

**STANDARD TERMS AND CONDITIONS**

**FOR SUPPLY OF CONSULTANCY SERVICES**

**SCTS T&C 3**

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**DEFINITIONS AND INTERPRETATION**

Definitions

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

**“Change of Control”** means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

**“Commercially Sensitive Information”** means the Confidential Information comprising commercially sensitive information:

1. relating to the Consultant, its IPR or its business or information which the Consultant has indicated to the Customer that, if disclosed by the Customer, would cause the Consultant significant commercial disadvantage or material financial loss;
2. that constitutes a trade secret;

**“Confidential Information”** means as the context allows, the Customer’s Confidential Information and/or the Consultant’s Confidential Information;

**“Contract”** means the written agreement between the Customer and the Consultant consisting of the Purchase Order, Letter of Appointment, these terms and conditions (save to the extent varied by the Letter of Appointment), and any other documents incorporated into them by reference or attachment;

**“Consultant”** means the Consultant to whom the Letter of Appointment is addressed;

**“Consultant’s Confidential Information”** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the Consultant, including all Intellectual Property Rights, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;

**“Contract Mediator”** has the meaning set out in clause 27.2.5.1;

**“Consultant’s Staff”** means all persons employed by the Consultant and/or any Sub-Contractor to perform the Consultant’s obligations under the Contract together with the Consultant’s and/or any Sub-Contractor’s servants, consultants, agents, contractors and sub-contractors used in the performance of the Consultant’s obligations under the Contract;

**“Consultant System”** means the information and communication technology system used by the Consultant in performing the Contract including any information, communication and technology equipment and items provided by the Customer to the Consultant for the Consultant’s use in the performance of its obligations under this Contract. This shall not include however the Customer’s hardware, software and/or telecommunications networks or equipment used by the Customer or the Consultant in connection with the Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Consultant System and which is necessary for the Customer to receive the Project;

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**“Customer”** means the Scottish Courts and Tribunals Service, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD;

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

**“Customer’s Confidential Information”** means all the Customer’s Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the Customer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential;

**“Customer’s Information Risk Management Policy”** means the Information Risk Management Policy of the Customer, as updated from time to time;

**“Customer’s Personal Data”** means the Personal Data supplied by the Customer to the Consultant and, for the purposes of or in connection with the Contract;

**“Customer’s Representative”** means the representative of the Customer appointed by the Customer from time to time in relation to the Contract and notified to the Consultant;

**“Data Controller”** shall having the meaning as set out in the **Data Protection** **Laws**;

**“Data Processor”** shallhave themeaning as set out 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;

**“Day Rate”** means the rate per day per grade tendered by the Consultant in the Consultant’s proposal that shall never be exceeded within this Contract;

**“Disclosure Scotland”** means Disclosure Scotland, an Executive Agency of the Scottish Government providing criminal disclosure records, or an equivalent body;

**“Data Subject”** shall have the meaning as set out in the **Data Protection Laws**;

**“Effective Date”** means the date on which the Contract shall take effect as stated in the Letter of Appointment;

**“EIR**” means the Environmental Information (Scottish) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government department in relation to such regulations;

**“Fees”** means the Day Rates, charges and expenses (exclusive of any applicable VAT), payable to the Consultant by the Customer under the Contract for the full and proper performance by the Consultant of the Project;

**“FOISA”** meansthe Freedom of Information (Scotland) Act 2002, and any subordinate legislation made under the Act from time to time together with any guidance and /or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

**“Fraud”** means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Crown;

**“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;

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the requirements of any Regulatory Body which is responsible for regulating the Consultant and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in providing services similar to the Project;

**“Grave Misconduct”** means grave misconduct as set out in Regulation 58(8) (c) of the Public Contracts (Scotland) Regulations 2015 as amended and includes:

1. serious financial irregularities on the part of the Consultant (within any legal jurisdiction);or
2. misconduct which would be regarded as serious by any Regulatory Body for a trade or profession;

**“Intellectual Property Rights” or “IPR”** means:

1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), know-how, trade secrets and moral rights and other similar rights or obligations;
2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
3. all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

**“Information”** has the meaning given under section 73 of the Freedom of Information (Scotland) Act 2002;

**“Key Personnel”** means any individuals identified as such in the Letter of Appointment and any replacements for such individuals that may be agreed between the Parties from time to time in accordance with Clause 2.3;

**“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;

**“Letter of Appointment”** means the letter from the Customer to the Consultant (including its appendices) constituting the Order to provide the Project;

**“Material Breach”** means a material breach of this Contract;

**“Milestone”** means an event or task described in the Contract which must be completed by the corresponding date set out in the Contract;

**“Order”** means an event or task described in the Contract which must be completed by the corresponding date set out in the Contract;

**“Party”** means the Consultant or the Customer and **“Parties”** shall mean both of them;

**“Persistent Failure”** means any two (2) or more failures by the Consultant in any rolling period of twelve (12) months to comply with obligations in respect of the under the Contract;

**“Personal Data”** shall have the same meaning as set out in the **Data Protection Laws**;

**“Premises”** means land or buildings owned or occupied by the Customer;

**“Processing”** has the meaning given to it under the Data Protection Laws and **“Process”** and **“Processed”** shall be interpreted accordingly;

**“Project”** means the services to be supplied by the Consultant to the Customer as set out in the Purchase Order and/or Letter of Appointment;

**“Prohibited Act”** means:

1. directly or indirectly offering, promising or giving any person working for or engaged by the Customer a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity; or committing any offence:

(i) under the Bribery Act 2010; or

(ii) under legislation creating offences concerning fraudulent acts; or

(iii) at common law concerning fraudulent acts in relation to this Contract or any other contract with the Customer; or

1. defrauding, attempting to defraud or conspiring to defraud the Customer;

**“Purchase Order”** means the Customer’s document setting out the Customer’s requirements for the Contract;

**“Regulatory Bodies”** means government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract and “**Regulatory Body**” shall be construed accordingly;

**“Request for Information”** means a request for information relating to the provision of the Project or an apparent request for such information under FOIA or EIR;

**“Relevant Conviction”** means a conviction that is relevant to the nature of the Project;

**“Sites”** means any premises from which the Project are provided or from which the Consultant manages, organises or otherwise directs the provision or the use of the Project or where any part of the Consultant System is situated or where any physical interface with the Customer’s hardware, software and/or telecommunications networks or equipment used by the Customer or the Consultant in connection with the Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Consultant System takes place;

**“Sub-Contract”** means the Consultant’s contract with a sub-contractor whereby that sub-contractor agrees to provide to the Consultant the Project or any part thereof or facilities or services necessary for the provision of the Project or any part thereof or necessary for the management, direction or control of the Project;

**“Sub-Contractor”** means any person appointed by the Consultant to carry out any and or all of the Consultant’s obligations under the Contract;

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

**“Term”** means the term of this Contract as determined in accordance with the Contract;

**“Transferee”** shallhave the meaning set out in TUPE;

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, re-enacted or extended from time to time;

**“VAT”**  meansvalue added tax in accordance with the provisions of the Value Added Tax Act 1994; and

**“Working Day”** means any day other than a Saturday, Sunday or public holiday in Scotland.

Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

* + 1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
    2. words importing the masculine include the feminine and the neuter;
    3. the words “include”, “includes” and “including” “for example” and “in particular” and words of similar effect are to be construed as if they were immediately followed by the words “without limitation” and shall not limit the general effect of the words which precede them;
    4. 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 assigns or transferees;
    5. the Appendices, Annexes and Schedules form part of these terms and shall have effect as if set out in full in the body of these terms and any reference to these terms includes the Appendices Annexes and Schedules;
    6. references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);
    7. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
    8. references to “Clauses”, the “Appendices” the “Annexes” and “Schedules” are, unless otherwise provided, references to the clauses of, the Appendices to, the Annexes to and the Schedules to these terms and references to “paragraphs” are, unless otherwise provided, references to paragraphs of the respective Annexes in which the references are made;
    9. terms or expressions contained in the Contract which are capitalised but which do not have an interpretation in Clause 1.1.1 shall be interpreted in accordance with the Contract;
    10. a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
    11. in the event of and only to the extent of any conflict between the Purchase Order, Letter of Appointment, these terms, any other document referred to in the Contract, the conflict shall be resolved in accordance with the following order of precedence:
        1. the Letter of Appointment;
        2. the Purchase Order;
        3. these terms; and
        4. any other document referred to in the Contract.

SUPPLY OF PROJECT

* 1. **Project**
     1. The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the provisions of the Contract. The Consultant shall provide the Customer with such reports of his work on the Project at such intervals and in such form as the Customer may require from time to time.
     2. The Consultant shall:
        1. comply with all reasonable instructions given to the Consultant and the Consultant’s Staff by the Customer in relation to the Project from time to time, including reasonable instructions to reschedule or alter the Project;
        2. immediately report to the Customer’s Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 2.1.3.1;
        3. co-operate with the Customer and the Customer’s other professional advisers in relation to the Project as required by the Customer;
        4. comply with the Customer’s internal policies and procedures in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Consultant in writing by the Customer;
     3. The Consultant shall not:
        1. knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer shall thereby exist in relation to the Project; or
        2. incur any expenditure which would result in any estimated figure for any element of the Project being exceeded without the Customer’s written agreement; or
        3. without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Project; or
        4. pledge the credit of the Customer in any way; or
        5. engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer.
        6. without the prior written consent of the Customer, introduce new methods or systems which materially impact on the provision of the Project
     4. Both Parties shall take all necessary measures to ensure the health and safety of the other Party’s employees, consultants and agents visiting the Sites.
     5. The Consultant accepts that the Customer shall have the right after consultation with the Consultant to require the removal from involvement in the Project of any person engaged in the performance of the Project if in the Customer’s reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Project.
     6. Where the Consultant is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Consultant’s obligations under the Contract.
  2. **Variation of the Project**
     1. The Customer may request a variation to the Project (including the Milestones) at any time provided that such variation does not amount to a material change to the Purchase Order.
     2. Any request by the Customer for a variation to the Project (including the Milestones) shall be by written notice to the Consultant:
        1. giving sufficient information for the Consultant to assess the extent of the variation and any additional costs that may be incurred; and
        2. specifying the timeframe within which the Consultant must respond to the request, which shall be reasonable,

and the Consultant shall respond to such request within such timeframe.

* + 1. Any such variation agreed between the Customer and the Consultant pursuant to Clause 2.2.2 shall not be valid unless in writing and signed by the Parties. Furthermore any written and signed variation between the Parties shall be appended to the Letter of Appointment. In the event that the Consultant and the Customer are unable to agree to a proposed variation including any change to the Day Rates and Fees in connection with the requested variation to the Project, the Customer may agree that the Consultant should continue to perform its obligations under the Contract without the variation or may terminate the Contract with immediate effect, except where the Consultant has already delivered part or all of the Order in accordance with the Contract
    2. or where the Consultant can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
  1. **Key Personnel**
     1. The Consultant acknowledges that the Key Personnel are essential to the proper provision of the Project to the Customer. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Letter of Appointment and such other roles as may be necessary or desirable for the purposes of the Contract or as may be agreed between the Parties from time to time. The Consultant will ensure that the Key Personnel have as required by the Purchaser, either Basic or Standard Disclosure Certificates issued by Disclosure Scotland, not containing any inappropriate record, prior to the Key Personnel commencing the Project and during the Term of the Contract. The Certificates will be exhibited to the Purchaser and the Crown. In the event that the Purchaser is not satisfied with the terms of the Certificates, or by the engagement of Key Personnel on the Contract, following security clearance checks by the Crown, the Consultant will ensure that the Key Personnel are not engaged on the provision of the Project or if engaged, will be removed from the provision of the Project under the Contract. Replacement Key Personnel will be agreed by the Customer.
     2. The Key Personnel shall not be released by the Consultant from supplying the Project without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment and/or partnership or other extenuating circumstances.
     3. Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Contract and have as required by the Purchaser either Basic or Standard Disclosure Certificates issued by Disclosure Scotland, not containing any inappropriate record.
     4. The Customer shall not unreasonably withhold its agreement under Clauses 2.3.1, 2.3.2 or 2.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Consultant to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
     5. If requested by the Customer, the Consultant shall procure that Key Personnel attend transaction review meetings at no cost to the Customer during the Term of the Contract and upon its conclusion.

1. **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE** **PROJECT**
   1. Without prejudice to any other right or remedy which the Customer may have at Law or in this Contract, if the Project is not supplied in accordance with, or the Consultant fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Project has been Delivered) do any of the following:
      1. at the Customer’s option, give the Consultant the opportunity at the Consultant’s expense to either remedy any failure in the performance of the Project together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer’s instructions;
      2. refuse to accept any further part of the Project to be delivered by the Consultant but without any liability to the Customer;
      3. carry out at the Consultant’s expense any work necessary to make the Project comply with the Contract;
      4. without terminating the Contract, itself supply or procure the supply of all or part of the Project until such time as the Consultant shall have demonstrated to the reasonable satisfaction of the Customer that the Consultant will once more be able to supply all or such part of the Project in accordance with the Contract;
      5. without terminating the whole of the Contract, terminate the Contract in respect of part of the Project only (whereupon a corresponding reduction in the Fees shall be made) and thereafter itself supply or procure a third party to supply such part of the Project; and/or
      6. charge the Consultant for and the Consultant shall on demand pay, any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Project by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Consultant for such part of the Project and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Project.
   2. Notwithstanding any of the provisions of this Clause 3, in the event that the Consultant fails to comply with Clause 3.1 above and the failure prevents the Customer from discharging a statutory duty, the Customer may terminate the Contract with immediate effect by giving the Consultant notice in writing.
2. **CONSULTANT’S STAFF**
   1. The Consultant shall ensure that, where appropriate, Consultant’s Staff are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.
   2. The Customer may, by written notice to the Consultant, refuse to admit onto, or withdraw permission to remain on, the Premises:
      1. any member of the Consultant’s Staff; or
      2. any person employed or engaged by the Consultant or any member of the Staff, whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
   3. At the Customer’s written request, the Consultant shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
   4. The Consultant’s Staff engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
   5. If the Consultant fails to comply with Clause 4.3 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
   6. The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Consultant has failed to comply with Clause 4.3 shall be final and conclusive.
   7. The Consultant acknowledges that certain days are privilege holidays in the civil service. On these days, the Customer may require or may specifically not require, work to be done under the Contract (which shall be communicated to the Consultant), and in the latter case be the subject to agreement between the Parties, unless specifically covered in the Contract.
   8. The Consultant shall procure that Consultant’s Staff shall at all times during their engagement in the provision of the Project remain servants of the Consultant and the Consultant shall not be relieved of any statutory or other responsibilities in relation to the Consultant’s Staff by virtue of this Contract.
   9. The Consultant shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Consultant to have any Relevant Convictions (whether as a result of Crown security check or through Disclosure Scotland basic or standard disclosure checks or otherwise), is employed or engaged in any part of the provision of the Project without the prior approval of the Customer.
   10. For each member of the Consultant’s Staff who, is providing the Project, the Consultant shall (and shall procure that any Sub-Contractor shall):
       * 1. as required by the Customer, carry out and meet the costs of a basic or standard disclosure check or the equivalent with Disclosure Scotland; and
         2. not engage or continue to employ in the provision of the Project any person who has a Relevant Conviction or an inappropriate record or does not have clearance following the Crown’s security check.

PAYMENT AND CHARGES

* 1. **Fees and VAT**
     1. In consideration of the Consultant’s performance of its obligations under the Contract, including implementation and completion of Milestones, the Customer shall pay the Fees in accordance with Clause 5.2 (Payment).
     2. The Customer shall, in addition to the Fees and following receipt of a valid VAT invoice submitted by the Consultant electronically, pay the Consultant a sum equal to the VAT chargeable on the value of the Project supplied.
     3. The Consultant shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Consultant’s failure to account for or to pay any VAT relating to payments made to the Consultant under the Contract. Any amounts due under this Clause 5.1.3 shall be paid by the Consultant to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
  2. **Payment**
     1. The Customer shall pay all sums properly due and payable to the Consultant in respect of the Project in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums submitted electronically by the Consultant.
     2. The Consultant shall ensure that each invoice (submitted electronically monthly in arrears) contains all appropriate references and a detailed breakdown of the Project provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the Customer to substantiate the invoice.
     3. The Consultant shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Consultant has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Consultant.
     4. Subject always to the provisions of Clause 18, if the Consultant enters into a Sub-Contract in respect of the Project, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Consultant to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
     5. The Consultant shall not suspend the supply of the Project unless the Consultant is entitled to terminate the Contract under Clause 11.2.2 on the grounds of the Customer’s failure to pay undisputed sums of money. Interest shall be payable by the Customer in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Consultant in respect of the Project.
     6. All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.
  3. **Recovery of Sums Due**
     1. Wherever under the Contract any sum of money is recoverable from or payable by the Consultant (including any sum which the Consultant is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Consultant under the Contract.
     2. Any overpayment by either Party, whether of the Fees or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

LIABILITY AND INSURANCE

* 1. **Liability**
     1. The Consultant cannot exclude or limit liability for:
        1. death or personal injury; or
        2. fraud or fraudulent misrepresentation by it or its employees.
     2. No individual nor any service company of the Consultant employing that individual shall have any personal liability to the Customer for the Project supplied by that individual on behalf of the Consultant and the Customer shall not bring any claim under the Contract against that individual or such service company in respect of the Project save in the case of Fraud or any liability for death or personal injury.
     3. Subject to Clause 6.1.1 above and to the limits set out in Clause 6.1.7 below, the Consultant shall fully indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Project and the Customer’s financial loss arising from any advice given or omitted to be given by the Consultant, or any other loss which is caused by any act or omission of the Consultant. The Consultant shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
     4. Subject to the limits set out in Clause 6.1.7 below, the Consultant shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by the Customer:
        1. the additional operational and/or administrative costs and expenses arising from any Material Breach;
        2. the cost of procuring, implementing and operating any alternative or replacement services to the Project as a result of a Material Breach by the Consultant; and
        3. any regulatory losses, fines, expenses or other losses arising from a breach by the Consultant of any Laws.
     5. No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Consultant in its provision of the Project, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Consultant to carry out all the obligations of a professional Consultant employed in a client/customer relationship.
     6. Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Consultant.
     7. Subject always to Clause 6.1.1 and for the avoidance of doubt, the Consultant agrees that the total aggregate liability (whether expressed as an indemnity or otherwise) to the Customer for each year of this Contract shall be:
        1. for all defaults resulting in direct loss or damage to the property of the Customer shall be subject to a limit of £2 million (Two Million Pounds) unless otherwise stipulated by the Customer in the Letter of Appointment;
        2. in respect of all other defaults, claims, losses or damages whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of the sum of £2 million (Two Million Pounds) or a sum equivalent to One Hundred and Twenty-Five Per Cent (125%) of the Fees paid or payable to the Consultant in the relevant year of the Contract calculated at the date of the event giving rise to the liability (estimated for the full year if the event occurs in the first year of the Contract) unless a different aggregate limit or limits is otherwise stipulated by the Customer in the Letter of Appointment.
  2. **Insurance**
     1. The Consultant and any Sub-Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of the risks which may be incurred by the Consultant, arising out of the Consultant’s performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Customer arising from any advice given or omitted to be given by the Consultant under the Contract or otherwise in connection with the provision of the Project. Such insurance shall be maintained for so long as the Consultant may have any liability to the Customer.
     2. It shall be the responsibility of the Consultant to determine the amount of insurance cover that will be adequate to enable the Consultant to satisfy any liability arising in respect of the risks referred to in Clause 6.2.1. The policies of insurance referred to in Clause 6.2.1 shall be shown to the Customer whenever the Customer requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.
     3. If, for whatever reason, the Consultant fails to give effect to and maintain the insurances required by Clause 6.2.1, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Consultant.
     4. The provisions of any insurance or the amount of cover shall not relieve the Consultant of any liabilities under the Contract.

INTELLECTUAL PROPERTY RIGHTS

* 1. All Intellectual Property Rights in the output from the Project shall vest in the Consultant who shall grant to the Customer a non-exclusive, unlimited, irrevocable licence to use and exploit the same.
  2. Subject to Clause 7.1 and save as expressly granted elsewhere under the Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Consultant or its licensors and the Consultant shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.
  3. The Consultant shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the Consultant of the Project infringes or allegedly infringes a third party’s Intellectual Property Rights (any such claim being a “**Claim**”).
  4. If a Claim arises, the Customer shall notify the Consultant in writing of the Claim within five (5) five Working Days and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Consultant shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Consultant:
     1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
     2. shall take due and proper account of the interests of the Customer;
     3. shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
     4. shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).
  5. The Consultant shall have no rights to use any of the Customer’s names, logos or trademarks without the prior written approval of the Customer.

PROTECTION OF INFORMATION

**Protection of Personal Data**

* 1. The Consultant acknowledges that Personal Data described in the scope of the Schedule (Data Protection) may be Processed in connection with the Project under this Contract. For the purposes of any such Processing, the Parties agree that the Consultant acts as the Data Processor and the Customer acts as the Data Controller.
  2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Clause 8 are without prejudice to any obligations and duties imposed directly on the Consultant under the Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.
  3. The Consultant will, in conjunction with the Customer 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 Consultant will provide the Customer 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 Consultant must:
     1. Process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Customer (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Consultant is subject; in which case the Consultant must inform the Customer 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 Consultant’s obligations under this Contract or as is required by the law;
     2. subject to Clause 8.5.1 only Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Customer’s prior written consent;
     3. take all reasonable steps to ensure the reliability and integrity of any Consultant personnel who have access to the Personal Data and ensure that the Consultant personnel:

(a) are aware of and comply with the Consultant’s duties under this Clause;

(b) are subject to appropriate confidentiality undertakings with the Consultant or the relevant Sub-Contractor;

(c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data.

* + 1. 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.
  1. The Consultant shall not engage a Sub-Contractor to carry out Processing in connection with the Project without prior specific or general written authorisation from the Customer. In the case of general written authorisation, the Consultant must inform the Customer of any intended changes concerning the addition or replacement of any other Sub-Contractor and give the Customer an opportunity to object to such changes.
  2. If the Consultant engages a Sub-Contractor for carrying out Processing activities on behalf of the Customer, the Consultant must ensure that same data protection obligations as set out in this Contract are imposed on the Sub-Contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Consultant shall remain fully liable to the Customer for the performance of the Sub-Contractor’s performance of the obligations.
  3. The Consultant must provide to the Customer reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Consultant must notify the Customer 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 Customer or any other regulatory Customer 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;
     6. 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 Customer from time to time.
  4. Taking into account the nature of the Processing and the information available, the Consultant must assist the Customer in complying with the Customer’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:
     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.
     2. notifying a Personal Data breach to the Customer without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
     3. assisting the Customer with communication of a Personal Data breach to a Data Subject;
     4. supporting the Customer with preparation of a data protection impact assessment;
     5. supporting the Customer with regard to prior consultation of the Supervisory Customer.
  5. At the end of the provision of services relating to Processing the Consultant must, on written instruction of the Customer, delete or return to the Customer all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
  6. The Consultant must:
     1. provide such information as is necessary to enable the Customer to satisfy itself of the Consultant’s compliance with this Clause 8;
     2. allow the Customer, 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 8 and contribute as is reasonable to those audits and inspections;
     3. inform the Customer if in its opinion an instruction from the Customer infringes any obligation under the Data Protection Laws.
  7. The Consultant 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 Customer containing the information set out in Article 30(2) of the GDPR.
  8. If requested, the Consultant must make such records referred to Clause 8.12 available to the Supervisory Customer on request and co-operate with the Supervisory Customer in the performance of its tasks.
  9. Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Clause 8.13with minimum disruption to the Consultant’s day to day business.

Confidentiality

* + 1. Except to the extent set out in this Clause 9.1 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
       1. treat the other Party’s Confidential Information as confidential and safeguard it accordingly; and
       2. not disclose the other Party’s Confidential Information to any other person without the owner’s prior written consent.
    2. Clause  9.1.1 shall not apply to the extent that:
       1. such disclosure is a requirement of Law or any competent Regulatory Body placed upon the Party making the disclosure, including any requirements for disclosure under the FOISA, or EIR pursuant to Clause 9.3(Freedom of Information); or
       2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
       3. such information was obtained from a third party without obligation of confidentiality; or
       4. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
       5. it is independently developed without access to the other Party’s Confidential Information.
    3. The Consultant and the Consultant’s Staff shall at all times comply with the Customer’s Information Risk Management Policy. The Consultant may only disclose the Customer’s Confidential Information to those members of the Consultant’s Staff who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality and the Customer’s Information Risk Management Policy.
    4. The Consultant shall not, and shall procure that the Consultant’s Staff do not, use any of the Customer’s Confidential Information received otherwise than for the purposes of the Contract.
    5. At the written request of the Customer, the Consultant shall procure that those members of the Consultant’s Staff identified in the Customer’s notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
    6. Nothing in the Contract shall prevent the Customer from disclosing the Consultant’s Confidential Information:
       1. to any Crown body on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body save as required by Law;
       2. to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with the Contract (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party);
       3. for the purpose of the examination and certification of the Customer’s accounts; or
       4. for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
    7. The Customer shall use all reasonable endeavours to ensure that any government department, Customer, employee, third party or Sub-Contractor to whom the Consultant’s Confidential Information is disclosed pursuant to Clause 9.1.6 is made aware of the Customer’s obligations of confidentiality.
    8. Nothing in this Clause 9.1 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party’s Confidential Information or an infringement of IPR.
    9. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Consultant undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
    10. The Consultant shall, at all times during and after the performance of the Contract, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Consultant’s obligations under this Clause 9.1 except and to the extent that such liabilities have resulted directly from the Customer’s instructions.
  1. **Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**
     1. The Consultant shall comply with and shall ensure that the Consultant’s Staff comply with, the provisions of:
        1. the Official Secrets Acts 1911 to 1989; and
        2. section 182 of the Finance Act 1989.
  2. **Freedom of Information**
     1. The Consultant acknowledges that the Customer is subject to the requirements of FOISA and EIR and shall assist and co-operate with the Customer to enable the Customer to comply with its Information disclosure obligations.
     2. The Consultant shall and shall procure that its Sub-Contractors shall:
        1. transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
        2. provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control, in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer’s request; and
        3. provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOISA or regulation 5 of the EIR.
     3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Consultant’s Confidential Information, is exempt from disclosure in accordance with the provisions of the FOISA or the EIR.
     4. In no event shall the Consultant respond directly to a Request for Information unless authorised in writing to do so by the Customer.
     5. The Consultant acknowledges that (notwithstanding the provisions of Clause 9.1) the Customer may, be obliged under the FOISA or the EIR to disclose information concerning the Consultant or the Project:
        1. in certain circumstances without consulting the Consultant; or
        2. following consultation with the Consultant and having taken the Consultant’s views into account, provided always that where Clause 9.3.5 applies the Customer shall, take reasonable steps, where appropriate, to give the Consultant advanced notice, or failing that, to draw the disclosure to the Consultant’s attention after any such disclosure.
     6. The Consultant shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer on reasonable notice to inspect such records as requested from time to time.
     7. The Consultant acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 9.3.5.
  3. **Transparency**
     1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOISA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOISA.
     2. Notwithstanding any other term of the Contract, the Consultant hereby gives consent to the Customer to publish the Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOISA), including any changes to the Contract agreed from time to time.
     3. The Customer may consult with the Consultant to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
     4. The Consultant shall assist and cooperate with the Customer to enable the Customer to publish the Contract.
  4. **Blacklisting**

The Consultant must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing Personal Data in connection with any blacklisting activities. Breach of this term is a Material Breach which shall entitle the Customer to terminate.

* 1. **Security of Premises**
     1. The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Consultant shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that the Consultant’s Staff comply with such requirements.
     2. The Customer shall provide the Consultant upon request details of its standard security requirements and shall afford the Consultant upon request an opportunity to inspect its physical security arrangements.
     3. The Consultant shall provide the Customer upon request copies of its written security procedures and shall afford the Customer upon request an opportunity to inspect its physical security arrangements.

WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

* 1. The Consultant warrants, represents and undertakes to the Customer that:
     1. it has full capacity and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
     2. the Contract is executed by a duly authorised representative of the Consultant;
     3. in entering the Contract it has not committed any Fraud;
     4. it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
     5. all information, statements and representations contained in the Consultant’s tender or other submission to the Customer for the award of the Project are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
     6. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
     7. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
     8. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
     9. no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Consultant or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Consultant’s assets or revenue;
     10. it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer; and
     11. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Project.
  2. The Consultant warrants, represents and undertakes to the Customer that:
     1. it has read and fully understood these terms and is capable of performing the Project in all respects in accordance with the Contract;
     2. the Consultant and each of its Sub-Contractors has all staff, equipment and experience necessary for the proper performance of the Project; and
     3. it will at all times:
        1. perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
        2. carry out the Project within any timeframe agreed with the Customer; and
        3. without prejudice to its obligations under Clause 2.3 (Key Personnel), ensure to the satisfaction of the Customer that the Project are provided and carried out by such appropriately qualified, skilled and experienced Consultants and/or other Staff as shall be necessary for the proper performance of the Project.
  3. The Consultant shall promptly notify the Customer in writing:
     1. of any material detrimental change in the financial standing and/or credit rating of the Consultant;
     2. if the Consultant undergoes a Change of Control; and
     3. provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
  4. For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Consultant if that provision had not been so expressed.
  5. The Consultant acknowledges and agrees that:
     1. the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Customer into entering into the Contract; and
     2. the Customer has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

TERMINATION

* 1. **Termination on Insolvency**
     1. The Customer may terminate the Contract with immediate effect by giving notice in writing to the Consultant if:
        1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Consultant’s creditors; or
        2. a shareholders’, members’ or partners’ meeting is convened for the purpose of considering a resolution that the Consultant be wound up or a resolution for the winding-up of the Consultant is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
        3. a petition is presented for the winding-up of the Consultant (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened in respect of the Consultant pursuant to section 98 of the Insolvency Act 1986; or
        4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Consultant’s business or assets; or
        5. a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Consultant’s assets and such attachment or process is not discharged within ten (10) Working Days;
        6. an application is made in respect of the Consultant either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
        7. if the Consultant is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
        8. the Consultant suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
        9. in the reasonable opinion of the Customer, there is a material detrimental change in the financial standing and/or the credit rating of the Consultant which:
           1. adversely impacts on the Consultant’s ability to supply the Project in accordance with the Contract; or
           2. could reasonably be expected to have an adverse impact on the Consultant’s ability to supply the Project in accordance with the Contract; or
        10. the Consultant demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Consultant; or
        11. being a “small company” within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Consultant comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
        12. the Consultant being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
        13. the Consultant being an individual or any partner or partners in the Consultant who together are able to exercise control of the Consultant where the Consultant is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or
        14. any event similar to those listed in Clauses  11.1.1.1 to 11.1.1.13 occurs under the law of any other jurisdiction.
  2. **Termination on Material Breach, Persistent Failure or Grave Misconduct etc.**
     1. The Customer may terminate the Contract with immediate effect by giving written notice to the Consultant if:
        1. the Consultant commits a Material Breach and if:
        2. the Consultant has not within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice to the Consultant specifying the Material Breach and requesting it to be remedied:
           1. remedied the Material Breach; and
           2. put in place measures to ensure that such Material Breach does not recur, in each case to the satisfaction of the Customer; or
           3. the Material Breach is not, in the opinion of the Customer, capable of remedy; or
           4. if a Persistent Failure has occurred; or
           5. if Grave Misconduct has occurred; or
           6. the Consultant breaches any of Clause 8.1 (Protection of Personal Data), Clause 9.1 (Confidentiality), Clause 9.2 (Official Secrets Acts 1911 to 1989), Clause 9.5 (Blacklisting), Clause 10 (Warranties, Representations and Undertakings), Clause 14 (Prevention of Bribery and Corruption), Clause 15 (Non Discrimination), Clause 16 (Prevention of Fraud) and Clause 18 (Transfer and Sub-Contracting); or
           7. in the event of conviction for dishonesty of the Consultant (if an individual) or any one or more of the Consultant’s directors, partners or members (if the Consultant is a firm or firms); or
           8. in the opinion of the Customer the Contract 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
           9. the Consultant has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of Regulation 58(2) and should therefore have been excluded from the procurement procedure; or
           10. the Contract should not have been awarded to the Consultant in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Clause “the Treaties” has the meaning given in the European Communities Act 1972.

* + 1. If the Customer fails to pay the Consultant undisputed sums of money when due, the Consultant shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within five (5) calendar days from the receipt of a such notice, the Consultant may terminate the Contract by ten (10) Working Days’ written notice to the Customer.
  1. **Termination on Change of Control**
     1. The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
        1. being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
        2. where no notification has been made, the date that the Customer becomes aware of the Change of Control, but shall not be permitted to terminate where the Customer’s written consent to the continuation of the Contract was granted prior to the Change of Control.
  2. **Termination on Summary Notice**
     1. The Customer shall have the right to suspend the Contract with immediate effect at any time by giving written notice to the Consultant and to terminate the Contract with immediate effect by giving written notice to the Consultant at any time.
  3. **Partial Termination**
     1. Where the Customer is entitled to terminate the Contract pursuant to this Clause 11, the Customer shall be entitled to terminate all or part of the Contract provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.

CONSEQUENCES OF EXPIRY OR TERMINATION

* 1. Subject to Clause 12.2, where the Customer terminates the Contract pursuant to Clause 11 (Termination) and then makes other arrangements for the supply of the Project:
     1. the Customer may recover from the Consultant the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer in securing the Project in accordance with the requirements of the Contract;
     2. the Customer shall take all reasonable steps to mitigate such additional expenditure; and
     3. no further payments shall be payable by the Customer to the Consultant until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Consultant.
  2. Clause 12.1 shall not apply where the Customer terminates the Contract:
     1. solely pursuant to Clauses 11.3, 11.4 or 11.5.
  3. Where the Customer terminates the Contract under Clause 11.3 or 11.4, the Customer shall indemnify the Consultant against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Consultant by reason of the termination of the Contract, provided that the Consultant takes all reasonable steps to mitigate such loss. The Consultant shall submit a fully itemised and costed list, with supporting evidence, of losses reasonably and actually incurred by the Consultant. Where the Consultant holds insurance, the Consultant shall reduce its unavoidable costs by any insurance sums available.
  4. On the termination of the Contract for any reason, the Consultant shall, at the request of the Customer and at the Consultant’s cost:
     1. immediately return to the Customer all Confidential Information and the Customer’s Personal Data in its possession or in the possession or under the control of any permitted Consultants or Sub-Contractors, which was obtained or produced in the course of providing the Project;
     2. except where the retention of Customer’s Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Customer’s Personal Data and provide written confirmation to the Customer that the data has been destroyed;
     3. immediately deliver to the Customer in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Consultant by the Customer in connection with the Contract provided to the Consultant;
     4. vacate, and procure that the Consultant’s Staff vacate, any Premises occupied for the purposes of providing the Project;
     5. return to the Customer any sums prepaid in respect of the Project not provided by the date of expiry or termination (howsoever arising); and
     6. promptly provide all information concerning the provision of the Project which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Project have been provided or for the purpose of allowing the Customer or any replacement Consultant to conduct due diligence.
  5. Save as otherwise expressly provided in the Contract:
     1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
     2. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Consultant under the following Clauses: Clause 5 (Payment and Charges); Clause 6 (Liability and Insurance); Clause 7 (Intellectual Property Rights); Clause 8 (Protection of Personal Data); Clause 9.1 (Confidentiality); Clause 9.2 (Official Secrets Act); Clause 9.3 (Freedom of Information); Clause 14 (Prevention of Bribery and Corruption); Clause 16 (Prevention of Fraud); Clause 25 (Entire Agreement); Clause 27.1 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.

PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

* 1. The Consultant shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Contract in any way without the Customer’s prior written approval and shall take reasonable steps to ensure that the Consultant’s Staff and professional advisors comply with this Clause 13. Any such press announcements or publicity proposed under this Clause 13 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
  2. Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer including any examination of the Contract by the auditors.
  3. The Consultant shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

PREVENTION OF BRIBERY AND CORRUPTION

* 1. The Consultant shall not:
     1. offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or any person employed by or on behalf of the Customer any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Contract; or
     2. engage in, and shall procure that all the Consultant’s Staff or any person acting on the Consultant’s behalf shall not commit, in connection with the Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.
  2. The Consultant warrants, represents and undertakes that it has not:
     1. paid commission or agreed to pay commission to the Customer, or any person employed by or on behalf of the Customer in connection with the Contract; and
     2. entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Customer before execution of the Contract.
  3. The Consultant shall:
     1. immediately notify the Customer if it suspects or becomes aware of any breach of this Clause 14;
     2. respond promptly to any of the Customer’s enquiries regarding any breach, potential breach or suspected breach of this Clause 14 and the Consultant shall co-operate with any investigation and allow the Customer to audit Consultant’s books, records and any other relevant documentation in connection with the breach;
     3. if so required by the Customer, within twenty (20) Working Days of the commencement date of the Contract, and annually thereafter, certify to the Customer in writing of the compliance with this Clause 14 by the Consultant and all persons associated with it or its Sub-Contractors or other persons who are supplying the Project in connection with the Contract. The Consultant shall provide such supporting evidence of compliance as the Customer may reasonably request; and
     4. have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent the Consultant and any of the Consultant’s Staff or any person acting on the Consultant’s behalf from committing a Prohibited Act and shall enforce it where appropriate.
  4. If the Consultant, any member of the Consultant’s Staff or any person acting on the Consultant’s behalf, in all cases whether or not acting with the Consultant’s knowledge breaches:
     1. this Clause 14 or
     2. the Bribery Act 2010 in relation to the Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract, the Customer shall be entitled to terminate the Contract by written notice with immediate effect.
  5. Without prejudice to its other rights and remedies under this Clause 14, the Customer shall be entitled to recover in full from the Consultant and the Consultant shall on demand indemnify the Customer in full from and against:
     1. the amount of value of any such gift, consideration or commission; and
     2. any other loss sustained by the Customer in consequence of any breach of this Clause 14.

NON-DISCRIMINATION

* 1. The Consultant shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
  2. The Consultant shall take all reasonable steps to secure the observance of Clause 15.1 by all Consultants’ Staff employed in the execution of the Contract.

PREVENTION OF FRAUD

* 1. The Consultant shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Consultant and any member of the Consultant’s Staff.
  2. The Consultant shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Consultant or any member of the Consultant’s Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
  3. If:
     1. the Consultant breaches any of its obligations under Clause 16.1 and Clause 16.2; or
     2. the Consultant or any member of the Consultant’s Staff commits any Fraud in relation to the Contract or any other contract with the Customer or any other person, the Customer may recover in full from the Consultant and the Consultant shall on demand indemnify the Customer in full against any and all losses sustained by the Customer in consequence of the relevant breach or commission of Fraud, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Project and any additional expenditure incurred by the Customer in relation thereto.

ANTI SLAVERY AND HUMAN TRAFFICKING

* 1. Compliance with Anti Slavery and Human Trafficking Laws and Policies
     1. In performing its obligations under the Contract, the Consultant 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 Customer’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 SCTS 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 Consultant represents and warrants that:
        1. neither the Consultant 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 Consultant 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 Consultant shall notify the Customer as soon as it becomes aware of:
        1. any breach, or potential breach, of the Customer’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 Contract.

TRANSFER AND SUB-CONTRACTING

* 1. The Consultant shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, the Contract or any part of it without the Customer’s prior written consent. Where the Customer provides written consent to this, copies of the Assignations, Novation Agreements and Sub-Contracts will be provided to the Customer within five (5) Working Days of execution of the Assignations, Novation Agreements and Sub-Contracts.
  2. The Consultant shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.
  3. The Customer may assign novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
     1. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
     2. any private sector body which substantially performs the functions of the Customer, provided that any such assignment, novation or other disposal shall not increase the burden of the Consultant’s obligations under the Contract.
  4. Any change in the legal status of the Customer shall not, subject to this Clause 18 affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

WAIVER

* 1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
  2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 26.
  3. A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

1. **CUMULATI**V**E REMEDIES**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

SEVERABILITY

* 1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
  2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Consultant shall immediately commence good faith negotiations to remedy such invalidity.

CONSULTANT’S STATUS

At all times during the Term of the Contract the Consultant shall be an independent Consultant and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

TUPE

* 1. The Consultant recognises that 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) shall (a) transfer to the Consultant on the commencement of the Contract; (b) transfer to another contractor on the expiry of the Contract.
  2. During the period of six months preceding the expiry of the Contract or after the Customer has given notice to terminate the Contract or the Consultant stops trading, and within 20 (twenty) Working Days of being so requested by the Customer, the Consultant shall fully and accurately disclose to the Customer or to any person nominated by the Customer information relating to employees engaged in providing the Project in relation to the Contract in particular, but not necessarily restricted to, the following:
     1. the total number of personnel whose employment with the Consultant is liable to be terminated at the expiry of this Contract but for any operation of law; and
     2. for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
     3. information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
     4. details of pensions entitlements, if any.
  3. The Consultant shall permit the Customer to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential consultants and contractors as the Customer considers appropriate in connection with any re-tendering. The Consultant will co-operate with the re-tendering of the contract by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.
  4. The Consultant agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Clause.
  5. In the event that the information provided by the Consultant in accordance with this Clause 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 Consultant becoming aware that the information originally given was inaccurate, the Consultant shall notify the Customer of the inaccuracies and provide the amended information. The Consultant shall be liable for any increase in costs the Customer may incur as a result of inaccurate or late production of data.
  6. The provisions of this Clause 24 shall apply during the continuance of this Contract and after its termination howsoever arising.

ENTIRE AGREEMENT

* 1. The Contract, together with the other documents referred to therein constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.
  2. Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.
  3. The Consultant acknowledges that it has:
     1. entered into the Contract in reliance on its own due diligence alone; and
     2. received sufficient information required by it in order to determine whether it is able to provide the Project in accordance with the terms of the Contract.
  4. Nothing in Clauses 25.1 and 25.2 shall operate:
     + 1. to exclude Fraud or fraudulent misrepresentation;
  5. The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

NOTICES

* 1. Except as otherwise expressly provided in the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless given or made in writing by or on behalf of the Party sending the communication.
  2. Any notice or other communication given or made by either Party to the other shall:
     1. be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and
     2. unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:
        1. if delivered personally, at the time of delivery;
        2. if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered;
        3. if sent by electronic mail, two (2) Working Days after posting of a confirmation letter; and
        4. if sent by facsimile, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 9:00 hours on the next Working Day and provided that at time of transmission of the facsimile an error-free transmission report is received by the Party sending the communication.
  3. For the purposes of Clause 26.2, the address, email address and fax number of each Party shall be the address, email address and fax number specified in the Letter of Appointment.
  4. Either Party may change its address for service by serving a notice in accordance with this Clause 26.
  5. For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

DISPUTES AND LAW

* 1. **Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with the Laws of Scotland and the Parties agree to submit to the exclusive jurisdiction of the Scottish courts any dispute that arises in connection with the Contract.

* 1. **Dispute Resolution**
     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 within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Letter of Appointment.
     2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
     3. If the dispute cannot be resolved by the Parties pursuant to Clause 27.2.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 27.2.5 unless:
        1. the Customer considers that the dispute is not suitable for resolution by mediation; or
        2. the Consultant does not agree to mediation.
     4. The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Consultant and the Consultant’s Staff shall comply fully with the requirements of the Contract at all times.
     5. The procedure for mediation is as follows:
        1. a neutral adviser or mediator (the **“Contract Mediator”)** shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the President of the Law Society of Scotland for the time being to appoint a Contract Mediator;
        2. the Parties shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the President of the Law Society of Scotland for the time being to provide guidance on a suitable procedure;
        3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
        4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
        5. failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
        6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**SCHEDULE (Data Protection)**

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

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

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

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

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

### [Include description here]

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

### [Include list of data types here]

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

### [Include categories of data subjects here]

### **The obligations and rights of the Customer**

The obligations and rights of the Customer as the Data Controller are set out in Clause 8 of the Contract.

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| **SUPPLEMENTARY NOTICE** | |
| **LATE PAYMENT OF INVOICES** | |
|  | Consultants to the Scottish Courts and Tribunals Service are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Head of Procurement, SCS, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Consultants’ legal rights. |
| **THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT** | |