

TERMS AND CONDITIONS

BETWEEN:-

- (1) Shetland UHI, (Company Number: SC646337) whose registered office is at Gremista Industrial Estate, Lerwick, Shetland ZE10PX (the "**Purchaser**"); and
- (2) [INSERT COMPANY NAME], a company incorporated in [Scotland] with registered number [INSERT COMPANY NUMBER] and having its address at [INSERT ADDRESS] (the "**Contractor**").

BACKGROUND

- (A) The Purchaser issued an invitation to tender entitled "[INSERT TITLE]" (the "Invitation to Tender").
- (B) In response to the Invitation to Tender, the Contractor submitted a tender on [**DATE**] (the "Tender Submission").
- (C) On the basis of the Tender Submission, the Purchaser selected the Contractor to provide services to the Purchaser in accordance with the Contract.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

Definitions

In these Conditions:

"Account Manager"	means the representative of the Contractor appointed pursuant to Clause 9.1;
"Bidding Misrepresentation"	means any discovery by the Purchaser that the non-collusive tendering certificate submitted by the Contractor to the Purchaser or any other communication, document or other information in whatever form provided by the Contractor to the Purchaser is erroneous, false, misleading or untrue in any material respect;

"Change"	means any proposed amendment or variation to the Contract;
"Charges"	means the amounts payable for the Services to be provided by the Contractor set out in Schedule 2 to the Conditions;
"Commencement Date"	means the date for the commencement of the performance of the Services, being [INSERT DATE];
"Conditions"	means these terms and conditions;
"Confidential Information"	has the meaning given to it in Clause 19.1;
"Contract"	means the legally binding agreement for the provision Services made between a Purchaser and the Contractor comprising the Conditions and any documentation stated to form part of the Contract in the Contract Award Letter;
"Contract Award Letter"	means the letter issued by the Purchaser to the Contractor notifying the Contractor of its award of the Contract;
"Contract Period"	[means the Initial Period and any Renewal Periods] or [the period beginning on the Commencement Date and ending on [INSERT DATE]];
"Contract Year"	means the period of [INSERT DURATION] from the Commencement Date, and each subsequent period of 12 months;
"Contract Worker"	means an officer, servant, employee or agent of a Contractor;
"Controller"	shall have the meaning ascribed to it in the Data Protection Legislation;
"Data Protection Legislation"	means UK GDPR, the Data Protection Act 2018 (and regulations made thereunder), the General Data Protection Regulation (EU 2016/679) (GDPR), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended and all other applicable laws and regulations relating to processing of personal data and privacy, including where applicable

	the guidance and codes of practice issued by the Information Commissioner;
"Data Subject"	shall have the meaning ascribed to it in the Data Protection Legislation;
"Default"	means material non-compliance with or material default against any obligation under the Contract by the Contractor or Purchaser;
"Deliverable"	means the outputs deriving from the provision of Services pursuant to the Contract including all items described as such in the Specification and all report(s) other than any communication or document stated to be draft, subject to further work, incomplete or not in final form;
"Discrimination Legislation"	means the Equality Act 2010 and all applicable law relating to discrimination and equal opportunities;
"Dispute"	means any dispute or difference between the Purchaser or the Contractor arising from or in connection with the Contract;
"Dispute Resolution Procedure"	means the procedure set out in Clause 33;
"Employees"	means the employees of the Purchaser and/or Contractor;
"Force Majeure"	means any event or circumstance materially and adversely affecting the performance by a party of its obligations arising beyond its reasonable control including without limitation fires, floods, acts of war, acts of terrorism and natural disasters but excluding events or circumstances attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees;
"Good Industry Practice"	means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a competent person engaged in the same type of undertaking under the same or similar circumstances;
"Illegal Term"	shall have the meaning given in Clause 28;
"Information Legislation"	means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;

"Initial Period"	means the period of [INSERT DURATION] from the Commencement Date;
"Intellectual Property Rights"	means patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country (including the United Kingdom);
"Issued Property"	means anything issued or otherwise made available to the Contractor for any purpose by or on behalf of the Purchaser including working papers and other written materials;
"Key Personnel"	shall have the meaning given in Clause 9.2;
"Law"	means all applicable laws, consents and approvals, legislative provisions, sub-ordinate legislation, legally binding codes of practice and the common law;
"Milestone"	means the completion of any event or task of a material nature by a particular date, such as the delivery of a Deliverable or completion of certain Services, identified as a milestone in the Specification;
"New Contractor"	means any successor to the Contractor in the provision of services similar to the Services (or part thereof) to the Purchaser;
"Personal Data"	shall have the meaning ascribed to it in the Data Protection Legislation;
"Personal Data Breach"	shall have the meaning ascribed to it in the Data Protection Legislation;
"Premises"	means any premises not belonging to the Contractor where the Services (or any part thereof) are to be provided as agreed between the parties in writing;
"Processing"	shall have the meaning ascribed to it in the Data Protection Legislation (and, unless otherwise defined herein, cognate expressions shall be construed accordingly);
"Processor"	shall have the meaning ascribed to it in the Data Protection Legislation;

"Professional Services"	means consultancy services and any services relating to the provision of legal, financial or other specialist advice;
"Records"	means any files, documents or other records which relate to delivery of the Contract or the management, administration, organisation or planning of them whether in writing or on magnetic or other media;
"Renewal Period"	has the meaning given to it in clause 15.4;
"Service Levels"	means the service levels identified in the Contract;
"Services"	means the services to be provided by the Contractor to the Purchaser as set out in the Specification (including any Professional Services so specified);
"Specification"	means the specification detailed in Schedule 1 to the Conditions as updated and agreed between the parties in accordance with the Conditions;
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 In these Conditions a reference to a "notice" is to a letter or other document sent by one party to the other which has a specific effect with reference to the Contract. Examples include notices which are given when there are changes to the Contract, or breaches of the Contract. Notices must be sent in accordance with Clause 27.

1.3 In these Conditions, unless the context otherwise requires:

1.3.1 a reference to the parties is to the Purchaser and the Contractor;

1.3.2 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;

1.3.3 a reference to one gender includes references to all other genders;

1.3.4 the singular includes the plural and vice versa;

1.3.5 any reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted by any subsequent statute, enactment, order, regulation or instrument;

1.3.6 any reference to a document shall include any variation, amendment, or supplement to such document;

- 1.3.7 headings are included for ease of reference only and shall not affect the interpretation or construction of these Conditions;
- 1.3.8 references to numbered Clauses and Schedules are, unless otherwise provided, references to Clauses and Schedules of these Conditions;
- 1.3.9 references to Sections are to the sections into which these Conditions are sub-divided;
- 1.3.10 the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
- 1.3.11 an obligation to do something includes an obligation to procure it to be done;
- 1.3.12 an obligation not to do something includes an obligation not to wilfully allow it to be done;
- 1.3.13 the word "including" means "including without limitation"; and
- 1.3.14 a reference to "approval" or "consent" shall mean consent in writing.

2. SERVICE PROVISION AND SCHEDULING

- 2.1 Unless otherwise agreed between the parties, the Contractor shall provide the Services at [its own premises] **or** [the Premises]. The Contractor shall provide the Services in accordance with the Contract and shall ensure that, in the performance of its obligations hereunder, it complies with the Laws. Where the Contract provides for the Services to:
 - 2.1.1 commence on a certain date;
 - 2.1.2 be completed by a certain date; or
 - 2.1.3 be provided for a certain period,the Contractor will use reasonable endeavours to comply with such requirements.
- 2.2 If Services are to be provided in distinct elements, the Contractor will comply with any reasonable request of the Purchaser as to the order in which the Services will be provided.
- 2.3 The Contractor will provide, at the reasonable request of and in such form as the Purchaser may require, reports showing the progress of the provision of the Services, the costs to the Purchaser of the Services provided during the period covered by the report, and a review of any factors likely to affect the satisfactory completion of the Services in accordance with the Contract.
- 2.4 The Contractor agrees to promptly notify the Purchaser if it believes that it may be unable to achieve any particular Milestone or where there is a Force Majeure event.
- 2.5 The Purchaser shall:

- 2.5.1 co-operate with the Contractor in all matters relating to the Services;
 - 2.5.2 provide the Contractor manner with all documents, information, items and materials in any form reasonably required by the Purchaser in connection with the Services, and ensure that they are accurate and complete; and
 - 2.5.3 obtain and maintain all necessary licence and consents and comply with the Law as required to enable the Supplier to provide the Services.
- 2.6 If the Contractor's performance of the Contract is prevented or delayed by any act or omission of the Purchaser, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Contractor shall be allowed an extension of time to perform its obligations equal to the delay caused by the Purchaser.
- 2.7 The provisions of Schedule Four relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*) shall apply from the Commencement Date.

3. CONFLICT OF INTEREST

- 3.1 If no Professional Services are to be supplied in accordance with the Contract, the provisions of this Clause 3 will not apply.
- 3.2 Where the Contract is one for the provision of Professional Services:
- 3.2.1 the Contractor shall ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing the Contract;
 - 3.2.2 where the Contractor becomes aware of any conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall promptly notify the Purchaser in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall, subject to any applicable obligations of confidentiality, furnish such further information as the Purchaser may reasonably require;
 - 3.2.3 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 3.2.2 is not capable of being avoided or removed the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor; and
 - 3.2.4 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 3.2.2 is capable of being avoided or removed the Purchaser and the Contractor shall agree such steps as will avoid, remove or mitigate the conflict; and if the Contractor fails to comply with the steps agreed pursuant to clause 3.2.3 or if, in the reasonable opinion of the Purchaser, compliance does not avoid, remove or satisfactorily mitigate the conflict, the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.

4. SERVICE LEVELS

- 4.1 The Contractor shall perform the Services to meet or exceed the Service Levels.
- 4.2 Without prejudice to the Purchaser's right to terminate the Contract under Clause 15.1.2.6, if the Contractor fails to meet the Service Levels then:
- 4.2.1 the Contractor shall undertake a comprehensive analysis of the reason for such failure to perform the Services (or any element thereof) to meet or exceed the Service Levels and shall arrange all such additional resources as it deems reasonably necessary depending on the criticality of the failure to ensure that such failure does not recur and shall, on request, provide a detailed report to the Purchaser describing the results of such analysis and the action it has taken at no additional charge to the Purchaser; and
 - 4.2.2 the Contractor shall remedy any materially non-conforming element of the Services at no additional charge to the Purchaser in accordance with the reasonable timescales agreed between the parties.
- 4.3 To the extent any Professional Services are to be supplied in accordance with the Contract:
- 4.3.1 the Purchaser shall be entitled to rely upon the Deliverables; and
 - 4.3.2 the Contractor may issue Deliverables in draft form, but if requested to do so the Contractor may not unreasonably refuse to issue a draft Deliverable in final form, nor unreasonably delay that issue.

5. PAYMENT

- 5.1 The Purchaser shall pay to the Contractor the Charges in consideration of the performance of the Contractor's obligations under the Contract.
- 5.2 The Purchaser shall pay the Contractor within 30 days of the date of receipt of a valid invoice from the Contractor. Invoices shall be issued by the Contractor on [INSERT DATES OR FREQUENCY].
- 5.3 All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Contractor will show this separately on its invoice and the Purchaser shall pay such Value Added Tax in addition to the Charges without deduction, withholding or set-off and within 30 days of its receipt of invoice.
- 5.4 All Charges are stated in pounds sterling, and all invoices must be presented and demanded in pounds Sterling.
- 5.5 The Purchaser shall reimburse the reasonable expenses of the Contractor in performing its obligations under the Contract provided that such expenses are agreed in advance between the parties in writing.
- 5.6 The Contractor will comply with all reasonable requests of the Purchaser in respect of invoicing, including the formatting of invoices and the consolidation or splitting of invoices to reflect different parts of the performance of the obligations of the Contract (including delivery to different locations and/or performance for the ultimate benefit of different persons).

- 5.7 The parties will pay interest on any amount payable under the Contract not paid on the due date, for the period from that date to the date of payment at a rate equal to 4% above the base rate set from time to time by the Bank of England.

6. READINESS FOR CHANGE

- 6.1 Each party shall notify the other without delay if it considers that any changes to its technology or business processes may impact on the other party in relation to the Contract.
- 6.2 The Contractor shall notify the Purchaser without delay if it considers that any of the technology used in the provision of the Services is in danger of becoming obsolete as a result of market changes or technology advantages or obsolescence.

7. ISSUED PROPERTY

All Issued Property shall remain the property of the Purchaser and shall be used only for the purposes of the Contract.

8. CONTRACT WORKERS

- 8.1 The Contractor shall engage, employ, and train suitably experienced and qualified staff for carrying out the Contractor's duties and obligations under the Contract.
- 8.2 If the Purchaser requests, the Contractor will provide the Purchaser with the names of all people whom the Contractor proposes will have a role in the performance of the Contract together with a description of the part each person will play in performing the Contract, and details of their qualifications, experience and previous employment.
- 8.3 The Purchaser may require the Contractor to produce documentary or other evidence to establish that the Contract Workers are suitably qualified and experienced to perform their respective duties under the Contract.
- 8.4 Nothing in the Contract shall have the effect of making any Contract Worker an employee of the Purchaser.

9. KEY PERSONNEL

- 9.1 The Contractor shall appoint an Account Manager to be the representative of the Contractor for all purposes connected with the delivery of the Contract, and who shall be authorised by the Contractor to fulfil that role.
- 9.2 The Purchaser and the Contractor may agree in writing to designate any person concerned with the performance of the Contract as "Key Personnel". Any person referred to in the Contract or the Contractor's response to the Invitation to Tender as "key personnel" and the Account Manager will be deemed so designated.
- 9.3 The Contractor will use reasonable endeavours to ensure that the Key Personnel are made available in performance of the Contract, unless the Purchaser agrees otherwise. The Purchaser will act reasonably in considering requests for replacements to the Key Personnel.

10. LIABILITY

10.1 Subject always to Clause 10.3, the maximum liability of either party under or in connection with the Contract shall be the value of the Charges payable under the Contract in the twelve (12) calendar months preceding the incident giving rise to the liability (or, in the case of a series of incidents, the first such incident).

10.2 Subject always to Clause 10.3, neither party shall be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings or other indirect or consequential loss or damage.

10.3 Nothing in the Contract shall limit or exclude a party's liability for:

10.3.1 death or personal injury caused by negligence;

10.3.2 fraud or fraudulent misrepresentation; or

10.3.3 any other sort of liability which cannot legally be so limited or excluded.

11. INSURANCE

11.1 The Contractor shall maintain in force with reputable insurers such insurances as it considers reasonably necessary to cover its liabilities under the Contract.

11.2 The Contractor shall, on request, produce evidence of the insurance policies referred to in Clause 11.1 to the Purchaser together with, if demanded, a copy of the receipt(s) from the insurer(s) in respect of all premium(s) paid for the said insurance(s) from the Commencement Date.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Contractor shall not knowingly infringe any Intellectual Property Right of any third party in the performance of the Contract.

[OPTION 1: THE CONTRACTOR OWNS THE DELIVERABLES]

12.2 In relation to the Deliverables:

12.2.1 the Contractor shall retain all Intellectual Property Rights in the Deliverables, excluding any incorporated materials which are provided to the Contractor by the Purchaser ("Purchaser Materials");

12.2.2 the Contractor grants the Purchaser a fully paid-up, worldwide, non-exclusive, royalty-free [perpetual and irrevocable licence] **or** [licence during the Contract Period] to copy and modify the Deliverables (excluding the Purchaser materials) for the purpose of receiving and using the Service and Deliverables [in its business]; and

12.2.3 the Purchaser [shall not sub-licence, assign or otherwise transfer the rights granted in Clause 12.2.2] **or** [may sub-licence the rights granted in Clause 12.2.2 for the purpose of receiving and using the Services and Deliverables].]

OR

[OPTION 2: THE PURCHASER OWNS THE DELIVERABLES]

12.2 In relation to the Deliverables:

- 12.2.1 the Contractor assigns to the Purchaser all Intellectual Property Rights in the Deliverables, excluding any Intellectual Property Rights incorporated therein that are created or generated before or independent to the provision of the Services;
- 12.2.2 [the Purchaser grants the Contractor a fully paid-up, worldwide, non-exclusive, royalty-free, sub-licensable, perpetual and irrevocable licence to use the Deliverables for academic, teaching and research purposes]; and
- 12.2.3 The Contractor shall, at the Purchaser's request and expense, do (or procure to be done) all such further acts and things and the execution of all such other documents as are necessary to give effect to Clause 12.2.1.]

12.3 In relation to the Purchaser Materials, the Purchaser:

- 12.3.1 shall retain ownership of all Intellectual Property Rights in the Purchaser Materials; and
- 12.3.2 grants the Contractor a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Purchaser Materials for the Contract Period for the purpose of performing the Contract.

13. CORPORATE SOCIAL RESPONSIBILITY ISSUES

13.2 Health & Safety

- 13.1.1 In connection with the performance of the Contract, the Contractor shall be responsible for the observance by itself and all Contract Worker of all safety precautions necessary for the protection of all Contract Workers, and all precautions required to be taken by or under laws relating to health and safety.
- 13.1.2 The Contractor shall promptly notify the Purchaser of any health and safety hazards which may arise in connection with the performance of the Contract.
- 13.1.3 The Purchaser shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises or during site visits, and which may affect Contract Workers and shall follow the reasonable health and safety requirements of the Purchaser while attending the Premises, provided that such requirements are made known to the Contractor in writing in advance.

13.3 Non-Discrimination

- 13.2.1 The Contractor shall comply with the Discrimination Legislation and shall not unlawfully discriminate within the meaning and scope of the Discrimination Legislation.

13.2.2 The Contractor shall notify the Purchaser promptly of any investigation of or proceedings against the Contractor under the Discrimination Legislation and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data legally required, attending any meetings and providing any legally required information.

13.2.3 The Contractor must at all times comply with any relevant codes of practice relating to the subject matter of the Discrimination Legislation.

13.4 Environmental Considerations

13.4.1 The Contractor will use reasonable endeavours to ensure that:

13.4.1.1 no Services are supplied which will endanger the health and safety of the end users of the Services (in each case assuming that such persons act reasonably); and

13.4.1.2 where alternatives of a similar price point are reasonably available, no service materials are supplied which will cause significant damage to the environment during manufacture, use, or disposal, which consume a disproportionate amount of energy during manufacture, use, or disposal, which cause unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contain materials derived from threatened species or threatened environments.

13.4.2 The Contractor will comply in all material respects with applicable Laws relating to environmental matters which are relevant to the Contract. Where the provisions of any such Laws are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such voluntary agreements or codes of practice.

14. DEFAULT

14.1 If the Contractor is in Default then without prejudice to any of its other rights and remedies the Purchaser may require the Contractor within 30 days (or such other period as the Purchaser may specify, acting reasonably) to produce a draft remedial plan to remedy the Default for the approval of the Purchaser, such approval not to be unreasonably withheld or delayed.

14.2 The Contractor will implement the remedial plan approved by the Purchaser pursuant to Clause 14.1.

14.3 The Contractor will use reasonable endeavours to co-operate with the Purchaser and any third party to mitigate the effects of the Default.

14.4 If the Contractor is in Default the Purchaser may withhold a proportion of any sum which is payable by the Purchaser to the Contractor until the Default has been remedied, such proportion to be reasonable and commensurate with regard to:

14.4.1 the extent to which the Default has caused or will cause a diminution in the extent or quality, including delay, of the Contractor's performance of the Contract; and

14.4.2 the amount of any loss or any additional costs which the Purchaser has incurred or may incur in consequence of the Default.

15. TERMINATION

15.2 Either party may at any time by notice in writing terminate the Contract with immediate effect where:

15.1.1 where the Purchaser is the terminating party, a Bidding Misrepresentation has occurred;

15.1.2 any of the following events occur:

15.1.2.1 the other party passes a resolution for winding-up or the court makes a winding-up order, other than for the purpose of a genuine and good faith reconstruction or amalgamation which the terminating party has consented to in advance;

15.1.2.2 the other party passes a resolution for administration or an administrator, administrative receiver, receiver or manager is appointed to the other party, by a creditor or by the court, or possession is taken of any of the other party's property under the terms of a floating charge;

15.1.2.3 the other party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as if the reference in section 123(1)(a) to £750 was to £10,000);

15.1.2.4 if applicable, a petition is presented for the other party to be wound up as an unregistered company;

15.1.2.5 any similar event to those listed above occurs under the law of any other jurisdiction;

15.1.2.6 where the terminating party is the Purchaser, the Contractor has materially failed to achieve the Service Levels for two calendar months in any period of six months and, following written notification of such failure, the Contractor has failed to remedy such failure to the reasonable satisfaction of the Purchaser within reasonable agreed timescales;

15.1.2.7 a Default has occurred which is incapable of remedy; or

15.1.2.8 the other party has committed a Default which is capable of remedy and the other party has failed to remedy such Default within 30 days of receipt of a written notice from the terminating party specifying the Default and requiring its remedy (unless, where the non-terminating party is the Contractor, a remedial plan produced in respect of that Default and approved by the Purchaser pursuant to Clause 14.1 is being implemented by the Contractor to the reasonable satisfaction of the Purchaser).

[OPTION 1: CONTRACT RUNS FOR FIXED TERM

- 15.2 Unless earlier terminated in accordance with the provisions of these Conditions, the Contract shall enter into force on the Commencement Date and shall remain in full force and effect for the Contract Period, following which it shall terminate.]

OR

[OPTION 2: CONTRACT RUNS FOR FIXED TERM WITH OPTIONS FOR RENEWAL

- 15.2 Unless earlier terminated in accordance with the provisions of these Conditions, the Contract shall enter into force on the Commencement Date and shall continue in full force and effect for the Initial Period.
- 15.3 At least three (3) calendar months before the end of the Initial Period and each Renewal Period, the Purchaser shall notify the Contractor in writing of whether or not it wishes the Contractor to provide the Services for a period of [INSERT DURATION]" immediately following the end of the Initial Period or relevant Renewal Period (as applicable) ("Renewal Period).
- 15.4 If the Purchaser notifies the Contractor in accordance with Clause 15.3 that it would like to proceed with the Renewal Period, [and if the Contractor agrees to permit such renewal], the parties shall agree the charges to apply to the Renewal Period and: (i) the parties shall enter into a written agreement to amend the Charges accordingly; and (ii) the Contract shall continue in force until the end of the Renewal Period following which, unless a further Renewal Period is agreed, the Contract shall terminate.
- 15.5 If the Purchaser notifies the Contractor in accordance with Clause 15.3 that it does not want to proceed with a Renewal Period, [if the Contractor does not agree to a Renewal Period] or if the parties are unable to agree the charges payable in respect of a Renewal Period, the Contract shall continue in force until the end of the Initial Period or current Renewal Period (as applicable), following which the Contract shall terminate.
- 15.6 The maximum number of Renewal Periods shall be [INSERT NUMBER].]
- 15.7 The Contractor shall be entitled to terminate the Contract where any Charges which have been properly invoiced under the Contract and which are not the subject of any bona fide query or dispute remain outstanding for a period of more than 30 days following the last due date for payment, provided that the Contractor has given at least seven days' prior written notice of the overdue amount and its intention to terminate the Contract in the event payment is not made on or by expiry of such 30-day period.
- 15.8 [Either party may terminate the Contract for convenience on sixty (60) days' written notice to the other party.]

16. CONSEQUENCES OF TERMINATION

- 16.1 The termination or expiry of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party, and the Contractor shall be entitled to payment in respect of all Services supplied up until the effective date of termination.
- 16.2 Termination of the Contract will not affect the continued operation of those Clauses which are stated to apply after its termination or any other of the provisions of the Contract which, having regard to their terms, are intended to apply on or to survive

termination or expiry (including, without limitation, Clauses 1, 2.5, 5, 7, 10, 12, 16, 18.1, 19, 21, 27, 33 and 34).

- 16.3 Upon the expiry or termination of the Contract, for any reason whatsoever, the Contractor shall cooperate with the Purchaser to such extent as the Purchaser may reasonably require for the period required by the Purchaser (of up to a maximum of 6 months after the date of such expiry or termination) to ensure an orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Contract to the Purchaser or New Contractor. If the Purchaser requires the Contractor to perform any transitory services following the effective date of termination, the extent of such services and the fees payable in respect of such services shall be agreed in writing between the parties, and the Conditions will continue in full force and effect in respect of such transitory services.
- 16.4 The Purchaser shall reimburse to the Contractor all reasonable costs and expenses incurred by the Contractor in satisfying the provisions of Clause 16.3.
- 16.5 The cooperation referred to in Clause 16.3 may include, if the Purchaser requires:
- 16.5.1 the making available of any Issued Property, the making available of relevant instruction and operating manuals and the provision of instruction in the use of any equipment or machinery forming part of the Issued Property; and/or
 - 16.5.2 the continued provision of the Services, or part of them, or the continued performance of the Contractor's obligations under Contract.

17. VARIATIONS TO THE CONTRACT

- 17.1 Other than as permitted under clause 15.4, the Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of each of the parties, each having completed the following change control procedure:
- 17.1.1 Should either party wish to propose a Change, it shall submit to the other 2 copies of a change control notice (CCN) completed in so far as that party is able;
 - 17.1.2 Each CCN shall contain:
 - 17.1.2.1 the title of the Change;
 - 17.1.2.2 the originator and date of the proposal of the Change;
 - 17.1.2.3 the reason for the Change;
 - 17.1.2.4 full details of the Change including any specifications;
 - 17.1.2.5 the price, if any, of the Change;
 - 17.1.2.6 a timetable for implementation of the Change; and
 - 17.1.2.7 details of the likely impact, if any, of the Change on other aspects of the Contract.
 - 17.1.3 The CCN will be completed by the other party and both parties will seek to agree the content of the CCN.

- 17.1.4 In the case of a Change proposed by the Purchaser, the Contractor shall act reasonably in considering the content of the CCN and will, once such content has been agreed between the parties, execute a variation or amendment to the Contract to implement the agreed CCN, without delay.
- 17.1.5 In the case of a Change proposed by the Contractor, the Purchaser will act reasonably in considering the content of the CCN but the agreement or otherwise to the content of a CCN shall be at the Purchaser's sole discretion.
- 17.2 The Contract shall not be varied, amended or superseded by the use, notification, issue or receipt by a party of any document containing or incorporating any standard terms and conditions of either party.
- 17.3 The Contract constitutes the entire agreement between the parties at its date of execution in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract.

18. NON-SOLICITATION OF EMPLOYEES

- 18.1 Without in any way restricting the right of any person freely to accept employment and change employment, neither the Purchaser nor the Contractor shall, during the term of the Contract and for the period of 6 months thereafter, without the other party's written consent:
- 18.1.1 employ any of the employees of the other party who have at any time been engaged in the performance of the Contract to perform similar duties to those involved in the performance of the Contract; or
- 18.1.2 solicit to employment any such employees of the other party.
- 18.2 A party shall not be in breach of Clause 18.1 if a person (without having been previously approached directly or indirectly) responds to a general recruitment advertisement placed by or on behalf of the prospective new employer.

19. CONFIDENTIALITY

- 19.1 Subject to Clause 19.3, all information of a confidential nature obtained by either party (the "Receiving Party") under or in connection with the Contract from the other party (the "Disclosing Party") ("Confidential Information") will be treated by the Receiving Party in confidence, and will not:
- 19.1.1 be used by the Receiving Party other than for the purposes of the Contract; or
- 19.1.2 be disclosed by the Receiving Party other than to those of its Employees (and, in the case of the Contractor, Contract Workers) who need to have access to that information for the purposes of the Contract.
- 19.2 Information will not be treated as "Confidential Information" for the purposes of Clause 19.1 if it was generally available to the public when it was received by the Receiving Party from the Disclosing Party and information will cease to be "Confidential Information" for the purposes of Clause 19.1 if it subsequently becomes generally

available to the public other than as a result of a breach by the Receiving Party of this Clause 19.

19.3 Clause 19.1 does not prohibit the disclosure by the Receiving Party of any Confidential Information which:

19.3.1 was known to the Receiving Party prior to its disclosure to the Receiving Party by the Disclosing Party or which subsequently comes into the Receiving Party's possession from a third party which does not owe a duty of confidence to the Disclosing Party in respect of that information;

19.3.2 the Receiving Party is obliged by any law, regulatory authority or court of competent jurisdiction to disclose (including, without limitation, any requirement under the Information Legislation); or

19.3.3 the Receiving Party requires to provide to its insurers or professional advisers to allow the Receiving Party to properly conduct its business.

19.4 The Receiving Party will take all technical and organisational measures and other precautions necessary to ensure that the Confidential Information is not used or disclosed other than as permitted by Clauses 19.1 and 19.3.

19.5 Without affecting the generality of Clause 19.4, the Receiving Party will ensure that any of its Employees (or, in the case of the Contractor, Contract Workers) to whom it wishes to disclose any of the Confidential Information pursuant to Clause 19.1.2 are bound by appropriate confidentiality obligations in respect of that Confidential Information at least as onerous as those set out in this Clause 19.

19.6 Upon the later of (i) expiry or termination of the Contract; or (ii) fulfilment of the parties' obligations under Clause 15.6, the Receiving Party will promptly, and in any event within 14 days of such expiry, termination or fulfilment, return to the Disclosing Party or destroy (at the absolute discretion of the Disclosing Party) any Confidential Information in its possession, and provide the Disclosing Party with a certificate, signed by a duly authorised officer, certifying that the Receiving Party has complied with its obligations under this Clause 19.6. The obligation to destroy any Confidential Information pursuant to this Clause 19.6 includes an obligation to permanently delete from any information technology systems owned and/or used by the Receiving Party, any copies of that Confidential Information held in electronic form.

19.7 Nothing in this Clause 19 will prevent the Contractor from using in the normal course of its business any techniques, ideas or know-how gained during the performance of the Contract to the extent that such use does not result in any unauthorised disclosure of any Confidential Information or an infringement of the Purchaser's (or anyone else's) Intellectual Property Rights.

19.8 The parties each acknowledge that the other may be subject to the requirements of the Information Legislation. Each party will provide such assistance and co-operation as the other party may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation including (although not only) by providing the other party with a copy of any information which it is holding on behalf of the other party in the form that the other party specifies within 7 days of a request from the other party to that effect.

19.9 The party receiving the request under the Information Legislation will be entitled to determine at its absolute discretion whether to disclose or otherwise publish any

information under the Information Legislation, including (although not only) any information provided to it by the other party or which relates in any way to the other party or the Contract. In particular the party receiving the request will be entitled to determine at its absolute discretion whether it is required to disclose upon request or otherwise publish any information under the Information Legislation, or whether, even if it is not required to disclose upon request or otherwise publish that information under the Information Legislation, it would nevertheless be in the public interest to do so.

- 19.10 Without affecting Clause 19.9, the party receiving the request under the Information Legislation will use reasonable endeavours to consult with the other party in accordance with the Scottish Ministers' code of practice on the discharge of functions by public bodies under any of the Information Legislation (and/or any subsequent guidance issued by the Scottish Ministers which amends or replaces that code of practice), before disclosing or otherwise publishing under the Information Legislation any information provided to it by the other party or which relates in any way to the other party or the Contract.

20. DATA PROTECTION

- 20.1 Each Party shall comply with its respective obligations under the provisions of the Data Protection Legislation. Without prejudice to the meaning afforded to each party under the Data Protection Legislation, the intention of the parties is that in respect of the Purchaser Data and any Personal Data Processed on behalf of the Purchaser by the Contractor, the Purchaser shall be the Controller and the Contractor shall be a Processor. Schedule 3 describes the subject matter, duration, nature and purpose of the Processing and the Personal Data categories and Data Subject types in respect of which the Contractor may process the Personal Data.

- 20.2 The Contractor shall:

20.2.1 implement and maintain appropriate technical and organisational measures and safeguards for protection of Personal Data, to ensure the rights of Data Subjects are protected and to ensure that Processing will meet the requirements of the Data Protection Legislation;

20.2.2 ensure that all employees and subcontractors authorised to Process Personal Data are subject to binding confidentiality obligations in respect of that Personal Data;

20.2.3 reasonably assist the Purchaser at the Purchaser's cost, using appropriate technical and organisational measures, to respond to requests from Data Subjects including requests for information, requests for deletion and amendments of information and requests for the transfer of data;

20.2.4 reasonably assist the Purchaser at the Purchaser's cost in ensuring compliance with its security, data breach notification, impact assessment and consultation obligations under Data Protection Legislation, taking into account the nature of processing and information available to the Contractor;

20.2.5 make available to the Purchaser all information necessary, and allow for and contribute to audits and inspections conducted by the Purchaser or the

Purchaser's mandated auditor, to demonstrate the Contractor's compliance with its obligations under the Conditions;

- 20.2.6 promptly inform the Purchaser if, in the Contractor's opinion, any instruction given by the Purchaser to the Contractor infringes the Data Protection Legislation;
 - 20.2.7 maintain a written record of all Processing activities under its responsibility and of all categories of Processing activities carried out by it on behalf of the Purchaser, that satisfies the requirements of the Data Protection Legislation;
 - 20.2.8 cooperate on request with any relevant supervisory authority;
 - 20.2.9 notify the Purchaser without undue delay after becoming aware of a Personal Data Breach and notify the Purchaser promptly if it is asked to do something infringing the Data Protection Law;
 - 20.2.10 take any further action and execute any further documents and amendments to this Contract as are required to comply with Data Protection Legislation;
 - 20.2.11 only Process Personal Data in accordance with the Purchaser's documented instructions consistent with and in the scope of this Contract (unless required to do so by applicable law, in which case the Contractor shall inform the Purchaser of that legal requirement unless prohibited by law on important grounds of public interest);
 - 20.2.12 only engage another Processor to carry out specific Processing activities with prior specific or general written authorisation of the Purchaser, and only where that other processor is subject to a written contract imposing on that other Processor the same data protection obligations as are imposed on the Contractor in this Contract. [Subject to the foregoing, the Purchaser hereby consents to the Contractor using [INSERT NAME] as a sub-Processor carrying out Processing activities]; and
 - 20.2.13 not transfer or otherwise Process the Personal Data outside the United Kingdom without obtaining the Purchaser's prior written consent. Where such consent is granted, no such transfer or Processing shall take place until all appropriate safeguards as might be required under the Data Protection Legislation in respect of such transfer or Processing are in place. [Subject to the foregoing, the Purchaser hereby consents to the Contractor Processing the Personal Data outside of the United Kingdom.]
- 20.4 Nothing within this Contract relieves the Purchaser of its own direct responsibilities and liabilities under the Data Protection Legislation including, without limitation, providing any required notices and obtaining any required consents. The Purchaser shall also be responsible for the Processing instructions it provides to the Contractor.

20.5 The Contractor agrees that the technical and organisational measures referred to in Clause 20.3(a) above shall ensure a level of security appropriate to the risk, taking into account :-

20.5.1 the state of the art, the costs of implementation;

20.5.2 the nature, scope, context and purposes of processing and risks of varying likelihood; and

20.5.3 severity for the rights and freedoms of individuals.

20.6 The Contractor agrees that the technical and organisational measures to be implemented by them and as referred to in Clause 20.3(a) above shall include, the technical and organisational measures set out in Schedule 3.

20.7 The parties agree to share Personal Data where necessary for the purposes of providing the agreed Service. Access to this Personal Data shall be restricted to only those Employees who need access to the Personal Data in order to provide the Service and those Employees are appropriately trained to handle and process the shared Personal Data in accordance with the Data Protection Legislation.

21 PUBLICITY

The Contractor shall not make any public statement identifying the Purchaser as a client or customer of the Contractor or using the Purchaser's name and/or brand in any promotion or marketing without the prior written consent of the Purchaser.

22 ANTI-CORRUPTION

22.1 The Contractor shall not (and shall procure that no Contractor Employee nor any other person acting on its behalf shall) offer or give or agree to offer or give any person any gift or consideration of any kind as an inducement or reward for:

22.1.1 showing or forbearing to show favour or disfavour to any person in relation to the Contract; or

22.1.2 doing or forbearing to do (or having done or forborne to do) any act in relation to the obtaining or performance of the Contract or any other agreement.

22.2 In the event of any breach of this Clause 22 or the commission of any offence by the Contractor or Contract Worker or person acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916, the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.

22.3 In exercising its rights or remedies under this Clause 22, the Purchaser shall:

22.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

22.3.2 give due consideration, where appropriate, to action other than termination of the Contract, including:

22.3.2.1 requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor; or

22.3.2.2 requiring the Contractor to procure the dismissal of an employee of any Contractor where the prohibited act is that of such employee.

23 COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

23.1 In performing its obligations under the Contract, the Contractor shall:

23.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of the Purchaser from time to time in force including the Modern Slavery Act 2015; and

23.1.2 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

23.1.3 include in its contracts with its subcontractors and suppliers in connection with this Contract appropriate and legally compliant anti-slavery and human trafficking provisions.

23.2 The Contractor confirms that, to the best of its knowledge, at the date of the Contract:

23.2.1 no Contractor Workers engaged in the performance of the Services:

23.2.1.1 have been convicted of any offence involving slavery and human trafficking; and

23.2.1.2 so far as it is aware, 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.

23.3 The Contractor shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

23.4 The Contractor shall notify the Purchaser as soon as it becomes aware of actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

23.5 The Contractor shall:

23.5.1 maintain a complete set of records to trace the supply chain of all Services provided to the Purchaser in connection with this Contract; and

23.5.2 permit the Purchaser and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause, to have access to and take copies of the Contractor's records and any other information and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause.

- 23.6 The Contractor confirms that it conducts its business in a manner that is consistent with all Law relating to anti-slavery.
- 23.7 The Purchaser may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of the provisions of this Clause 23.

24 ANTI-FACILITATION OF TAX EVASION

- 24.1 The Contractor shall:

24.1.1 not engage in any activity, practice or conduct which would constitute either:

24.1.1.1 a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

24.1.1.2 30.1.1.2 a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

24.1.2 have and shall maintain in place throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Contractor) and to ensure compliance with this Clause;

24.1.3 promptly report to the Purchaser any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract.

- 24.2 The Contractor shall ensure that any person associated with the Contractor who is performing services and/ or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause.

- 24.3 Breach of this Clause 24 shall be deemed a material breach of contract and shall allow the Purchaser to terminate by written notice with immediate effect.

25 FORCE MAJEURE

- 25.1 Subject to Clause 25.3, a party affected by Force Majeure shall not be liable to the other for any loss of any kind which is directly or indirectly caused by reason of any failure or delay in the performance of its obligations under this Contract which is due to Force Majeure.

- 25.2 Notwithstanding Clause 25.1, a party affected by Force Majeure shall:

25.2.1 notify the other party in writing within 5 days of the occurrence of the event constituting Force Majeure;

25.2.2 use its reasonable endeavours to continue to perform, or resume performance of, its obligations under this Contract hereunder for the duration of the event constituting Force Majeure; and

25.2.3 shall not be relieved from any obligation to pay any sum of money to the other party.

- 25.3 If either party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part it shall forthwith notify the other as to the circumstances and the period for which it is estimated that such failure or delay is likely to continue.
- 25.4 If either party is prevented from performance of its obligations under the Contract for a continuous period in excess of 3 months by reason of Force Majeure, the other party may terminate the Contract immediately on service of written notice upon the party so prevented.
- 25.5 The only events which shall afford relief from liabilities under the Contract for failure or delay shall be any event constituting Force Majeure.

26 ASSIGNATION AND SUB-CONTRACTING

- 26.1 Except as expressly set out herein, neither party shall assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof (whether voluntarily, involuntarily or by operation of the law) without the previous consent in writing of the other party (which consent shall not be unreasonably withheld or delayed in respect of sub-contracts). No assignation howsoever occurring shall relieve the assignor of its obligations hereunder prior to the date of assignation unless the parties mutually agree otherwise in writing.
- 26.2 [Notwithstanding Clause 26.1, the Contractor shall be entitled to engage a sub-contractor to perform its obligations under the Contract.]

27 NOTICES

- 27.1 Each party shall from time to time notify the other of the communications protocols to be followed in connection with the Contract but subject to any such protocol, any notice or other communication shall be validly served if sent by letter to the address of the relevant party as detailed in the Contract (or, where the party is a company, that company's registered office).
- 27.2 A notice delivered or sent or transmitted to the correct address of a party shall be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

28 SEVERABILITY

- 28.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction (an "**Illegal Term**"), such provision shall be severed and subject to Clause 32.2, the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the relevant provision eliminated.
- 28.2 If an Illegal Term is so fundamental that its severance prevents the accomplishment of the purpose of the Contract, the parties shall immediately commence good faith negotiations to remedy such invalidity, but if the parties have not implemented that remedy within 2 weeks of the declaration of the provision as an Illegal Term, either party may terminate this agreement forthwith by notice in writing to the other.

29 WAIVER

- 29.1 The failure of either party to insist upon the performance or the strict performance of any provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 29.2 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and notified in writing to the other party.

30 REMEDIES

- 30.1 Except as otherwise expressly provided in the Contract:
- 30.1.1 all remedies available to a party under the Contract are cumulative and may be exercised concurrently or separately; and
 - 30.1.2 the exercise of any one remedy shall not exclude the exercise of any other remedy.

31 AUDIT ACCESS

- 31.1 No more than once in any Contract Year, the Contractor shall grant to the Purchaser, any auditors of the Purchaser (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Purchaser) and any other person authorised by the Purchaser (together the "Auditors") access to all of the Records and shall provide reasonable assistance at all times to the Purchaser or the Auditors (including the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records), all for the purposes of enabling the Purchaser or the Auditors:
- 31.1.1 to carry out an audit of the Contractor's compliance with the Contract;
 - 31.1.2 to carry out an audit of all activities carried out and security precautions taken in connection with the performance of the Contract;
 - 31.1.3 to prepare, audit, examine and certify the accounts of the Purchaser; or
 - 31.1.4 to conduct any audit or investigation by a regulatory body.
- 31.2 The Contractor shall be repaid any reasonable expenses properly and necessarily incurred in giving such reasonable assistance.
- 31.3 The Purchaser shall ensure that any representative of the Purchaser given access to any premises or Records by the Contractor in accordance with Clause 31.1 is subject to appropriate obligations of confidentiality and causes the minimum amount of disruption to the business of the Contractor.

32 RELATIONSHIP

- 32.1 The Contract shall not have the effect of making the Contractor the agent of the Purchaser, and the Contractor will procure that no Contractor and no Contractor Employee, by act or omission, purports to act as agent of the Purchaser, or leads any party to believe that such a relationship of agency exists.

33 DISPUTE RESOLUTION PROCEDURE

- 33.1 In the first instance the parties will seek to resolve any Dispute by its escalation to various levels within the organisational structures of the parties.
- 33.2 There shall be two levels of escalation, and at each level each party will make available for the purposes of the Dispute Resolution Procedure an appropriate representative most closely matching the description given below.

Level Representative

First Level person with day to day responsibility for the Contract.

Second Level person with managerial responsibility for overseeing the Contract.

An individual representing a party at one level may not be made available by a party to represent it at a higher level.

- 33.3 If a Dispute is resolved at any level, the resolution shall be reduced to writing, without delay, and signed by both parties. Once signed by both parties, the resolution shall be binding on the parties.
- 33.4 Unless the resolution of a Dispute is reduced to writing signed by both parties, all discussions and negotiations connected with the Dispute shall be conducted without prejudice to the rights of the parties in any future legal or other proceedings, and no such discussions and negotiations may be produced or relied upon in evidence in any such proceedings.
- 33.5 A meeting of the representatives at the first level shall take place as soon as possible after any Dispute arises.
- 33.6 If a Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the first level, the Dispute shall be referred to the next level, and the representatives at that next level shall meet within 3 days of the reference to that level.
- 33.7 If a Dispute is referred to the second level, and that Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the second level, either party may refer the dispute to a court of competent jurisdiction for a final, binding and enforceable resolution.
- 33.8 Nothing contained in this Clause 33 shall prevent or delay a party from referring a dispute to a court of competent jurisdiction to seek urgent interlocutory relief or where not doing so would result in a course of action being lost.

34 LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the law of Scotland and the Scottish Courts shall have exclusive jurisdiction to settle any disputes.

35 ANTI-BRIBERY

35.1 The Contractor shall:

- 35.1.1 Comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements');
- 35.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 35.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them;
- 35.1.4 promptly notify the Purchaser if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
- 35.1.5 ensure that all persons who are performing Services on behalf of the Contractor comply with this Clause 35; and
- 35.1.6 within 2 months of the Commencement Date, and annually thereafter if so requested, certify to the Purchaser in writing signed by an officer of the Contractor, compliance with this Clause 35 for whom the Contractor is responsible under Clause 35.1.6. The Contractor shall provide such supporting evidence of compliance as the Purchaser may reasonably request.

35.2 For the purpose of this Clause 35, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

35.3 In the event of any breach of this Clause 35 in connection with the Services or the Contract by the Contractor or by anyone employed by it or acting on its behalf:

- 35.3.1 the Contractor shall promptly give the Purchaser full details of any such breach and shall co operate fully with the Purchaser in disclosing information and documents which the Purchaser may request; and/or
- 35.3.2 the Purchaser shall (without prejudice to any of its rights or remedies under the Contract or otherwise) be entitled by notice in writing to terminate the Contract immediately.

36 TRANSITION AND ACCEPTANCE

36.1 In this Clause:

"Transition Period" means any period between the award of the Contract and the Commencement Date as set out in the Contract; and

"Transition Plan" means the Contractor's plan for the Lead-in Period forming part of the Contract.

36.2 During the Transition Period the Contractor will:

36.2.1 ensure that all Contractor Employees have received the training necessary to allow the Contractor to perform the Contract from the Commencement Date;

36.2.2 prepare draft procedural instructions to be issued to all Contractor Employees in connection with the Contract, and submit the draft to the Purchaser for approval (which will not be unreasonably withheld);

36.2.3 issue procedural instructions as approved by the Purchaser to all Contract Workers in advance of the Commencement Date; and

36.2.4 comply with its obligations pursuant to the Transition Plan.

36.3 During the Transition Period the Purchaser will use its reasonable endeavours to comply with its obligations pursuant to the Transition Plan.

36.4 The Conditions will apply to the Transition Period from the commencement of that period, notwithstanding that this is prior to the Commencement Date.

37. DURING LEAD-IN PERIOD

37.1 During the Transition Period (as defined in Clause 36), the Contractor shall, at its own expense, conduct system trials in relation to the Services required for the performance of its obligations pursuant to the Contract.

IN WITNESS WHEREOF the parties or their duly authorised representatives have executed these Conditions and the following four (4) Schedules on the day and year stated below.

Signed for and on behalf of SHETLAND UHI

by

(Name in Block Capitals) Signature

on

at Designation

In the presence of

.....
(Name in Block Capitals) Witness

Address

Signed for and on behalf of The Contractor

by
(Name in Block Capitals) Signature

on

at Designation

In the presence of

.....
(Name in Block Capitals) Witness

Address

Schedule One Specification

[Specification to be appended]

Schedule Two Charges

[Charges to be appended]

Schedule Three Data Protection

1. Particulars of the Processing

1.1 **Scope:** [insert]

1.2 **Nature:** [insert]

1.3 **Purpose of processing:** [insert]

1.4 **Duration of the processing:** [insert]

1.5 **Types of personal data:** [insert]

1.6 **Categories of data subject:** [insert]

2. Technical and organisational measures

[insert]

3. Supplier Privacy Policy

[insert]

Schedule 4 TUPE

1.1 In this Schedule 4 the following definitions apply:

Employees: those employees whose contract of employment transfer to the Contractor from the Purchaser as at the Commencement Date, being those employees who are listed in paragraph 2 of this Schedule 4.

Employee Liability Information: in respect of each of the Employees:

- (a) the identity and age of the Employee;
- (b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
- (c) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the Employee against the Purchaser within the previous two years or where the Purchaser has reasonable grounds to believe that such action may be brought against the Contractor arising out of the Employee's employment with the Purchaser; and
- (e) information about any collective agreement which will have effect after the [Commencement Date] in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

1.2 The Purchaser and the Contractor believe that, pursuant to the Employment Regulations, at the Commencement Date, the Contractor will become the employer of the Employees.

1.3 The Purchaser represents, warrants and undertakes to the Contractor that:

- (a) no persons are employed or engaged in the provision of the Services other than the Employees;
- (b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this agreement;
- (c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits of any Employees otherwise disclosed) are set out in paragraph 2 of this Schedule 4;
- (d) there is not in existence any contract of employment with directors or employees of the Purchaser (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a

claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);

- (e) in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Purchaser has:
 - (i) complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;
 - (ii) maintained adequate and suitable records regarding the service of each of its employees;
 - (iii) calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (*SI 1998/1833*) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
 - (iv) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and
 - (v) complied with all relevant orders and awards made under any statute affecting their conditions of service;
- (f) the Purchaser has not been involved in any industrial or trade disputes in the last three years and to the best of the Purchaser's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this agreement including the identity of the Contractor is likely to lead to any industrial dispute;
- (g) there is not outstanding any agreement or arrangement to which the Purchaser is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
- (h) the Purchaser has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
- (i) the Purchaser has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
- (j) there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of

sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;

- (k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;
- (l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state of affairs which may hereafter give rise to a claim against the Purchaser arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
- (m) the Purchaser has provided the Employee Liability Information to the Contractor regarding each of the Employees either in writing or by making it available to the Contractor in a readily accessible form;
- (n) the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Contractor;
- (o) the Purchaser has notified the Contractor in writing of any change in the Employee Liability Information since the date on which it was provided;
- (p) the Employee Liability Information was provided not less than 28 days before the Commencement Date; and
- (q) the Purchaser has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of TULRCA, if required.

1.4 The Purchaser shall indemnify the Contractor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Contractor including all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the termination by the Purchaser of the employment of any of the Employees;
- (b) anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Contractor by virtue of the Employment Regulations; and
- (c) any claim made at any time by any employee of the Purchaser other than the Employees who claim to have become an employee of or have rights against the Contractor by virtue of the Employment Regulations (**Claims**);

provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Contractor. The Purchaser's liability arising under this clause 1.4 shall not be subject to the limitations on liability set out in Clauses 10.2 and 10.3 of the Conditions.

1.5 The Purchaser shall procure that its employees, agents and successors in title shall promptly:

- (a) take such action in connection with the Claims as the Contractor shall from time to time reasonably request;
 - (b) provide free of charge all such assistance and information as the Contractor may reasonably request relating to the Claims to enable the Claims to be pursued;
 - (c) subject to any restriction imposed by law, provide the Contractor, its legal and other advisers with access to all documents, records or other information held by the Contractor relating to the Claims;
 - (d) provide the Contractor and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Contractor with the preparation of its cases in relation to the Claims;
 - (e) permit and require such employees as the Contractor and/or its professional advisers may reasonably request to meet with the Contractor and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the Contractor and/or its legal or other professional advisers may reasonably require;
 - (f) provide such other assistance as the Contractor may reasonably request in order to ensure the due and timely prosecution of the Claims;
 - (g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Contractor and obtaining its agreement to any approval of the request; and
 - (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Contractor's consent to such waiver, such consent not to be unreasonably withheld.
- 1.6 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Purchaser up to and including the Commencement Date and by the Contractor with effect from the Commencement Date.
- 1.7 The Contractor shall indemnify the Purchaser in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Purchaser including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- (a) any failure by the Contractor to comply with its obligations pursuant to the Employment Regulations; and
 - (b) anything done or omitted to be done by the Contractor in respect of any of the Employees whether before or after the Commencement Date.

The Purchaser's liability arising under this clause 1.7 shall not be subject to the limitations on liability set out in Clauses 10.2 and 10.3 of the Conditions.

2. List of Employees

Employee name	Benefit
[insert]	[insert]