SCOTTISH COURTS AND TRIBUNALS SERVICE

SCTS TC 7

CONDITIONS OF CONTRACT FOR SOCIAL RESEARCH

This Agreement may only be varied with the written agreement of the Client. No terms or conditions put forward at any time by the Contractor shall form any part of this Agreement unless specifically agreed in writing by the Client.

AGREEMENT

BETWEEN:

**THE SCOTTISH COURTS AND TRIBUNALS SERVICE**, established by the Judiciary and Courts (Scotland) Act 2008 and having a place of business at Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, on behalf of [INSERT] (**“the Client**”);

and

**[NAME],** [design Contractor, specifying business address / registered office, company number if applicable etc] (**“the Contractor”**).

WHEREAS:

1. The Client requires research to be conducted into [INSERT], as more particularly described in the Specification.
2. The Client issued an Invitation to Tender to the Contractor on [INSERT] inviting the Contractor to submit a proposal for the carrying out of the research described in the Specification.
3. On [**insert date**] the Contractor submitted the Contractor’s Proposal in response to the Client’s Invitation to Tender.

**NOW IT IS HEREBY AGREED** as follows:

DEFINITIONS

* 1. In this Agreement, the following terms shall, unless the context requires otherwise, have the following meanings:

*“Client’s Anti Slavery and Human Trafficking Policy”* means the Anti Slavery and Human Trafficking Policy of the Client, as may be in place and/or updated from time to time;

*“Change in Law”* means a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party;

*‘Completion Date’* means [INSERT] or such other date as may be agreed in writing between the parties;

‘*Contractor’s Proposal’* means the Contractor’s proposal, a copy of which is set out in the Schedule Part 2;

*“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Requests”* 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 2018 and any statutory modification or re-enactment thereof and the GDPR;

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

*“Law”* means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, rule of common law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

*‘Price’* means the price specified in the Contractor’s price schedule, a copy of which is set out in the Schedule Part 3;

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

*‘Project’* means the services to be provided by the Contractor, as described in the Specification and the Contractor’s Proposal;

*‘Schedule’* means the Schedule in 4 parts attached to this Agreement;

*‘Specification’* means the document describing the Client’s requirements, a copy of which is set out in the Schedule Part 1;

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

* 1. References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees.
  2. Where the context so requires, words importing the singular only also include the plural and vice versa, and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
  3. References to legislation are to be construed as references to that legislation as from time to time amended or to any legislation from time to time replacing, extending, consolidating or amending the same.

THE PROJECT

* 1. The Contractor shall complete the Project with reasonable skill, care and diligence in accordance with this Agreement. Further, the Contractor shall comply with the appropriate guidelines (if any) of the Contractor’s profession in the carrying out of the Project.
  2. All research conducted by or on behalf of the Contractor in terms of this Agreement shall be carried out in accordance with the ethical guidelines applicable to the Contractor’s profession, any applicable guidelines laid down by any professional body or association of which the Contractor is a member, and carried out in accordance with the directions or recommendations of any ethics committee which has approved the research.
  3. The Contractor shall if appropriate in terms of the Project conduct its research with a view to reaching an evidence based conclusion or set of conclusion(s), shall provide evidence for any such conclusions, shall be able to demonstrate a clear line of reasoning in the reaching of such conclusion(s) and, where opinions or claims are proffered or necessary in relation to research findings or conclusions, be able to substantiate such with clear and accurately recorded data. Should the Project not require conclusions or a final report the Contractor shall nevertheless carry out the Project with due diligence, care and attention.
  4. The Contractor shall comply with any direction or instruction of the Client with regard to the carrying out of the Project.
  5. Questionnaires involving commercial or business concerns, local authorities, or judicial office holders, require prior approval from the Client and the Contractor shall wait for such approval before issuing questionnaires to such bodies or persons.
  6. If the Project requires written reports and/or submissions to be provided by the Contractor to the Client the Contractor shall ensure that all such reports or submissions shall be completed to a high standard, and completed with sufficient skill, care and diligence to meet the expected outcome of the Project, such standard being, in the sole opinion of the Client (having regard to the reasonable standards of content and presentation expected from the Contractor’s profession), of the quality required to satisfy the expected outcome of the Project, as described in the Specification.
  7. Should the final report be deemed by the Client as not being in accordance with the terms of this Agreement, or not of an acceptable standard, the Client will view this failure as a material breach of this Agreement.
  8. If the Contractor fails to meet the conditions imposed in clauses 2.1to 2.7above, the Client may, but shall not be bound to:
     1. require the Contractor to carry out further research to the standard required in terms of this Agreement and / or draft further evidenced conclusions based upon such further research, or;
     2. require the Contractor to improve, redraft and / or resubmit any report or submission, on as many occasions as are necessary in the opinion of the Client in order that it may meet the required standard as defined in clause 2.6, or;
     3. withhold the final payment until a report which is acceptable to the Client is received, or;
     4. require the Contractor to repay such sum already paid under this Agreement as the Client considers reasonable, or;
     5. terminate this Agreement with immediate effect.

For the avoidance of doubt, the Client shall not be bound to exercise any of its rights under paragraphs (a) to (d) of this clause 2.8prior to exercising its right to terminate this Agreement under paragraph (e).

* 1. The Contractor shall provide the Client with such reports of its work on the Project at such intervals and in such form as the Client may from time to time require. Such reports shall show progress of research in relation to any contractual programme or timetable, the cost of work during the period covered by the report and a review of any factors likely to affect the satisfactory completion of the Project by the Completion Date, in accordance with the timetable agreed with the Client. Included in such reports, and without prejudice to the foregoing generality, shall be audit reports on money spent by the Contractor at any time during the term of this Agreement, together with time sheets or other similar documentation (if applicable) relative to any personnel contracted, employed or engaged to perform any of the Contractor’s obligations under this Agreement.
  2. The Contractor must not undertake any work while engaged in terms of this Agreement which would lead to a conflict of interest between its duties to the Client and its duties in carrying out that other work, or which would mean that it would be unable to meet its obligations in terms of this Agreement.
  3. If it appears to the Contractor that the Project is not likely to be completed by the Completion Date, or that the Price is, or is likely to be, exceeded, the Contractor shall immediately notify the Client of that fact, together with the reasons for the delay or increase in Price, and give an estimate of the additional time and / or expenditure required to complete the Project.
  4. On the occurrence of any of the events mentioned in clause 2.11above, the Client may in its absolute discretion do any of the following:
     1. vary the Project or any part of it so that the Project may be completed without exceeding the Price; or
     2. extend the Completion Date; or
     3. increase the Price; or
     4. terminate this Agreement by giving the Contractor not less than 7 days’ notice to that effect.
  5. The Contractor shall afford the Client reasonable access to the Project, including any work in progress, and to all documents (in particular documents recording methodology and results, field observations, and analyses of data) produced in connection with the Project, and the Contractor will provide the Client with copies of any documents referred to in this clause if requested to do so by the Client.
  6. The Client may set up a research advisory group to consider the conduct and progress of the Project. The Contractor will be required to attend meetings of the group and provide reports on progress with the work.
  7. The Contractor shall act as employer of any staff required for the research and shall accept all normal duties and responsibilities of any employer including, without prejudice to the foregoing generality, those relating to superannuation, national insurance and income tax.
  8. The Client shall not be liable to indemnify the Contractor against claims for compensation, redundancy payment, or any other claims for which the Contractor may become liable as an employer.
  9. The Project shall be completed and a final draft report and/or other agreed output made available to the Client no later than one month prior to the Completion Date. The final report must be submitted in hard copy, together with an electronic copy in a format compatible with the Client’s systems and software, (which the Contractor shall be advised of), on or before 17 March 2017. Unless otherwise agreed by the Client, the final report shall include:
     1. a statement of the aims and objectives, methods, findings and conclusions of the Project; and
     2. a concise summary of the report.

The final report shall be submitted fully proof-checked and ready for publication. Further work should not require to be done by the Client.

* 1. The Client reserves the right to publish the final report.

CONTRACTOR’S PERSONNEL

* 1. The Contractor shall make available for the purposes of the Project any individuals named in the Contractor’s Proposal (“key personnel”). The Contractor shall provide the Client with a list of the names and addresses of any other persons regarded by the Contractor as key personnel and, if and when instructed by the Client, any other persons who may at any time be involved in the Project or any part of it (other than those whose duties will be purely clerical), specifying in each case the capacities in which they are so involved and giving such other particulars and supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Contractor designate any person concerned with the Project or any part of it as a member of key personnel. The Contractor shall not, without the prior written approval of the Client, make any changes in the key personnel referred to in this clause 3.1
  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 Contractor has furnished the information or taken the steps required under clause 3.1.
  3. The Contractor shall bear the cost of any notice, instruction or decision of the Client under clause 3.1 or clause 3.2.

ASSIGNATION AND SUB‑CONTRACTING

* 1. The Contractor shall not assign or sub‑contract any portion of this Agreement without the prior written consent of the Client. Sub‑contracting any part of this Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Agreement.
  2. Notwithstanding clause 4.1the Contractor may assign to another person (an “assignee”) the right to receive payment of the Price or part of the Price due to the Contractor under this Agreement. The Contractor shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the Price 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 the Price or for handling invoices.
  3. Where the Contractor enters into a sub-contract for the purpose of performing any of its obligations under this Agreement, the Contractor shall ensure that the sub-contract contains a provision:
     1. which requires payment to be made of all sums due by the Contractor 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;
     2. which provides that, where the Client has made payment to the Contractor in respect of the Contractor’s obligations under this Agreement and the sub-contractor’s invoice relates to such obligations then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a 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 Contractor, payment must be made to the sub-contractor without deduction;
     3. which notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Scottish Courts and Tribunals Service 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 Head of Procurement, SCTS, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD; and
     4. in the same terms as that set out in this clause 4.3(including for the avoidance of doubt this clause 4.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

1. **CHANGE TO CONTRACT REQUIREMENTS**
   1. The Client may order any variation to any part of the Project that is for any reason in its opinion 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.
   2. Save as otherwise provided in this Agreement, no variation of the Project as provided for in clause 5.1shall be valid unless given or confirmed in the form of an order given by the Client to the Contractor. 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 subsequently be confirmed in writing by the Client within 2 working days of the oral order, failing which the variation made by oral order shall cease to have effect.
   3. Where any variation of the Project ordered in accordance with clauses 5.1and 5.2has affected or may affect the costs incurred by the Contractor in delivering the Project, the Contractor will notify the Client in writing of the effect which it has had or may have on the Contractor’s costs. Such notification shall be considered by the Client, who shall take all of the facts into account and may authorise such alteration to the Price as is, in the Client’s opinion, appropriate and reasonable in the circumstances.

THE PRICE

* 1. Subject to clause 6.2the Client shall pay the Price to the Contractor in instalments on dates to be agreed between the parties that are linked to the completion of the phases of the Project.
  2. The Contractor shall not be entitled to payment until evidence of any invoiced expenses, outlays or other costs has been provided to the Client’s reasonable satisfaction that such expenses, outlays or other costs are part of the Price and have been reasonably and properly incurred by the Contractor in the performance of the Contractor’s obligations under this Agreement.
  3. Unless otherwise agreed, 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. The Contractor accepts that for accounting and budgetary reasons, the Client will not pay any invoices that relate to work carried out after the Completion Date. The Contractor undertakes to issue its final invoice to the Client no later than [INSERT].
  4. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

AUDIT

* 1. The Contractor shall keep and maintain for a period of 5 years after the Completion Date 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 Contractor or in connection with any employees or contractors of the Contractor paid for by the Client on a time charge basis. The Contractor shall on request afford the Client or its representatives such access to those records as may be required by the Client in connection with this Agreement.

CORRUPT GIFTS OR PAYMENTS

* 1. The Contractor 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 entering into of this Agreement or any other contract with the Client or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any other contract. The attention of the Contractor is drawn to the criminal offences created by the Bribery Act 2010.

PATENTS, INFORMATION AND COPYRIGHT

9.1 It shall be a condition of this Agreement that, except to the extent that the Project incorporates any intellectual property furnished by the Client, nothing done by the Contractor in the performance of its obligations under this Agreement shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Contractor shall **indemnify** the Client against all actions, claims, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this clause 9.1or clause 9.19.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other materials, whether in writing or in electronic, magnetic or other media:

9.2.1 furnished to or made available to the Contractor by the Client shall remain vested in the Client absolutely;

9.2.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contractor’s obligations under this Agreement are hereby assigned to and shall vest in the Client absolutely, and the Contractor shall not and shall procure that its servants and agents shall not (except to the extent necessary for the implementation of this Agreement) 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 or any other information (whether or not relevant to this Agreement) which the Contractor may obtain pursuant to or by reason of this Agreement, 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 Contractor shall not refer to the Client or this Agreement in any advertisement without the Client’s prior written consent.

9.3 Clauses 9.1to 9.2shall apply during the continuance of this Agreement and shall survive its termination howsoever arising.

INDEMNITIES AND INSURANCE

* 1. The Contractor 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 Agreement to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Contractor or the Contractor’s servants or agents.
  2. The Contractor’s total liability to the Client arising from or in connection with the performance of the Project and its obligations under this Agreement whether arising in contract or delict (including negligence) or howsoever otherwise shall be no more than £1million. However nothing in this clause shall limit the Contractor’s liability for death and personal injury which is caused by the negligence of the Contractor.
  3. Neither party shall be liable whether in contract or delict (including negligence) or otherwise howsoever for any indirect or consequential loss or damage.
  4. Nothing in this Agreement excludes or limits either party’s liability for personal injury or death caused by the negligence of that party.
  5. The Contractor (if an individual) represents that the Contractor is regarded by both HM Revenue & Customs and the Department for Work and Pensions or any successor thereto 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 Contractor by reason of this Agreement.
  6. The Contractor shall effect and maintain (for so long as any liability may arise under this Agreement) with an insurance company or companies acceptable to the Client a policy or policies of insurance, at a suitable level of cover (having regard to clauses 10.2and 10.4), covering all the matters which are the subject of the indemnities and undertakings on the part of the Contractor contained in this Agreement.
  7. If requested by the Client, the Contractor shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium or premiums due.

DATA PROTECTION

* 1. The Contractor acknowledges that Personal Data described in the scope of the Schedule Part 4 (Data Protection) may be Processed in connection with the Project. For the purposes of any such Processing, the Parties agree that the Contractor acts as the Data Processor and the Client acts as the Data Controller.
  2. Both Parties agree to negotiate in good faith any such amendments to this Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Clause 11 are without prejudice to any obligations and duties imposed directly on the Contractor under the Data Protection Laws and the Contractor hereby agrees to comply with those obligations and duties.
  3. The Contractor 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.
  4. The Contractor 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.
  5. The Contractor must:
     1. 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 Contractor is subject; in which case the Contractor must inform the Client of that legal requirement before Processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor’s obligations under this Agreement or as is required by the law;
     2. Subject to clause 11.5.1only Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Client’s prior written consent;
     3. Take all reasonable steps to ensure the reliability and integrity of any Supplier personnel who have access to the Personal Data and ensure that the Contractor personnel:
        1. are aware of and comply with the Contractor’s duties under this clause;
        2. are subject to appropriate confidentiality undertakings with the Contractor or the relevant sub-contractor;
        3. 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 Agreement; and
        4. have undergone adequate training in the use, care, protection and handling of Personal Data.
     4. implement appropriate technical and organisational measures including those 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.
  6. The Contractor 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 Contractor 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.
  7. If the Contractor engages a sub-contractor for carrying out Processing activities on behalf of the Client, the Contractor must ensure that same data protection obligations as set out in this Agreement 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 Contractor shall remain fully liable to the Client for the performance of the sub-contractor’s performance of the obligations.
  8. The Contractor 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 Contractor must notify the Client if it:
     1. receives a Data Subject Access Request (or purported Data Subject Access Request);
     2. receives a request to rectify, block or erase any Personal Data;
     3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
     4. receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data Processed under this Contract; or
     5. 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.

11.9 Taking into account the nature of the Processing and the information available, the Contractor 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:

11.9.1 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.

11.9.2 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;

11.9.3 assisting the Client with communication of a Personal Data breach to a Data Subject;

11.9.4 supporting the Client with preparation of a data protection impact assessment;

11.9.5 supporting the Client with regard to prior consultation of the Supervisory Authority.

11.10 At the end of the provision of services relating to Processing the Contractor 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.

11.11 The Contractor must:

11.11.1 provide such information as is necessary to enable the Client to satisfy itself of the Supplier’s compliance with this clause 11;

11.11.2 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 clause 11 and contribute as is reasonable to those audits and inspections;

11.11.3 inform the Client if in its opinion an instruction from the Client infringes any obligation under the Data Protection Laws.

11.12 The Contractor must maintain written records including in electronic form, of all Processing activities carried out in performance of the Project or otherwise on behalf of the Client containing the information set out in Article 30(2) of the GDPR.

11.13 If requested, the Contractor must make such records referred to clause 11.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

11.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 11.13 with minimum disruption to the Contractor’s day to day business.

DISCRIMINATION

* 1. The Contractor shall not, and shall take all reasonable steps to ensure that its servants, employees, assistants and agents do not, unlawfully discriminate against any person within the meaning of the Equality Act 2010 in performing its obligations under this Agreement or any other contract with the Client.

CONFIDENTIALITY AND ACCESS TO INFORMATION

* 1. The Contractor shall keep secret and not disclose and shall procure that its servants, employees, assistants and agents keep secret and do not disclose any information of a confidential nature obtained by the Contractor by reason of this Agreement except information which is in the public domain otherwise than by reason of a breach of this provision.
  2. All information related to this Agreement will be treated as confidential by the Client except that:
     1. references may be sought from banks, existing or past clients, or other referees proposed by the Contractor, and
     2. disclosure may be made of such information relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Union or elsewhere in accordance with EC Directives or UK Government or Scottish Government policy on the disclosure of information regarding public contracts. This disclosure may include the number of tenders received, the identity of the successful tenderer, the winning contract price, the specification of goods or services to be supplied, terms and conditions of contract, quality and performance standards, and subsequent performance against those quality and performance standards.
     3. all information submitted to the Client may need to be disclosed and / or published by the Client. Without prejudice to the foregoing generality, the Client may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further the Client may also disclose all information submitted to it to the Scottish or United Kingdom Parliament or any department, office or agency of the UK Government or the Scottish Government, 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 is unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this Agreement.
  3. The Contractor or any of its employees or agents shall not communicate with the media or otherwise place in the public domain:-
     1. any information or knowledge acquired by the Contractor or any of its servants, employees, assistants or agents as a consequence (directly or indirectly) of this Agreement, or
     2. any views or opinions relating to the Client or this Agreement, without the prior written approval of the Client.
  4. The Contractor shall procure that all confidential information disclosed to it by the Client under this Agreement or which may at any time during the term come into the Contractor’s knowledge, possession or control, shall be kept secret and confidential and shall not be used for any purposes other than those required or permitted by this Agreement and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this Agreement and then only with the express authorisation of the Client.
  5. The Contractor shall notify the Client promptly if any confidential information is required by law to be disclosed by it or any other person receiving it under or pursuant to this Agreement and shall co-operate with the Client regarding the manner of such disclosure (but without prejudice to any obligation to comply with any law).
  6. The provisions of clauses 13.1to 13.7shall apply during the continuance of this Agreement and shall survive after its termination howsoever arising.
  7. In principle, the Client supports the publication and dissemination of research findings. However, the Client’s prior agreement must be obtained in writing if at any time during the conduct of the Project prior to any publication of a final report by the Client, the Contractor intends to publish, present or communicate publicly any findings from the Project. Permission must be sought at least 6 weeks in advance of the date of the intended presentation or publication. The Client has the right to refuse permission to the Contractor to publish and / or will have the right to amend factual inaccuracies within the final report and to publish a disclaimer as to views or conclusions expressed.

CHANGE IN LAW

The Contractor shall neither be relieved of its obligations to complete the Project in accordance with the provisions of this Agreement nor be entitled to an increase in the Price as the result of a Change in Law.

TERMINATION

* 1. The Contractor shall notify the Client in writing immediately upon the occurrence of any of the following events:
     1. where the Contractor is an individual, if a petition is presented for the Contractor’s bankruptcy or the sequestration of his estate, 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
     2. where the Contractor is not an individual but is a firm or unincorporated body, or a number of persons acting together in any capacity, if any event in paragraph (a) or paragraph (c) of this clause 15.1occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unincorporated body; or
     3. where the Contractor is a company, limited liability partnership or any other incorporated body, if the company, limited liability partnership or incorporated body passes a resolution for winding‑up or the court makes an administration order or a winding‑up order, or the company, limited liability partnership or incorporated body 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.
  2. On the occurrence of any of the events described in paragraph 14.1, or if the Contractor commits a material breach of this Agreement and (if such breach is capable of remedy) fails to remedy such breach within 14 days of being required by the Client in writing to do so, or, where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Client shall be entitled to terminate this Agreement by notice to the Contractor with immediate effect.
  3. In addition to its rights of termination under paragraph 14.2, the Client shall be entitled to terminate this Agreement by giving to the Contractor not less than 7 days’ notice to that effect. In the event of such termination, the Contractor 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.
  4. In the event of termination of this Agreement for any reason, the Contractor shall, at the discretion of the Client, furnish the Client with a report or other output as may be reasonable in the circumstances, and the Contractor must promptly return to the Client any documents, information, or materials obtained by the Contractor as a result of this Agreement.
  5. In the event that the Contractor provides the Client with a report under clause 15.3or clause 15.4the Client shall pay to the Contractor such proportion of the Price as the Client considers reasonable.
  6. Termination under clauses 15.1to 15.3shall 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 clause 7.1clauses 9.1to 9.2clauses 10.1to 10.7, clause 11clauses 15.1to 15.7, clauses 16.1to 16.2clause 18.1clauses 20.1to 20.3or clause 22.1
  7. The Client may terminate this Agreement with immediate effect by giving written notice to the Contractor if:
     1. in the opinion of the Client this Agreement has been subject to a 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; or
     2. the Contractor 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) and should therefore have been excluded from the procurement procedure; or
     3. this Agreement should not have been awarded to the Contractor 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 clause ‘the Treaties’ has the meaning given in the European Communities Act 1972.

RETURN OF DOCUMENTS

* 1. The Contractor will return to the Client promptly upon the Client’s request any document, paper, material or information supplied by or obtained from the Client in connection with this Agreement, or extracted from such documents, papers, materials or information.
  2. Where this Agreement has been terminated the Contractor may retain any documents, papers, materials or information which shall be required by him to prepare any report required by the Client. Promptly upon submission of any report to the Client, the Contractor will return any documents, papers, materials or information which he may have retained in terms of this clause 16.2, and which the Client has indicated it requires. However for the avoidance of doubt the Contractor shall not be bound to return any documents, papers, materials or information to which clause 9.2applies.

1. **ANTI SLAVERY AND HUMAN TRAFFICKING**
   1. Compliance with Anti Slavery and Human Trafficking Laws And Policies
      1. In performing its obligations under this Agreement, the Contractor shall:
         1. comply with all applicable anti slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
         2. comply with the Client’s Anti Slavery and Human Trafficking Policy; and
         3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
         4. require that each of its sub-contractors shall comply with the Client’s Anti Slavery and Human Trafficking Policy and with all applicable anti slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
   2. Due Diligence
      1. The Contractor represents and warrants that:
         1. neither the Contractor nor any of its officers or employees:
            1. has been convicted of any offence involving slavery and human trafficking; and
            2. to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
      2. The Contractor shall implement due diligence procedures for its sub-contractors and suppliers to ensure that there is no slavery or human trafficking in its supply chains.
   3. Reports
      1. The Contractor shall notify the Client as soon as it becomes aware of:
         1. any breach, or potential breach, of the Client’s Anti Slavery and Human Trafficking Policy; or
         2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
2. **NOTICES**
   1. Any notice given under or pursuant to this Agreement must be sent by first class recorded delivery post to the address of the party shown on the first page of this Agreement, or to such other address as the party may by notice communicate to the other party, and shall be deemed effectively given on the day when in the ordinary course of recorded delivery post it would first be received by the addressee in normal business hours. An electronic copy of any notice must also be sent by email, in the case of the Client, to Procurement@scotcourts.gov.uk and, in the case of the Contractor, to [**insert email address**], or to such other email addresses as the parties may in writing agree.

STATUS OF CONTRACT

* 1. Nothing in this Agreement shall have the effect of making the Contractor the servant of the Client.

ARBITRATION AND DISPUTE RESOLUTION

* 1. The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with this Agreement.
  2. Any dispute or difference arising out of or in connection with this Agreement, including but not limited to any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitration proceedings shall be English.
  3. Any arbitration under clause 20.2is subject to the Arbitration (Scotland) Act 2010.

HEADINGS

* 1. Clause heading used in this Agreement shall not affect their interpretation.

GOVERNING LAW

* 1. This Agreement shall be governed by and construed in all respects in accordance with Scots Law and the parties hereby irrevocably submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding [**XX**] pages together with the Schedule in 4 Parts are executed as follows:

[Signing blocks to be inserted]

**This is the Schedule referred to in the preceding Agreement between the Scottish Courts and Tribunals Service (on behalf of the Scottish Civil Justice Council and [INSERT CONTRACTOR NAME]**

**SCHEDULE**

**PART 1**

**[Insert Specification]**

**PART 2**

**[Insert Contractor’s Proposal]**

**PART 3**

**[Insert Price Schedule]**

**PART 4 (Data Protection)**

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

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

**Subject matter and duration of the Processing of Personal Data**

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

**The nature and purpose of the Processing of Personal Data**

[Include description here]

**The type of Personal Data to be Processed**

[Include list of data types here]

**The categories of Data Subject to whom Personal Data relates**

[Include categories of data subjects here]

**The obligations and rights of the Client**

The obligations and rights of the Client as the Data Controller are set out in Clause 11 of the Contract.