 Breach of this Condition 21 is a material default which shall entitle the Purchaser to terminate the Contract with immediate effect.

22 CONFIDENTIALITY

- 22.1 The Supplier shall keep secret and not disclose and shall procure that all Personnel keep secret and do not disclose any Purchaser's or third party's information of a confidential nature obtained by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 22.2 The Supplier will take all reasonable precautions to prevent the loss of such confidential information including, without limitation, only taking such copies of confidential information as are reasonably necessary for the performance of the Contract. The Supplier shall inform the Purchaser immediately if any of the Purchaser's confidential information is lost or mislaid.
- 22.3 The Supplier acknowledges that the Purchaser is subject to obligations under the Freedom of Information (Scotland) Act 2002 ("FOISA") and the Environmental Information Regulations 2004 ("EIR"). The Supplier will assist and co-operate with the Purchaser (at the Supplier's expense) to enable the Purchaser to comply with these disclosure requirements. The Supplier acknowledges that the Purchaser may be required to disclose information held by the Purchaser in relation to the Supplier, the Contract or any other recorded information to anyone who makes a valid request under FOISA. Information held by the Purchaser may only be withheld as a result of the exemptions in FOISA.
- 22.4 The Supplier may designate information provided to the Purchaser as "confidential" or "commercially sensitive" however the Supplier acknowledges that the Purchaser may still be obliged to disclose such information in accordance with Condition 24.3. The Purchaser shall take reasonable steps, where appropriate, to give the Supplier advance notice of such disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure
- 22.5 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. Such disclosure shall not be treated as a breach of this Contract

22.6 The provisions of this Condition 22 shall apply during the continuance of this Contract and after its termination howsoever arising.

23 DATA PROTECTION

23.1 For the purposes of this Condition 23, the terms “Data Processor”, “Personal Data”, and “Processing” will have the meanings prescribed in Data Protection Legislation

23.1 Both parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Contract.

23.2. Notwithstanding the general obligation in Condition 23.2, where the Supplier is Processing Personal Data as a Data Processor on behalf of the Purchaser then the provisions of the Schedule shall apply, and the Schedule is incorporated into and forms part of this Contract.

24 TERMINATION

24.1 The Purchaser shall be entitled to terminate this Contract at any time by giving to the Supplier not less than 30 days’ written notice to that effect.

24.2 Without prejudice to any other right or remedy it might have, the Purchaser may terminate the Contract by written notice to the Supplier with immediate effect if the Supplier:

24.2.1 is in material breach of any obligation under the Contract which is not capable of remedy;

24.2.2 repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;

24.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

24.2.4 undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;

24.2.5 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this Condition 24.2.5 in consequence of debt in any jurisdiction; or

24.2.6 fails to comply with legal obligations in the fields of environmental, social or labour law.

24.3 The Purchaser may also terminate the Contract in the event that:

24.3.1 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;

25.3.2 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

24.3.3 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.

24.4 If the Purchaser terminates the Contract in accordance with Condition 24.2, then, without prejudice to any other of its 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 therefore in any payment subsequently made to the Supplier) all 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.

24.5 Upon termination or expiry of the Contract, the Supplier shall:

24.5.1 give all reasonable assistance to the Purchaser and any incoming supplier of the Services; and

24.5.2 return all requested documents, information and data to the Purchaser as soon as reasonably practicable.

24.6 Termination under Conditions 24.1, 24.2 and 24.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser.

25 BREXIT

25.1 If a Brexit Trigger Event occurs, either party may:

25.1.1 subject always to Condition 24.3.1, require the other party to negotiate in good faith an amendment to this Contract to alleviate the Brexit Trigger Event; and

- 25.1.2 if no such amendment is made to this agreement within 30 days, terminate this agreement by giving the other party not less than 30 days' written notice.
- 25.2 If the Supplier is requesting a variation in the Charges as a consequence of a Brexit Trigger Event then the Supplier must submit written evidence of the justification for any requested increase including:
- 25.2.1 a breakdown of the profit and cost components that comprise the relevant Charges;
- 25.2.2 details of the movement in the different identified cost components of the relevant Charges;
- 25.2.3 reasons for the movement in the different identified cost components of the relevant Charges; and
- 25.2.4 evidence that the Supplier has attempted to mitigate against the increase in the relevant cost component
- 25.3 Brexit Trigger Event means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union
- 25.3.1 a substantial adverse impact on a party's ability to perform the Contract in accordance with its terms and the law;
- 25.3.2 an increase in the costs incurred by a party in performing the agreement of at least []%

26 ASSIGNATION AND SUB-CONTRACTING

- 26.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to him under the Contract.
- 26.2 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 on request as soon as reasonably practicable.
- 26.3 Where the Supplier 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:
- 26.3.1 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 Purchaser has made payment to the Supplier and the sub-contractor's invoice includes Services in relation to which payment has been made by the Purchaser 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;

26.3.2 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

26.3.3 in the same terms as that set out in this Condition 27.3 (including for the avoidance of doubt this Condition 27.3.3) 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.

27 NOTICES

27.1 Any notice to be given under the Contract shall be in writing and may be served by personal delivery, first class recorded or e-mail to the address of the relevant party set out in the Purchase Order, or such other address as that party may from time to time notify to the other party in accordance with this Condition:

27.2 Notices served as above shall be deemed to have been received:

27.2.1 if delivered personally, at the time of delivery

27.2.2 in the case of first class recorded post 48 hours from the date of posting

27.2.3 in the case of an email when sent unless an error message is received.

28 DISPUTE RESOLUTION

28.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.

28.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in Condition 28.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

28.3 If the parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

29 REGISTERS OF SCOTLAND DATA

29.1 The Supplier shall not store, copy, disclose, or use Registers of Scotland Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Purchaser.

- 29.2 The Supplier shall take reasonable precautions for preserving the integrity of Registers of Scotland Data and preventing the corruption or loss of Registers of Scotland Data. The Supplier shall comply with any obligations it may have in relation to the secure storage of Registers of Scotland Data and secure back-ups of all Registers of Scotland Data as set out in the Purchase Order or as otherwise agreed by the parties.
- 29.3 In the event of any loss or damage to the Registers of Scotland Data the Supplier shall use all reasonable endeavours to restore the lost or damaged Registers of Scotland Data from the latest back-up of such Registers of Scotland Data maintained by the Supplier in accordance with its obligations referred to in Condition 23.2 above.
- 29.4 If at any time the Supplier suspects or has reason to believe that Registers of Scotland Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify Registers of Scotland immediately

30 GOVERNING LAW

- 30.1 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.

31 TUPE

- 31.1 The Supplier recognises 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 another supplier on the expiry of the Contract. In the event that TUPE is deemed to apply then the remaining provisions of this Condition 31 shall have effect.
- 31.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract 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 the total number of its employees engaged in providing the Services in relation to the Contract and employee liability information (within the meaning of TUPE) in respect of those employees.
- 31.3 The Supplier shall permit the Purchaser to use the employee liability information 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 any replacement supplier to communicate with and meet the affected employees and/or their representatives.
- 31.4 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 employee information permitted under this Condition 31.

- 31.5 In the event that the information provided by the Supplier in accordance with this Condition 31 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 promptly 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 employee information.
- 31.6 The provisions of this Condition 31 shall apply during the continuance of this Contract and after its termination howsoever arising.