

Purchase Order Terms and Conditions (the "PO Terms")

1. Definitions and Interpretation

For the purpose of these Conditions:

- 1.1 **"Affiliate"** means any entity that directly or indirectly, controls or is under the control of, or is under common control with, as the case may be, Customer;
- 1.2 **"Agreement"** means the Purchase Order and the Supplier's acceptance of the Purchase Order in accordance with clause 2.4 and subject to clauses 2.1 and 2.3;
- 1.3 **"Business Day or Working Day"** means any day which is not a Saturday or a Sunday or a bank holiday in Scotland;
- 1.4 **"Conditions"** means these terms and conditions;
- 1.5 **"Customer"** means Caledonian Sleeper Limited (CSL), Company Number SC328825;
- 1.6 **"Customer's Policies"** means Customer's policies (including those relating to Customer's code of conduct, health and safety, expenses; security; ethics, anti-bribery and anti-corruption policies, and any additional policies and working procedures as defined by CSL.
- 1.7 **"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Processing"** shall have the meanings given to them in the Data Protection Legislation;
- 1.8 **"Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; [and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Commissioner or other relevant regulatory authority and which are applicable to a party;
- 1.9 **"Deliverables"** means all goods, records, reports, documents, papers and other materials or deliverables developed or produced by or on behalf of the Supplier as part of or in connection with the Goods and/or Services;
- 1.10 **"DOTAS"** means the Disclosure of Tax Avoidance Schemes rules;
- 1.11 **"Environmental Information Regulations"** means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations;
- 1.12 **"Employee Liabilities"** means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:
 - (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
 - (b) unfair wrongful or constructive dismissal compensation;
 - (c) compensation for discrimination under the Equality Act 2010;
 - (d) compensation for less favourable treatment of part-time workers or fixed-term employees;
 - (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
 - (f) employment claims whether in delict, contract, statute or otherwise;
 - (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
- 1.13 **"FOISA"** means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation;
- 1.14 **"Former Supplier"** means a supplier supplying services to the Customer before the Relevant Transfer Date that are the

- same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
- 1.15 **"Goods"** means any goods and/or Deliverables (as the context allows) agreed in the Agreement to be purchased by Customer from the Supplier (including any part or parts of them);
- 1.16 **"Insolvency Event"** means that the Supplier is declared or becomes insolvent or (as applicable) bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction, or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances;
- 1.17 **"Losses"** means direct, indirect or consequential liabilities (which terms include loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses);
- 1.18 **"Purchase Order"** means Customer's written instruction to the Supplier to supply the Goods and/or Services, incorporating these Conditions;
- 1.19 **"Relevant Transfer"** means a transfer of employment to which TUPE applies;
- 1.20 **"Relevant Transfer Date"** means the date upon which the Relevant Transfer takes place;
- 1.21 **"Replacement Services"** means any services which are the same or substantially similar to the Services following the expiry or termination of this Agreement, whether those services are provided by the Customer internally and/or by any third party;
- 1.22 **"Replacement Supplier"** means any third party service provider of Replacement Services appointed by the Customer from time to time;
- 1.23 **"Replacement Sub-contractor"** means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date;
- 1.24 **"Services"** means the services (or any part or parts of them) agreed in the Agreement to be supplied to Customer by the Supplier and any related services not specifically described in the Agreement which are reasonably required for the proper performance and provision of such services including the production and delivery of any Deliverables;
- 1.25 **"Service Transfer"** any transfer of the Services of any part of the Services for whatever reason from the Supplier or any sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
- 1.26 **"Staffing Information"** means information relating to all persons identified in the Suppliers Provisional Personnel List or Suppliers Final Personnel List, as the case may be, such information as the Customer may reasonably request but including in an anonymised format:
- (a) their ages, dates of commencement of employment or engagement and gender;
 - (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
 - (c) the identify of the employer or relevant contracting party;
 - (d) their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;
 - (e) their wages, salaries and profit sharing arrangements as applicable;
 - (f) details of other employment relating benefits including without limitation medical insurance, life assurance, pension and other retirement benefit schemes, share options schemes and company car schedules applicable to them;
 - (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
 - (h) details of any such individuals on long terms sickness absence, parental leave, maternity leave or other authorised long term absence;
 - (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment; and
 - (j) any other "employee liability information" as such term is defined in Regulations 11 of TUPE;
- 1.27 **"Supplier"** means the person, firm or company who accepts Customer's Purchase Order in accordance with clause 2.4;
- 1.28 **"Supplier Code of Conduct"** means the Customer's Supplier Code of Conduct found [here](#).

- 1.29 **“Supplier Personnel”** means all directors, offices, employees, agents, consultants and **contractors** of the Supplier and/or any Sub-contractor engaged in the performance of the Supplier’s obligations under this agreement;
- 1.30 **“Supplier’s Final Personnel List”** means a list provided by the Supplier of all **Supplier Personnel** who will transfer under TUPE on the Relevant Transfer Date;
- 1.31 **“Supplier’s Provisional Personnel List”** means a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in whole or mainly assigned to the provision of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
- 1.32 **“TUPE”** means the Transfer of Undertakings (Protection of **Employment**) Regulations 2006;
- 1.33 **“Transferring Supplier Employees”** means those employees of the Supplier and/or the Sub-contractors to whom TUPE will apply on the Service Transfer Date; and
- 1.34 **“UK GDPR”** means the General Data Protection Regulation as incorporated into UK laws and as defined and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.
- 1.35 Any phrase introduced by the words "including", "include", "in particular", "for **example**" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.
- 1.36 References to clauses are to clauses of these **Conditions**.
- 1.37 Any reference to a statute, regulation or other similar instrument shall be **construed** as a reference to the same as amended, replaced or superseded.
- 2. Supplier's Conditions and Effect of and Purchase Order**
- 2.1 These Conditions shall apply to and be incorporated into the Agreement, which, subject to clause 2.2 (and save in the case of fraud or fraudulent concealment), constitutes the entire agreement between Customer and the Supplier relating to its subject matter.
- 2.2 Where Customer and the Supplier have entered into a framework agreement or supply contract in respect of the Goods and/or Services referred to in the Purchase Order, then these Conditions shall not apply.
- 2.3 Subject to clause 2.2, these Conditions apply to this Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.4 The Customer shall only be bound by a Purchase Order if it is signed or sent electronically by a duly authorised representative of the Customer. The execution and return of the acknowledgement copy of the Purchase Order by the Supplier or the delivery of Goods or commencement of Services pursuant to that Purchase Order constitutes acceptance of the Purchase Order on these Conditions by the Supplier.
- 3. Goods**
- 3.1 The Supplier warrants that all Goods supplied to the Customer under the Agreement shall: (i) comply with the specification set out in the Purchase Order and any variations of such specification agreed in writing by the parties; (ii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); (iii) be fit for any purpose held out by the Supplier or made known to the Supplier by Customer; (iv) be free from defects in design, material and workmanship and shall remain so for 12 months after delivery to Customer in accordance with this clause 3; and (v) comply with all applicable laws, codes of practice and guidance.
- 3.2 Goods shall be delivered at the Supplier's cost and risk to Customer by the date(s) specified in the Purchase Order, or if a date is not specified, within 30 days of the date of the Purchase Order, to the delivery address stated in the Purchase Order (or such other location as agreed in writing by Customer), during normal business hours (unless otherwise specified in the Purchase Order), together with a delivery note which shows the Purchase Order number, date of the Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. All delivery notes provided pursuant to this clause 3.2 will act as an inventory of the Goods delivered and shall have no other purpose.
- 3.3 The Supplier shall unload the Goods at its own risk and as directed by Customer. The Goods shall remain at the risk of the Supplier until unloading of the Goods is complete, at which point risk in the Goods shall pass to Customer.
- 3.4 Subject to clause 3.3, title in the Goods shall pass to Customer on the earlier of: (i) delivery of such Goods in accordance with these Conditions; and (ii) payment by Customer for such Goods, without prejudice to any rights of rejection that Customer may have under the Agreement.
- 3.5 All Goods shall be subject to Customer's (and, if necessary, any of Customer's

customers' and/or Customer's Affiliates) inspection and test at all times before, during or after manufacture. The Supplier shall provide, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by Customer and/or any of its customers and/or its Affiliates. Final inspection and acceptance shall be on Customer's premises unless otherwise specified in the Purchase Order.

3.6 If, after delivery of any Goods, Customer determines that:

- (a) there is a physical shortfall in the quantity delivered, then without prejudice to Customer's other rights or remedies, the Supplier shall promptly correct any shortfall; or
- (b) Goods have been delivered in excess of the quantities stated in the Purchase Order, then Customer shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable upon request at the Supplier's expense; or
- (c) Goods are visibly damaged and/or do not comply with the requirements of clause 3.1, then without prejudice to any other right or remedy of Customer under the Agreement, the Supplier shall promptly at its own expense replace any such defective Goods without waiting for the defective Goods to be returned by Customer, and Customer shall return (at the Supplier's cost and risk) any defective Goods to the Supplier after receipt of replacement Goods from the Supplier.

4. Services

4.1 The Supplier shall provide the Services to Customer in accordance with the terms of the Agreement from the commencement date specified in the Purchase Order until the expiry date specified in the Purchase Order, subject to earlier termination in accordance with the terms of the Agreement.

4.2 The Supplier shall: (i) perform the Services with all due care, skill and diligence; (ii) ensure that the Services conform with the specification set out in the Purchase Order and any variations of such specification agreed in writing by the parties; (iii) perform the Services in accordance with all applicable laws, codes of practice and guidance; (iv) observe all health and safety rules, requirements and regulations and any and all security requirements that apply at any of Customer's premises at which Services are being provided; (v) observe any and all cyber security requirements communicated by the Customer to the

Supplier and/or detailed in the Purchase Order and/or contained in the Customer's Policies; and (vi) provide the Services and perform its obligations under this Agreement in accordance with the Customer's Policies.

4.3 The Supplier shall meet any dates or deadlines for performance of the Services set out in the Purchase Order, provided that if no performance dates are specified, the Supplier shall perform the Services promptly, diligently and in any event within a reasonable time of the date of the Purchase Order.

5. Price

5.1 The price of the Goods and/or Services shall be set out in or calculated in accordance with the Purchase Order and, unless otherwise agreed in writing by Customer, shall be exclusive of value added tax ("VAT") but inclusive of all other charges. Any VAT shall be charged in accordance with the relevant regulation in force at the time of making the taxable supply and shall be paid by Customer following receipt from the Supplier of a valid VAT invoice in accordance with clause 6. No variation in the price or any extra charges shall be accepted or payable by Customer unless agreed between Customer and the Supplier and set out in the Agreement.

6. Payment and Invoicing

6.1 The Customer shall pay the price (as detailed on the Purchase Order and/or agreed in writing by the parties) of the Goods and/or Services that are delivered and accepted pursuant to these Conditions ("**Charges**") monthly in arrears within 30 days from the date of receipt by Customer of a valid and undisputed invoice from the Supplier which includes the relevant Purchase Order number(s) given by Customer for the relevant Goods and/or Services and any relevant supporting data that may reasonably be required by Customer. In this Clause 6, 'invoice' includes an electronic invoice meeting all requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

6.2 Without prejudice to any other right or remedy that Customer may have, Customer shall have the right to: (i) withhold from the payment of the Charges any amounts required by law to be deducted; and (ii) set off any liability of the Supplier (whether under the Agreement or not) to Customer against any liability of Customer to the Supplier.

6.3 If Customer fails to pay any undisputed Charges by the due date for payment, Customer shall pay interest on the overdue

amount at the rate of 2% per annum above the Bank of Scotland base rate from time to time from the due date until the date of actual payment of the overdue amount whether before or after judgment.

7. Tax Warranty

The Supplier warrants and undertakes to Customer that:

- 7.1 its tax affairs have not given rise to a criminal conviction in any jurisdiction for tax related offences which is unspent, or to a penalty for civil fraud or evasion and it has procedures in place to ensure that no such tax offence, fraud or evasion should arise; and
- 7.2 it has not entered into any arrangements or submitted any tax return which has been successfully challenged on the basis of abuse of law or being a transaction the main, or one of the main, purposes of which was the avoidance of any tax and no report under the DOTAS rules (or equivalent rules in any other jurisdiction) has been made or required to be made.

8. Confidentiality

- 8.1 The Supplier shall at all times during and after the term of the Agreement keep in strict confidence all technical and/or commercial know-how, specifications, inventions, processes and/or initiatives which are of a confidential nature and any other information relating to Customer's business, customers or financial or other affairs and/or related to the Agreement and the provision of the Goods and/or Services which is not publicly known and which is disclosed to the Supplier by Customer or any employee, agent or subcontractor of Customer or which the Supplier obtains ("Confidential Information"). The Supplier shall restrict disclosure of such Confidential Information to: (i) such disclosure as may be required by law or any legal or regulatory authority; and/or (ii) such of its employees, agents and/or subcontractors who need to know the same for the purpose of discharging the Supplier's obligations to Customer provided that the Supplier shall ensure that such employees, agents and/or subcontractors are subject to obligations of confidentiality equivalent to this clause 8.
- 8.2 The Supplier undertakes to abide and procure that the Supplier's employees and any permitted subcontractors abide by the provisions of the Official Secrets Acts 1911 to 1989.
- 8.3 The Customer may disclose any information as required by law or judicial order to be disclosed. Further, the Customer may disclose any information obtained by the Customer by virtue of the Agreement to the Scottish or United Kingdom Parliament or any other department, office or agency of

Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Customer shall if the Customer sees fit disclose such information but is unable to impose any restrictions upon the information that the Supplier provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of the Agreement.

9. Blacklisting

- 9.1 The Supplier 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 Legislation by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Customer to terminate this Agreement.

10. Audit Rights

- 10.1 The Supplier shall as soon as reasonably practicable on request from Customer make available to Customer any file, correspondence, document or information relating to the performance of the Supplier's obligations under the Agreement and any other information which Customer may require to verify the Supplier's performance of the Agreement in accordance with its terms or to comply with the requirements of any applicable laws, relevant governmental authority and/or customer of Customer. The Supplier shall permit Customer, its professional advisers, its customers and any relevant governmental authority access to all information in the possession or control of the Supplier which they may reasonably require in relation to the Agreement.
- 10.2 The Supplier shall keep and maintain until 5 years after the Agreement has been completed records to the satisfaction of the Customer of all full and accurate records of the Agreement including the Purchase Orders placed, the Services provided and of all expenditures which are reimbursable by the Customer and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Customer on a time charge basis. The Supplier shall on request and without charge afford the Customer or the Customer's representatives such access to those records as may be required by the Customer in connection with the Agreement.
- 10.3 Clause 10.2 shall apply during the

continuance of this Agreement and shall continue after its termination howsoever arising.

11. Ethics and Compliance

11.1 Obligations: The Supplier must, and must procure that each of its sub-contractors must:

- (a) comply and act consistently with Customer's Supplier Code of Conduct and Customer's Policies;
- (b) comply with all applicable laws, statutes and/or regulations relating to anti-slavery, human trafficking, child labour, forced labour, collective bargaining, discrimination, abuse, working hours and minimum wages;
- (c) comply with all applicable laws, statutes and/or regulations relating to anti-bribery, anti-corruption, tax evasion and fraud (including but not limited to those detailed in clause 11.4 below);
- (d) not engage in any activity, practice or conduct which would constitute an offence under clauses 11.1(b) and 11.1(c) and 11.4 had the activity, practice or conduct been carried out in the relevant jurisdiction;
- (e) promptly report to Customer and Customer's Affiliates any request or demand which if complied with would amount to a breach of either this Agreement, or Customer's Supplier Code of Conduct or a breach of clause 11.4; and
- (f) ensure that any person associated with it who is performing Services or providing Goods in connection with this Agreement does so only with the Customer's prior written consent and only on the basis of a written Subcontract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 11. In respect of any person associated with the Supplier (including any sub-contractor) for which clause 11.1(f) applies, the Supplier is responsible for the entry into a Subcontract, and observance and performance by such persons of the obligations set out in this clause 11.

11.2 Indemnity for Breach of Ethics and Compliance:

The Supplier hereby indemnifies the Customer against any Losses incurred by, or awarded against, the Customer as a result of any breach of clause 11 by the Supplier or any breach of provisions equivalent to such clauses in any Subcontract by any sub-contractor.

11.3 **The Supplier's Obligations on Breach by Sub-Contractor:** If a sub-contractor breaches any subcontract, The Supplier must:

- (a) notify Customer in the case of any such breach; and
- (b) where requested by Customer, if the breach relates to any of the Supplier's obligations under clause 11, immediately give the Sub- Contractor notice specifying the breach; and
- (c) if the breach is capable of remedy (at the sole discretion of the Customer), give notice to the sub-contractor that the Subcontract will terminate in 30 days from the date of the notice unless the sub-contractor remedies the breach within that period; or
- (d) if the breach is not capable of remedy, terminate the Subcontract immediately.

11.4 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, codes and industry best practice relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Anti-Bribery Requirements");
- (b) not engage in any activity, practice or conduct (or make, promise or offer (or accept, request, receive or agree to receive) any gift, payment, reward, rebate, contribution, commission or any improper influence, incentive, inducement or advantage of any kind (financial or otherwise)) which would constitute an offence under or contravene any Relevant Anti-Bribery Requirements;
- (c) comply with the Customer's ethics, anti-bribery and anti-corruption policies in place and as may be updated from time to time and notified to the Supplier ("**Relevant Anti-Bribery Policies**");
- (d) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures as defined under the Bribery Act 2010, to ensure compliance with the Relevant Anti-Bribery Requirements, the Relevant Anti-Bribery Policies and clause 11.4(b), and will enforce them where appropriate and shall provide the Customer with a copy of such policies and procedures upon request;
- (e) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of

this Agreement;

- (f) immediately notify the Customer (in writing) if a foreign public official (as defined under the Bribery Act 2010) becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement); and
 - (g) on request by the Customer, certify to the Customer in writing signed by an officer of the Supplier compliance with this clause 11 by the Supplier and all persons associated with it under clause 11.5. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 11.5 The Supplier shall ensure that any Associated Persons who are performing services in connection with this Agreement do so in compliance with the terms of this clause 11 (the "**Relevant Anti- Bribery Terms**"). The Supplier shall be responsible for the observance and performance by any and all such persons of the Relevant Anti-Bribery Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Anti-Bribery Terms
- 11.6 Breach of clauses 11.1 and clause 11.4 shall be **deemed** an irremediable material breach of this Agreement.
- 12. Customer's Property and Intellectual Property Rights**
- 12.1 All materials (including equipment and tools) supplied by Customer to the Supplier and/or paid for by Customer shall be the property of Customer and shall be: (i) clearly identified as the property of Customer; (ii) subject to removal upon demand by Customer at any time without additional cost to Customer; (iii) used only for fulfilling orders from Customer; (iv) kept separate from other materials; (v) held by the Supplier in safe custody at its own risk; and (vi) maintained and kept in good condition by the Supplier, and shall not be: (i) disposed of other than in accordance with Customer 's written instructions; or (ii) used other than as authorised by Customer in writing. The Supplier assumes all liability for loss or damage howsoever caused to such materials, save for reasonable wear and tear, and agrees to supply detailed statements of inventory upon request by Customer.
- 12.2 In the absence of prior written agreement by Customer to the contrary, all intellectual property rights created by the Supplier or any employee, agent or subcontractor of the

Supplier (i) in the course of providing the Goods and/or Deliverables and/or performing the Services; or (ii) exclusively for the purpose of providing the Goods and/or Deliverables and/or performing the Services ("**New IPR**") shall vest in Customer immediately on creation and the Supplier hereby assigns by way of assignation of present and future rights to Customer and free from encumbrances and third-party rights all New IPR, including all goodwill and rights under all applicable laws attaching thereto and the Supplier hereby undertakes do all things necessary to give effect to such assignation, including without limitation assignation and registration in favour of and/or in the name of the Customer.

- 12.3 The Supplier does not acquire any interest in or license to use the Customer's intellectual property rights owned or developed prior to or independently of the Agreement.
- 12.4 The Supplier must not infringe any intellectual property rights of any third party in providing the Goods and/or Services or otherwise performing its obligations under this Agreement (including but not limited to the creation of New IPR). The Supplier shall indemnify the Customer against all actions, claims, demands, Losses, charges, costs and expenses which the Customer may suffer or incur as a result of or in connection with any breach of this Clause 12.4.
- 12.5 The Supplier grants to Customer all necessary rights and licences to use, transfer and sublicense the intellectual property rights in Supplier materials which existed prior to the date of the Agreement (and warrants that to Customer that it has the right to do so) for so long as the Customer may require. For the avoidance of doubt, all Customer materials are and shall remain the exclusive property of Customer.
- 13. Data Protection**
- 13.1 The Supplier acknowledges and agrees that Customer is the Controller and the Supplier is a Processor in respect of all Personal Data processed pursuant to the Agreement.
- 13.2 The Supplier warrants and represents that it shall, and shall procure that the Supplier's Personnel, process Personal Data only for the purpose of performing the Supplier's obligations under the Agreement on documented instructions that Customer may give to the Supplier from time to time and in compliance with the Data Protection Legislation.
- 13.3 the Supplier shall, in relation to the Personal Data:
- (a) process that Personal Data only on the documented instructions of the Customer, unless the Supplier is required to do so by law to which the

Supplier is subject; in such case the Supplier shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The Supplier shall inform the Customer if, in its opinion, the Customer's instructions do not comply with the Data Protection Legislation;

- (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against its accidental or unlawful destruction, damage, loss, alteration, unauthorised disclosure of, or access to, including *inter alia* as appropriate:
- the pseudonymisation and encryption of Personal Data;
 - the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
 - a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

In assessing the appropriate level of security the Supplier shall take into account in particular the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing.

- (c) ensure, and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential on terms no less onerous than those set out in this Agreement;
- (d) promptly assist the Customer in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under Applicable Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or other regulators and, in particular, the Supplier shall immediately (and in any event within three (3) days of receipt) notify the Customer if the Supplier

receives any complaint, notice or communication (whether from a regulator or supervisory authority, any data subject or other third party) which relates to processing of Personal Data;

- (e) notify the Customer without undue delay (and no later than twenty-four (24) hours) after becoming aware of a personal data breach by providing at least, information about the nature of the personal data breach and, where possible, such notification of the data breach should be followed without undue delay by: information on the categories and approximate number of data subjects concerned; the categories and approximate number of personal data records concerned; the name and contact details of the contact point where more information can be obtained; the likely consequences of the personal data breach; and the measures taken or proposed to be taken to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects;
- (f) on suspecting a personal data breach, the Supplier shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether the event or incident qualifies for notification to the Customer under clause 13.3(e) and shall provide a copy of this initial assessment along with such notification under clause 13.3(e) and shall provide the Customer with all manner of assistance in relation to such personal data breach as the Customer may require;
- (g) The Supplier shall not disclose any information about or in connection with any unauthorised or unlawful processing or accidental loss or destruction of, or damage to, Personal Data, other than:
- to Customer;
 - with Customer's express prior written approval; or
 - as required to be disclosed by law
- (h) at the written direction of the Customer or upon expiry of the duration of processing under this Agreement, cease processing of all Personal Data other than as anticipated under clause 13.12 and certify to the Customer in writing it has done so and, unless the Supplier is required by law to continue to process that Personal Data, in which case the Supplier shall promptly notify the Customer, in writing, of what

that law is and shall only be permitted to process that Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 13 shall continue to apply to such Personal Data notwithstanding the termination or expiry of this Agreement for as long as such Personal Data is processed by the Supplier;

- (i) where requested by the Customer, provide to the Customer or to any third party carrying out auditing or inspections on behalf of the Customer copies of or access to all Personal Data;
- (j) maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with Data Protection Legislation and this clause 13;
- (k) assist the Customer, at the Supplier's cost, by providing such information as may be necessary to enable the Customer to comply with its obligations under the following Articles of the UK GDPR: Article 32 (Security of Processing); 33 (Notification of a Personal Data Breach to the Supervisory Body); 34 (Communication of a Personal Data Breach to the Data Subject); 35 (Data Protection impact Assessment); and 36 (Prior Consultation with the Supervisory Body in the event that a Data Impact Assessment indicates the processing would result in a high risk to the rights and freedoms of natural persons); and
- (l) maintain written records including in electronic form, of all processing activities carried out in connection with the Agreement or otherwise on behalf of the Customer containing the information set out in Article 30(2) of the UK GDPR and, if requested, make such records available to any supervisory or regulatory authority on request and co-operate with such supervisory or regulatory authority in the performance of its tasks.

13.4 The Supplier shall not, without the prior written consent of the Customer (and in any event subject to the Supplier providing the Customer with reasonable evidence that such activity is being undertaken in full compliance with Data Protection Legislation):

- (a) appoint or replace (or change the terms of the appointment of) any other processor or sub processor in relation to Personal Data or transfer any Personal Data to the same; or
- (b) carry out, via itself or via any other processor, any processing of Personal Data, or transfer any Personal Data, outside of the UK or EU, including processing Personal Data on equipment situated outside of the UK or EU; and

13.5 where the Supplier does engage a processor or sub processor, the Supplier shall ensure that such processor or sub processor is engaged on terms no less onerous than the terms of this Agreement by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures.

13.6 Where the Supplier does appoint another processor or sub processor (in accordance with clause 13.5), the Supplier shall be fully liable to the Customer for any failure by such processor or sub processor appointed by the Supplier to fulfil its obligations in accordance with the Data Protection Legislation and this Agreement. The Supplier will indemnify the Customer for all claims, losses, costs, injury or damage sustained by the Customer as a result of or in connection with any breach by the Supplier or processor or sub processor appointed by the Supplier of the terms of this Agreement or of the Data Protection Legislation.

13.7 The Supplier warrants and represents that it shall:

- (a) not do anything that would put Customer in breach of the Data Protection Legislation;
- (b) not cause or allow Personal Data to be transferred to and/or otherwise processed outwith the UK/EU without Customer's prior written approval;
- (c) not transfer Personal Data to, or permit the processing of Personal Data by, any third party (for the avoidance of doubt including its Affiliates) save to the Supplier's employees, except: (a) with Customer's prior written consent in each case (such consent to be given or withheld at Customer's absolute discretion); and (b) where Customer has given such consent, the Supplier has entered into a written contract with that third party under which that third party agrees to obligations that are equivalent to the Supplier's obligations set out in this clause 12, unless required to do so by law, in which case the Supplier shall (to the extent

permitted by law) give Customer prior written notice of such requirement;

- (d) at any time upon request, and in any event upon termination or expiry of the Agreement, deliver up to Customer or (at Customer's choice) securely delete or destroy all Personal Data in the Supplier's possession (except for such Personal Data which the Supplier is required to keep in compliance with Data Protection Legislation); and
 - (e) ensure the Supplier Personnel are subject to binding obligations of confidentiality in respect of Personal Data processed under the Agreement.
- 13.8 The Supplier shall assist Customer by appropriate technical and organisational measures to comply with its obligations and fulfil Data Subjects' rights under Data Protection Legislation, including:
- (a) responding to requests or queries from Data Subjects in respect of their Personal Data (including the provision of Portable Copies);
 - (b) co-operating with an investigation in connection with the Personal Data by a regulatory body, (including a supervisory authority); or
 - (a) reconstructing and/or otherwise safeguarding the Personal Data, within any reasonable timescales specified by Customer.
- 13.9 The only processing that the Supplier is authorised to do by or on behalf of Customer is listed on the Purchase Order and may not be determined by the Supplier.
- 13.10 Any data types processed and its purposes are described within the definitions and descriptions of any goods/services in the Purchase Order. The nature of the processing covers the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means), but only insofar as detailed in the Purchase Order. The data may be processed for the duration specified in the Purchase Order where applicable or as is otherwise required for the performance of the Agreement. These data types may include Personal Data (and in some cases special category data as defined in the Data Protection Legislation).
- 13.11 The following categories of data subject may be collected and processed and used by the Supplier under this Purchase Order: children under the age of 18, including students and pupils, complainants,

enquirers or their representatives, customers, licence and permit holders, members of the public, people captured by CCTV images, persons contracted to provide a service, professional advisers and consultants, clients, service users and their representatives, suppliers, staff (including volunteers, agents and temporary workers), and traders and others subject to inspection, representatives of other organisations or any other such data subjects as detailed in the Purchase Order.

- 13.12 The Supplier shall comply with any further written instructions from Customer with respect to processing Personal Data if Customer considers this to be necessary to include a plan for return and/or destruction of the data once the processing is complete UNLESS any requirement exists under applicable law to preserve that type of data.

14. Freedom of Information / Environmental Information Regulations

- 14.1 The Supplier acknowledges that Customer and/or its Affiliates and/or its successor may be subject to the requirements of FOISA and the Environmental Information Regulations.
- 14.2 The Supplier shall, at the Customer's request, provide all necessary assistance, information and cooperation as reasonably requested by Customer to enable Customer and/or its Affiliates and/or its successor to comply with its obligations under the FOISA and the Environmental Information Regulations.
- 14.3 Where the Supplier receives a request for information relating to the Services or this Agreement ("**Request For Information**"), it shall:
- (a) transfer to Customer such request as soon as practicable and in any event within 2 Business Days of receipt; and not respond directly to a request for information unless authorised in writing to do so by Customer. The Supplier acknowledges that Customer may be required under FOISA and/or the Environmental Information Regulations to disclose information (including commercially sensitive information) without consulting or obtaining consent from Customer or the Supplier;
 - (b) provide the Customer with a copy of all information held on behalf of the Customer which is requested in a Request For Information and which is in the Supplier's possession or control. The information must be provided within 5 Business Days (or such other period as the Customer may reasonably specify) in the form that the Customer requires;

- (c) not respond directly to a Request For Information addressed to Customer or its Affiliates unless authorised in writing to do so by the Customer;
- 14.4 If the Request for Information appears to be directed to information held by the Customer, the Supplier must promptly inform the applicant in writing that the Request for Information can be directed to the Customer.
- 14.5 If the Customer receives a Request for Information concerning this Agreement, the Customer is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 14.6 The Supplier acknowledges that the Customer may, acting in accordance with the Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Supplier or this Agreement:
- (a) in certain circumstances without consulting the Supplier, or
- (b) following consultation with the Supplier and having taken its views into account.
- 14.7 Where 14.6 applies the Customer shall take reasonable steps, if practicable, to give the Supplier advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 14.8 Where a Request for Information concerns any commercially sensitive information of the Supplier as advised by the Supplier, the Customer may, where practicable, consult with the Supplier before disclosing it pursuant to a Request for Information. Any such consultation is at the sole discretion of the Customer.
- 14.9 The Supplier acknowledges that the content of this Agreement including any amendments, agreed from time to time, (together the "Transparency Information") are not commercially sensitive information. The Customer shall be entitled to publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier. However, if the Customer believes that publication of any element of the Transparency Information should be treated as commercially sensitive information the Customer may, in its discretion exclude such information from publication.
- 14.10 Notwithstanding any other provision of this Agreement, the Supplier hereby gives consent for the Customer to publish to the general public, the Transparency Information in its entirety.
- 14.11 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information including the preparation of any reports.
- 14.12 The Supplier agrees that any further information it holds that is not included in the response but is reasonably relevant to or that arises from the provision of the Goods and/or Services shall be provided to the Customer upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Customer may disclose such information under FOISA and the Environmental Information Regulations and may (except for commercially sensitive information, Confidential Information) publish such Information. The Supplier shall provide to the Customer within 5 working days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 14.13 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Customer and/or its Affiliates publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Supplier should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.
- 14.14 This clause shall apply after the termination of this Agreement howsoever arising.
- 15. Data Security**
- At all times that the Supplier has access to, holds or processes any of Customer's Personal Data or Confidential Information, without prejudice to the provisions of clause 8 (Confidentiality) and clause 13 (Data Protection), the Supplier shall be certified as compliant with the standards set out in ISO27001:2013 (or such replacement data security standard as Customer may notify to the Supplier from time to time) by an accredited certification body and shall hold

any and all of Customer's Confidential Information and Personal Data in its possession in compliance with such standards and in compliance with this Agreement. On request from Customer, the Supplier shall provide evidence of such certification.

16. Termination

- 16.1 Customer shall be entitled at any time and for convenience to terminate the Agreement in whole or in part by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Agreement and Customer shall pay to the Supplier all amounts properly due under the Agreement for the Goods delivered and/or the Services performed up to the date of termination.
- 16.2 Customer shall have the right at any time by giving notice in writing to the Supplier to terminate the Agreement forthwith if:
- (a) the Supplier commits a material breach of the Agreement;
 - (b) the Supplier breaches clauses 3.1, 4.2, 7, 8, 9, 11, 12, 13, 15, 17, 19 or 20;
 - (c) a Force Majeure Event (as defined in clause 26.1) prevents the Supplier from supplying any Goods and/or performing any Services or otherwise performing any of its obligations under the Agreement for more than 4 weeks; or
 - (d) Customer is required to terminate the Agreement under any applicable law or by a governmental authority.
- 16.3 The termination of the Agreement, however arising, shall be without prejudice to the rights of Customer accrued prior to termination. The clauses of these Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 16.4 On the expiry or earlier termination of the Agreement (in whole or in part) for any reason, the Supplier shall co-operate fully with Customer to ensure an orderly migration of any Services to Customer or such replacement supplier as Customer may direct at no additional cost to Customer including but not limited to compliance with clause 25.
- 16.5 On termination of the Agreement for any reason, the Supplier (or, if appropriate, its receiver, administrator, administrative receiver, liquidator or manager) shall:
- (a) promptly deliver to Customer: (i) all necessary documentation and assistance to ascertain the status of the relevant Goods and the input required to provide and complete the relevant Goods and to operate, support and

maintain the relevant Goods in accordance with the Specifications; (ii) all relevant Goods or Deliverables in which title has passed to Customer but which remain in the possession of the Supplier; and

- (b) immediately (and within 7 days after the date of termination at the latest) repay to the Supplier any monies which have been paid in advance and which relate to the supply of Goods and/or Services after the date of termination.

17. IR35 Notification

- 17.1 The Supplier undertakes that no part of the Services (where the Services relate to the provision of a worker) shall be provided either directly or indirectly at any stage within the supply chain via a personal services company or any other third party (intermediary) as defined within Chapter 10 of Part 2 ITEPA 2003. Prior to any such Services being provided the Supplier warrants, and must procure that each of its subcontractors warrant and confirm, that:
- (a) no worker, consultant, contractor, freelancer or similar, operating via a personal services company or any other third party (intermediary) as defined within the meaning of Chapter 10 of Part 2 ITEPA 2003 is involved directly or indirectly in the provision of the Services;
 - (b) any worker, consultant, contractor, freelancer or similar supplied to Customer is an employee or an agency worker of the Supplier or its subcontractors and that the employing entity/agency is not an intermediary within the meaning of Chapter 10 of part 2 ITEPA 2003; and
 - (c) the worker, consultant, contractor, freelancer or similar is subject to PAYE/NIC in respect of all income received from any engagement pursuant this Agreement and that the liability to account for such PAYE/NIC falls on the Supplier, its subcontractors or the employing entity/agency
- 17.2 If Customer is deemed or held liable by HMRC or any other Governmental Authority or third party for any income tax, employer and employee National Insurance contributions, Apprenticeship Levy or any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services for which there was a failure to comply with clause 17.1 (Relevant Tax), the Supplier shall indemnify and/or reimburse the Customer for and in respect of:
- (a) any such Relevant Tax amounts required to be paid by Customer; and

- (b) all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim for Relevant Tax save to the extent it arises out of Customer's negligence or wilful default.

18. TUPE – Employee information

18.1 The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Customer of a transfer under TUPE;
- (b) receipt of the giving of notice of early termination or any partial termination of this Contract;
- (c) the date which is 12 months before the end of the term of this agreement; and
- (d) receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.

18.2 At least 20 Working Days prior to the transfer under TUPE the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

18.3 The Customer shall be permitted to use and disclose information provided by the Supplier under clauses 18.1 and 18.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

18.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to clauses 18.1 and 18.2 shall be true and accurate in all material respects at the time of providing

the information.

18.5 From the date of the earliest event referred to in clauses 18.1(a), 18.1(b) and 18.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

18.6 During the period of this Agreement, the Supplier shall provide, and shall procure

that each Sub- contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

18.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

19. EMPLOYMENT REGULATIONS EXIT PROVISIONS

19.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer

to which TUPE will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

19.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Supplier and/or the Sub-contractor (as appropriate); and
- (b) the Replacement Supplier and/or Replacement Sub-contractor.

19.3 Subject to clause 19.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or

- (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (e) (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (f) (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - (h) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or TUPE; and
 - (i) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of TUPE.
- 19.4 The indemnities in clause 19.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under TUPE.
- 19.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to TUPE, then:
- (a) the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 19.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier

or a Sub-contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

- 19.7 If after the 15 Working Day period specified in clause 19.5(b) has elapsed:
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved

the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

- 19.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of clauses 19.5 to 19.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of clause 19.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 19.9 The indemnity in clause 19.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification

referred to in clause 19.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

- 19.10 If any such person as is described in clause 19.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in clauses 19.5 to 19.7, such person shall be treated as a Transferring Supplier Employee.

- 19.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under TUPE and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Supplier and/or any Sub-contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

- 19.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of TUPE. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of TUPE.

- 19.13 Subject to clause 19.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) In relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in TUPE) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or

Replacement Sub-contractor in relation to obligations under regulation 13 of TUPE.

19.14 The indemnities in clause 19.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under TUPE.

20. Alcohol and Drugs Policy

20.1 The Customer, in meeting its obligation under the Transport and Works Act 1992, operates an alcohol and drugs policy. It is supported by related codes of practice, guidelines and readily available educational materials. A copy of the policy statement and code of conduct is available on request.

20.2 The Supplier and its Supplier Personnel shall not:

- (a) report or endeavour to report for duty having just consumed alcohol or under the influence of drugs;
- (b) report for duty in an unfit state due to the use of alcohol or drugs;
- (c) be in possession of drugs or alcohol in any of the Customer's premises; or
- (d) consume alcohol or drugs whilst at any time on duty.

20.3 The Customer will not tolerate any departure from these rules and will take appropriate action in the event of any infringement.

20.4 A program of screening has been put in place. This includes procedures to:

- (a) deter the use of drugs; and
- (b) detect the use of alcohol and drugs where abnormalities of behaviour require prompt managerial intervention (which may include a request for screening).

20.5 If the Supplier or any of the Supplier Personnel infringe the Customer's policy on alcohol and drugs the offender will not be considered for work by the Customer at the Customer's premises at any future date.

21. Assignment and subcontracting

21.1 The Supplier may not assign, subcontract, transfer or otherwise dispose of or deal with the Agreement (in whole or in part) or any or all of its rights and/or obligations under the Agreement without Customer's prior written consent.

21.2 The Supplier shall obtain the Customer's prior written consent prior to entering into any sub-contract and shall remain fully responsible for any and all acts, omissions and failures to act of its subcontractors as if they were acts, omissions or failures to act of the Supplier and, without prejudice to the generality of the foregoing, any breach of the terms of the Agreement by a subcontractor of the Supplier shall be deemed a breach of the Supplier.

21.3 The Customer shall be entitled to assign or otherwise transfer its rights and obligations under the Agreement without consent of the Supplier.

22. Indemnity

The Supplier shall indemnify Customer and keep Customer indemnified in full for and against all Losses suffered or incurred by Customer as a result of or in connection with:

- 22.1 defective workmanship, quality or materials and/or defective performance of the Services and/or defective Goods;
- 22.2 an infringement or alleged infringement of any intellectual property rights caused by the use, possession, manufacture, receipt or supply of the Goods and/or Services and/or creation and/or use of the New IPR; and
- 22.3 any breach of clauses 3.1, 4.2, 7, 8; , 11, 12, 13, 14, 15, 17, 19 or 20.
- 22.4 any claim made against Customer in respect of any Losses suffered or incurred by Customer's employees or agents or by any customer or third party as a result of or in connection with the provision of the Goods and/or the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Agreement by the Supplier.

23. Insurance

From the date of the Agreement until the date which falls twelve (12) months after the later of: (i) the date of delivery of any Goods under clause 3; and (ii) the date of expiry of the Services (as specified in the Purchase Order), the Supplier shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent business person in connection with the risks associated with the Agreement, and produce to Customer on demand full particulars of that insurance and the receipt for the then current premium.

24. Customer's Affiliates

24.1 The Supplier agrees that all benefits, warranties, indemnities, licences and other rights and remedies provided to or conferred upon Customer under the Agreement are also provided to or conferred upon its

Affiliates and in providing Goods and/or Services to the Affiliates the Supplier owes the same duties and obligations to the Affiliates as to Customer. Where the Supplier provides Goods and/or Services to an Affiliate, the Affiliate shall have the same rights under the Agreement as Customer and the Supplier shall owe the same duties and obligations to such Affiliate as it does to Customer.

- 24.2 Any Losses suffered, incurred or paid by an Affiliate as a result of any negligence of the Supplier or a breach of the Agreement (an "**Affiliate Loss**") by the Supplier shall be treated as if it was suffered, incurred or paid by Customer and Customer shall be entitled to enforce directly against the Supplier any of the rights or the benefits conferred on any of its Affiliates by the Agreement and recover any such Affiliate Loss. To the extent that Customer is unable to recover an Affiliate Loss, the relevant Affiliate(s) shall be entitled to recover such Affiliate Loss directly from the Supplier for this purpose under the Contract (Third Party Rights) (Scotland) Act 2017.

25. Exit Plan and Exit Management

- 25.1 The Supplier shall perform its exit management obligations (as detailed in the Purchase Order and/or as requested by the Customer and/or contained in the exit plan to be prepared under this clause 22) as part of the Agreement whether applicable on either the expiry or early termination of the Agreement.
- 25.2 The Supplier shall, at the request of the Customer and taking into account the comments of the Customer, prepare and maintain an exit plan and shall agree such exit plan with the Customer, in writing. The scope of the exit plan and what is required to be covered shall be at the discretion of the Customer.
- 25.3 No amendment of the exit plan shall be made without the prior written consent of the Customer.
- 25.4 The Supplier shall comply with its obligations in the exit plan and shall:
- (a) co-operate with the Customer and/or any replacement supplier to the extent reasonably required to facilitate the smooth migration of the Services and data and shall provide the professional services staff necessary to do so; and
 - (b) procure that all licences for any third party software entered into with effect from or after the commencement date and all subcontracts (if applicable) shall be assignable at the request of the Customer to the Customer and/or any replacement supplier without

restriction (including any need to obtain any consent or approval) or payment by the Customer. If the Supplier cannot procure such rights then the Supplier shall consult with the Customer on whether the rights that can be obtained are nevertheless acceptable to the Customer or whether the Supplier should seek an alternative provider of the goods or services to which the relevant agreement relates.

- 25.5 On reasonable notice, provide to the Customer and/or to any replacement supplier (subject to the replacement supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as the Customer shall require to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential replacement supplier undertaking due diligence (including in relation to the Services, assets, Customer's data, Customer's personal data).
- 25.6 The transitional Services to be provided by the Supplier shall include (without limitation) such services as the Customer may specify and/or as detailed in the exit plan.

26. General

- 26.1 Subject to clause 16.2(c), neither party will be in breach of the Agreement nor liable for any delay or failure to perform its obligations under the Agreement which is caused by circumstances, events or causes beyond its reasonable control including acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire explosion, flood, epidemic, (but excluding strikes or labour disputes involving the staff of the Supplier) (a "**Force Majeure Event**") provided that the Supplier shall use all reasonable endeavours to mitigate the effect of any Force Majeure Event on the performance of its obligations.
- 26.2 Nothing in the Agreement and no action taken by the parties pursuant to it shall constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between the parties or to authorise either party to act as agent for the other for any purpose. Neither party will hold itself out as agent or representative of the other nor as having authority to act in the name of or otherwise bind the other party in any way.
- 26.3 No failure, delay or indulgence of either party in exercising any right, power, privilege or remedy under the Agreement shall impair or operate as a waiver thereof in whole or in part except to the extent such waiver is confirmed in writing and signed by the waiving or consenting party and then

only in the instance and for the purpose for which it is given. No single or partial exercise of any right, power, privilege or remedy will preclude any other or further exercise of any other right, power, privilege or remedy.

26.4 Notices required or authorised to be given under the Agreement will be sent to the address (and addressed to the contact) detailed in the Purchase Order of the other party unless otherwise notified in writing.

26.5 If any term or provision of the Agreement is or becomes (whether or not pursuant to any judgment or otherwise) illegal, void, invalid or unenforceable, in any respect under the law of any jurisdiction:

- (a) the legality, validity and enforceability of that provision in any other jurisdiction; and
- (b) the legality, validity and enforceability of any other provision of the Agreement in any jurisdiction,

shall not be affected or impaired in any way and shall continue to be valid and binding on the parties and such provision shall be divisible from the Agreement and shall be deemed to be deleted from the Agreement.

26.6 Except as expressly set out in the Agreement, no variation of the terms of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

26.7 Customer's rights and remedies expressly provided under the Agreement are in addition to, and not exclusive of, any and all rights and remedies implied or otherwise provided by law and may be enforced separately or concurrently with any other right or remedy.

26.8 Except as expressly provided by the Agreement and subject to clause 24 (Customer's Affiliates), a person who is not a party to the Agreement shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Agreement.

26.9 The Agreement and any dispute or claim whatsoever relating to it or its formation shall be governed by and construed in accordance with Scots law and the parties irrevocably agree that the Scottish courts shall have exclusive jurisdiction.