

HISTORIC ENVIRONMENT SCOTLAND ENTERPRISES LIMITED

CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

These Conditions of Contract for the Purchase of Services ("Conditions") may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

'Contract' means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions, any Schedule annexed hereto and other documents (or parts thereof) specified in the Purchase Order but expressly excluding any Supplier terms of business or terms and conditions. Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- The Purchaser's specification ("the Specification") included, annexed or referred to in the Purchase Order; then
- The Purchase Order, then
- These Conditions; then
- The Supplier's technical response, included, annexed or referred to in the Purchase Order, to the Specification; then
- The Schedule annexed hereto; then
- All other terms and documents specified in the Purchase Order (but expressly excluding any Supplier terms of business or terms and conditions).

"Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Request" has the meanings given in the Data Protection Laws;

"Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, respectively in force from time to time, to which the Purchaser and/or Supplier is subject and which relates to the protection of individuals with regard to the Processing of Personal Data, including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR;

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

'Good Industry Practice' means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances;

"HES" means Historic Environment Scotland, an executive non-departmental public body established by the Historic Environment Scotland Act 2014 and a registered charity (Scottish Charity number SC045925) and having its principal office at Longmore House, Salisbury Place, Edinburgh EH9 1SH;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“*PCI DSS*” means the Payment Card Industry Data Security Standard version 4.0 issued in March 2022 or any subsequent version of the Standard that applies or may apply to the Supplier;

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

‘*Premises*’ means the location(s) owned, occupied or maintained by or on behalf of HES and/or the Purchaser where the Services are to be performed, as specified in the Purchase Order or as otherwise notified to the Supplier by the Purchaser;

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

‘*Purchase Order*’ means the Purchaser's order for the Services, as set out in the Purchaser's purchase order form or the Purchaser's written acceptance of the Supplier's quotation (as the case may be), but excluding always any terms and conditions put forward by the Supplier, whether on the Supplier's quotation or otherwise, unless specifically agreed in writing by the Purchaser;

‘*Purchaser*’ means Historic Environment Scotland Enterprises Limited, a company incorporated in Scotland with registered number SC510997 and having its registered office at Longmore House, Salisbury Place, Edinburgh EH9 1SH;

“*Schedule*” means the schedule in one part attached to these Conditions (when applicable);

‘*Services*’ means the services set out or described in the Purchase Order which are to be provided to the Purchaser by the Supplier pursuant to or in connection with the Contract and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

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

‘*Supplier*’ means the person, firm or company from whom the Purchaser procures the Services; and

“*Supplier Background IP*” means all Intellectual Property Rights owned by or licensed to the Supplier at the commencement of this Contract or created or acquired by or licensed to the Supplier, independently of the performance of this Contract, after the commencement of this Contract.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignee.
- 1.3 The Schedule forms part of this Contract and shall have effect as if set out in full in the body of these terms and conditions and any reference to this Contract includes the schedules.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.8 A reference to a document is a reference to that document as varied, assigned or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.9 References to Conditions and Schedule are to the Conditions and Schedule of these terms and conditions; references to paragraphs are to paragraphs of the Schedule.
- 1.10 The words include or including are to be construed as meaning without limitation.
- 1.11 The Supplier acknowledges that:
- (a) HES is a charitable executive non-departmental public body responsible for investigating, caring for and promoting Scotland's historic environment, with responsibility for management of properties in public care (including the Premises) for and on behalf of the Scottish Ministers;
 - (b) the Purchaser is a wholly owned subsidiary of HES.

2. CHANGE TO CONTRACT REQUIREMENTS

- 2.1 The Purchaser may vary any part of the Services which, in the Purchaser's opinion, is necessary or desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, location, method or sequence of the Services. The Purchaser shall also be able to temporarily suspend supply of the Services, if in the Purchaser's reasonable opinion this is necessary or desirable.
- 2.2 Save as otherwise provided herein, no variation or suspension of the supply of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed by the Purchaser in writing. If for any reason the Purchaser shall find it necessary to instruct such a variation and or suspension orally in the first instance, the Supplier shall comply with such instruction and such instruction will be confirmed in writing by the Purchaser within two (2) working days of the giving of such oral order. If not so confirmed, the variation and or suspension shall cease to have effect on the expiry of this two (2) working day period.
- 2.3 Where a variation or suspension of the supply of the Services pursuant to Condition 2.1 or 2.2 will affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser of this in writing not later than two (2) working days after receiving notice of such variation and or suspension by the Purchaser, and shall provide such information on the affected costs as the Purchaser may require. The Purchaser will consider such notification and supporting information and the Purchaser may (at its discretion but acting reasonably) authorise such alteration to the sums to be paid to the Supplier as is, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

3. NATURE OF SERVICES AND SUPPLIER'S RIGHT TO ACCESS PREMISES

- 3.1 The Supplier is deemed to have satisfied itself in all respects as to the nature and extent of the Services to be carried out (including, where applicable but without limitation, the Premises where the Services are to be carried out), to have taken all such matters into account when calculating the charges payable by the Purchaser for the Services and to be satisfied in relation to all matters connected with the Services and Premises.
- 3.2 The Purchaser shall, at the request of the Supplier, grant such access to the Premises as may be reasonable for the purpose of Condition 3.1 and/or in the reasonable opinion of the Purchaser is necessary for the provision of the Services in accordance with the Contract.
- 3.3 The Supplier acknowledges and accepts that during the inspection of the Premises and provision of the Services at the Premises, the Premises shall remain open to the public and/or the Purchaser's staff, representatives and sub-contractors, unless agreed otherwise between the parties. Any rights granted to the Supplier under this Condition 3.3 shall be granted in common with all others entitled to similar rights and on the condition that the Supplier does not disturb, annoy, obstruct or interfere with the rights of the Purchaser, the public, the Purchaser's staff or any other person so entitled.

- 3.4 When accessing any Premises, the Supplier shall (and shall procure that its sub-contractors, personnel or representatives shall):
- (a) only use the Premises solely for the purpose of performing its obligations under this Contract and must limit access to the Premises to such individuals as are necessary for that purposes;
 - (b) comply with the Purchaser's policies and procedures regarding access to and attendance on such Premises (including, without limitation, in relation to health and safety and security);
 - (c) comply with any and all instructions issued by the Purchaser's personnel or representatives with respect to such access and attendance at the Premises;
 - (d) not disconnect or unplug any cables, plugs or other wiring at the Premises without the express written permission of the Purchaser; and
 - (e) provide, at the Purchaser's written request, a list of the names of all persons who may require admission to the Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 3.5 Any of the Supplier's personnel, employees, workers, agents or representatives are likely to have contact with the public at any Premises, such personnel, employees, workers, agents or representatives must have a current basic Disclosure Scotland Certificate or a heightened form of security check as may be specified by the Purchaser to the Supplier from time to time and the Supplier must notify the Purchaser of any matter or change in circumstances affecting the Disclosure Scotland Certificate (or other security check then specified by the Purchaser) of any of Supplier's personnel, employees, workers, agents or representatives or the Supplier's ability to comply with this Condition 3.5 in any other respect. Breach of this Condition shall constitute a material breach of for the purpose of Condition 20.2.
- 3.6 The Supplier acknowledges that the Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises any personnel, employees, workers, agents or representatives or sub-contractors of the Supplier the Supplier whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable, which may include any individual whether or not they hold a current basic Disclosure Scotland Certificate (or heightened form of security check as may have been specified by the Purchaser at the relevant time). All decisions of the Purchaser under this Condition 3.6 are final and conclusive.
- 3.7 The Supplier shall fully indemnify the Purchaser in respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of, in connection with or otherwise attributable to, any act or omission of the Supplier or any of its sub-contractors.
- 3.8 Unless otherwise agreed between the parties in writing, the Supplier shall provide all plant, tools, material, labour, haulage and any other things necessary to provide the Services and complete the Contract.

4. CONSERVATION AND DAMAGE TO THE PREMISES

- 4.1 The Supplier acknowledges and accepts that essential conservation or maintenance work may require to take place at the Premises during the provision of the Services. Such essential work may include, without limitation, the erection of scaffolding and/or partial or total closure of the Premises for safety reasons. Due to the age and historical importance of the Premises, such work may require to be undertaken at short notice and within any part of the Premises. However, the Purchaser will endeavour to advise the Supplier of any such essential conservation or maintenance work to the extent that it is planned in advance of the provision of the Services commencing. For the avoidance of doubt, the carrying out of any such conservation or maintenance work shall not entitle the Supplier to terminate the Contract, and such conservation or maintenance shall not be considered a Force Majeure Event as defined in Condition 28.

- 4.2 The Supplier recognises the cultural and historical importance of the Premises and undertakes to take all reasonable care of the Premises during the provision of the Services. Furthermore the Supplier acknowledges the role and interest of HES in ensuring the conservation and maintenance of the Premises. The Supplier accepts that they shall be held responsible for any damage, including accidental damage (whether direct, indirect or consequential and including any economic loss or other loss of profits or business whether incurred by the Purchaser or HES), caused to the Premises or any part of it by the Supplier or the Supplier's employees or representatives, and other people who the Supplier brings onto the Premises for or in connection with the Services (together the **"Supplier's Representatives"**). The Supplier must:
- (a) inform the Purchaser and or HES immediately if at any time the Supplier becomes aware of any damage which occurs to the Premises or any items of property in the Premises; and
 - (b) settle any invoice raised for work instructed by the Purchaser and or HES pursuant to the repair or maintenance of the Premises or any items of property in the Premises as a result of damage caused by the Supplier or the Supplier's Representatives. Such invoices shall be settled within twenty eight (28) days of the maintenance or repair work being completed.
- 4.3 The Supplier further agrees and accepts that where the Purchaser and or HES requires to undertake remediation of the Premises resulting from the provision of the Services, the Supplier will be required to meet the cost of such remediation.

5. SUPPLIER'S STATUS

- 5.1 In carrying out the Services the Supplier shall be acting as an independent contractor and not as the agent of the Purchaser. Accordingly:
- (a) the Supplier shall not (and shall procure that the Supplier's personnel and representatives do not) say or do anything which might lead any other person to believe that the Supplier is acting as the agent of the Purchaser;
 - (b) when contracting with third parties, the Supplier does so on its own account and not as an agent or representative of the Purchaser; and
 - (c) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of any negligence on the part of the Purchaser, or the Purchaser's staff or agents or any other liability that arises which cannot be excluded or limited by any applicable law.

6. SUPPLIER'S PERSONNEL

- 6.1 The Supplier shall take all steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser notifies the Supplier that any person is not to be admitted to, or is to be removed from, the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall comply with such notice. If required by the Purchaser, the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any security pass issued to the person removed is promptly surrendered. The giving of such notice by the Purchaser to the Supplier as aforesaid shall not entitle the Supplier to delay, suspend, terminate or withhold the performance of any of its obligation in terms of the Contract and it shall remain bound to timeously implement its obligations in full, whether or not it complies with the terms of the said notice or otherwise.
- 6.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 6.3 The Supplier acknowledges that the Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises any personnel, employees, workers,

agents, representatives or sub-contractors of the Supplier whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.

6.4 The decision of the Purchaser shall be final and conclusive as to whether (i) any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract; and (ii) the Supplier has furnished the information or taken the steps required of the Supplier by this Condition 6.

6.5 Where the Services to be provided are deemed to be activities constituting works, the Supplier shall ensure that on-site staff are accredited under the Construction Skills Certification Scheme or an equivalent scheme. Access to the Premises will not be permitted until evidence of such accreditation is provided to the Purchaser.

6.6 Where the Supplier engages a sub-contractor for the performance of any of its obligations under the Contract, the Supplier shall ensure that it enters into a written contract with such sub-contractor and shall ensure that the contract:-

6.6.1 requires the sub-contractor to ensure that on-site staff are accredited under the Construction Skills Certification Scheme or an equivalent scheme, and

6.6.2 is in the same terms as that set out in this Condition 6 (including for the avoidance of doubt this Condition 6.6) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

The Supplier acknowledges and accepts that it shall be liable for the acts and omissions of its sub-contractor(s) as if they were its own acts and omissions.

6.7 In this Condition "on-site staff" means all persons engaged by the Supplier to undertake any works or part thereof at the Premises.

6.8 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition 6.

7. MANNER OF CARRYING OUT THE SERVICES

7.1 In providing the Services and otherwise performing the Contract, the Supplier shall:

- (a) co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;
- (b) comply in all respects with all applicable law (including, without limitation, any statutes, orders, regulations or bye-laws from time to time in force), any applicable requirements of regulatory bodies
- (c) comply in all respects with Good Industry Practice;
- (d) perform the Services with all reasonable care, skill and diligence;
- (e) use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services will be free from defects in workmanship, installation and design;
- (f) hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier (Purchaser Materials) in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser, and not dispose or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorisation;
- (g) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

- (h) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations; and
- (i) observe all health and safety rules and regulations and any other security requirements that apply at the Premises.

7.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without first obtaining the Purchaser's prior consent. The Supplier shall make delivery at a time agreed between the Supplier and Purchaser.

7.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier must limit access to the Purchaser's Premises to such individuals as are necessary for that purpose and shall co-operate with such others as the Purchaser may reasonably require.

7.4 The Purchaser shall have the power at any time during the progress of the Services to order in writing:

- (a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or
- (b) the substitution of proper and suitable materials, and/or
- (c) the removal and proper re-execution of the works notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract,

and the Supplier shall forthwith comply with any order made under Condition 7.4.

7.5 The Supplier agrees that these Conditions shall apply to any replacement or remediation works which shall be deemed to form part of the Services.

7.6 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all waste material arising out of the Services and leave the Premises in a neat and tidy condition.

8. HEALTH AND SAFETY

8.1 The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons on or in the vicinity of the Premises (whether such persons are in the vicinity of the said Premises at the time when the Services are being performed or otherwise) and in such a manner as to comply with any and all applicable health and safety laws or other legislation or regulations and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally.

8.2 The Supplier shall submit to the Purchaser a completed health and safety risk assessment in respect of the Services.

8.3 The Supplier shall notify the Purchaser immediately in the event of any incident occurring within the Premises where that incident causes or otherwise results in any personal injury, or damage to the Premises that could give rise to personal injury or a risk of personal injury.

8.4 The Purchaser accepts no responsibility for loss or damage to any item brought into the Premises or any part of it by the Supplier or any of the Supplier's personnel, representatives or sub-contractors.

8.5 The Supplier shall fully indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 8.

9. TIME OF PERFORMANCE

- 9.1 The Supplier shall begin performing the Services on the date stated in the Purchase Order and shall complete the Services by the date stated in the Purchase Order or within the period stated in the Purchase Order (whichever is applicable), (or such alternative date for delivery as may be stipulated by HES in accordance with clause 2.1, or otherwise agreed between the Parties).
- 9.2 Time is of the essence of the Contract. Failure by the Supplier to provide the Services in accordance with the terms of the Contract, is a material breach for the purposes of Condition 20 that, without prejudice to the Purchaser's other rights and remedies, shall entitle the Purchaser (at the Purchaser's option) to release themselves from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract without liability to the Supplier.
- 9.3 The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

10. PRICE AND PAYMENT

- 10.1 The charges for the Services shall be set out in the Contract, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Purchaser, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 10.2 The Supplier shall invoice the Purchaser promptly at the end of each calendar month in respect of the Services provided by the Supplier (to the satisfaction of the Purchaser) during that month, unless otherwise specified in the Purchase Order. Each invoice so issued by the Supplier must contain the Purchase Order number and such other information as is required under the Contract. The Purchaser shall pay each invoice received by it (provided it has been correctly rendered and is undisputed) within thirty (30) days of receipt of a valid invoice, with payment being made to the Supplier's nominated bank account.
- 10.3 The Supplier acknowledges and agrees that the Purchaser shall not be liable to make any payments to the Supplier if the Supplier is unable to provide the Services to the satisfaction of the Purchaser or otherwise in accordance with the Contract.
- 10.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 10.5 Notwithstanding Condition 22 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 21 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any reasonable variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.
- 10.6 Where, with the agreement of the Purchaser, the Supplier has entered into a sub-contract for the purposes of performing the Contract, the Supplier shall be responsible for the payment of all sub-contractors and all other costs incurred by such sub-contractors during the course of the contract, all in accordance with Condition 22.

11. PCI DSS

- 11.1 This Condition applies where, under this Contract or otherwise, the Supplier stores, processes or transmits payment cardholder data, and/or sensitive authentication data, or could impact the security of the cardholder data environment.

- 11.2 The Supplier acknowledges and agrees that the Supplier is responsible for the security of cardholder data that it possesses, including the functions relating to the storing, processing, and transmitting of cardholder data, in accordance with the PCI DSS.
- 11.3 The Supplier represents and warrants that, at the date of this Contract, it has complied with all applicable requirements to be considered PCI DSS compliant, and has performed the necessary steps to validate its compliance with the PCI DSS.
- 11.4 The Supplier will provide the Purchaser with the current status of its PCI DSS compliance status, and evidence of its most recent validation and/or attestation of compliance, at the date of this Contract, and at least annually thereafter.
- 11.5 The Supplier shall notify the Purchaser immediately in the event that it learns that it is no longer PCI DSS compliant and will immediately notify the Purchaser of the steps being taken to remedy its non-compliant status, such notification to be later than seven (7) calendar days after the Supplier learns it is no longer PCI DSS compliant.
- 11.6 The Supplier shall fully indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 11 or from the Supplier's non-compliance with the PCI DSS.

12. FREE-ISSUE MATERIALS

Where the Purchaser issues materials (including consumables) free of charge to the Supplier for the purposes of the Contract, such materials shall be and remain the property of the Purchaser. The Supplier shall at its own risk keep and maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall return them to the Purchaser or dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's personnel, representatives or sub-contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials (whether processed or not) to the Purchaser on demand.

13. AUDIT

- 13.1 The Supplier shall, for the duration of the Contract and the period of 5 (five) years thereafter, keep and maintain proper records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.
- 13.2 The provisions of this Condition 13 shall apply during the continuance of this Contract and after its termination howsoever arising.

14. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser or HES, any gift or consideration of any kind, as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract with the Purchaser (or any other contract with the Purchaser or HES), or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010 and the Supplier warrants that it shall comply (and procure that its personnel, representatives and any associated persons shall comply) with the Bribery Act 2010.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 Save to the extent that the Services incorporate or utilise Intellectual Property Rights, confidential information, or other works furnished by the Purchaser, the Supplier warrants that nothing done

by the Supplier in the performance of the Services or otherwise performing its obligations under the Contract shall infringe any Intellectual Property Rights of any third party.

15.2 All Intellectual Property Rights (including, without limitation, copyright and confidential information) in any materials or works, including but not limited to reports, guidance, documents, specifications, instructions, toolkits, plans, data, drawings, photographs, images, databases, inventions, patterns, models or designs ("Materials") whether in writing or in magnetic format or in any other media or format whatsoever:

- (a) furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser absolutely;
- (b) created, developed or prepared by or on behalf of the Supplier either (i) for use, or intended use, or in the course of, or in relation to, the performance by the Supplier of its obligations under or in connection with this Contract; or (ii) for use, or intended use, by the Purchaser, whether during or subsequent to the performance by the Supplier of its obligations under or in connection with this Contract, are hereby assigned (by way of a present and future assignation of rights) to the Purchaser, such that they shall vest in the Purchaser absolutely and the Supplier shall provide to the Purchaser, written absolute waivers from all authors of such Intellectual Property Rights, in relation to all of their moral rights arising under the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world;
- (c) Save to the extent necessary for the purposes of the Contract, the Supplier shall not (and shall procure that the Supplier's personnel and representatives shall not) use or disclose any such Materials or any of the Intellectual Property Rights assigned to the Purchaser pursuant to Condition 15.2 (b) to any third party without the Purchaser's prior written consent.

15.3 The Supplier warrants that:

- (1) it is the sole owner of the Intellectual Property Rights assigned by this Contract;
- (2) all the assigned Intellectual Property Rights are subsisting and enforceable and nothing has been done to make them invalid;
- (3) it has not assigned or licensed to any third party, and will not assign or licence to any third party, any of the rights assigned by this Contract;
- (4) the Supplier Background IP and the Intellectual Property Rights assigned to the Purchaser by his Contract are its original work, and have not been (and will not be) copied wholly or substantially from any other design or any other source; and
- (5) so far as it is aware, exploitation of the Intellectual Property Rights assigned by this Contract by the Purchaser will not infringe the rights of any third party; and

15.4 Save to the extent necessary for the purposes of the Contract and/or to the extent that such Intellectual Property Rights are Supplier Background IP, the Supplier shall not (and shall procure that the Supplier's personnel and representatives shall not) use the Intellectual Property Rights owned by or assigned to the Purchaser under Condition 15.2 without the Purchaser's prior written consent.

15.5 Except as may expressly be provided for in the Contract, the Supplier acquires no interest in or license to use the Purchaser's Intellectual Property Rights owned or developed prior to or independently of the Contract.

15.6 All Supplier Background IP shall remain the property of the Supplier, provided that Supplier hereby grants the Purchaser a fully paid up non-exclusive, perpetual and irrevocable licence to use and/or sub-license the use of the Supplier Background IP to the extent that this is reasonably necessary for the Purchaser to obtain the full benefit and utilisation of the Services under this

Contract and of any Intellectual Property Rights acquired by the Purchaser pursuant to this Contract.

15.7 The Supplier shall fully indemnify the Purchaser against all actions, claims, demands, costs, liabilities and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 15.

15.8 The provisions of this Condition 15 shall apply during the continuance of this Contract and after its termination howsoever arising.

16. INDEMNITY AND INSURANCE

16.1 Without prejudice to any other rights or remedies of the Purchaser and/or HES under the Contract, the Supplier shall fully indemnify the Purchaser and HES against all actions, suits, claims, demands, losses, liabilities, charges, costs and expenses which the Purchaser and/or HES may suffer or incur (including as a result of or in connection with any damage to Premises, in respect of any injury (whether fatal or otherwise) to any person and/or any claim against the Purchaser and/or HES by any third party) which may result directly or indirectly from any breach of the Contract by, or any negligent or wrongful act or omission of, the Supplier.

16.2 The Supplier shall, at its own cost, effect and maintain with a reputable insurance company a policy or policies of (and shall require any sub-contractor to have in force):

- (a) employer's liability insurance in accordance with any legal requirements for the time being in force,
- (b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident, unless otherwise agreed by the Purchaser in writing,
- (c) professional indemnity insurance with a reputable insurance company in the sum of not less than £1 million for any one incident, unless otherwise agreed by the Purchaser in writing; and
- (d) such other insurances as are required by applicable law.

16.3 The Supplier shall:

- (a) do nothing to invalidate any insurance policy or to prejudice the Purchaser's or HES's entitlement under it; and
- (b) notify the Purchaser and HES if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

16.4 The Supplier shall, if requested by the Purchaser and/or HES at any time,

- (a) ensure that the interests of the Purchaser and HES are noted on the policy or policies of insurance referred to in Condition 16.2;
- (b) provide the Purchaser (and/or, where applicable, HES) with copies of all or any such insurance policies, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder and the noting of the Purchaser's and HES's interest where applicable.

16.5 The Supplier's liabilities under this Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Condition 16.2.

16.6 This Condition 16 shall survive termination of the Contract and the Purchaser's and HES's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

17. DISCRIMINATION

17.1 The Supplier shall (and shall procure that all of the Supplier's employees, representatives and sub-contractors):

- (a) perform its obligations under this Contract in accordance with:
 - (i) all applicable law including but not limited to equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Purchaser's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Purchaser reasonably imposes in connection with any equality obligations imposed on the Purchaser at any time under applicable equality law; and
- (b) at all times comply with the provisions of the Human Rights Act 1998 and Equality Act 2010 in the performance of this Contract. The Supplier shall also undertake, or refrain from undertaking, such acts as the Purchaser requests so as to enable the Purchaser to comply with its obligations under the Human Rights Act 1998 and Equality Act 2010.

Breach of this Condition is a material breach which shall entitle the Purchaser to terminate this Contract.

18. BLACKLISTING

The Supplier must not commit (and shall procure that its employees, representatives and sub-contractors shall not commit) any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully Processing Personal Data in connection with any blacklisting Activities. Breach of this Condition is a material breach which shall entitle the Purchaser to terminate the Contract

19. OFFICIAL SECRETS ACT, CONFIDENTIALITY, AND ACCESS TO GOVERNMENT INFORMATION

19.1 The Supplier shall (where applicable) comply with and procure that the Supplier's employees, representatives and sub-contractors comply with the provisions of the Official Secrets Acts 1911-1989.

19.2 All information related to the Contract will be treated by the Supplier as commercial in confidence. The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees, representatives and sub-contractors keep secret and do not disclose any information of a confidential nature obtained by the Supplier as a result of the Contract, except information which is in the public domain (otherwise than by reason of a breach of this provision) or where disclosure is required by law or judicial order.

19.3 Where the Supplier provides any confidential information to the Purchaser, the Supplier acknowledges and accepts that:-

- (a) the Purchaser may disclose any information as required by law or judicial order to be disclosed, and may disclose all information obtained by the Purchaser by virtue of the Contract to HES, the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom;
- (b) that when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament, the Purchaser is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MP's); and

(c) such disclosure shall not constitute a breach of the Contract.

19.4 The provisions of this Condition 19 shall apply during the continuance of this Contract and after its termination howsoever arising.

20. TERMINATION

20.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

- (a) if the Supplier suspends or threatens to suspend payment of its debts or becomes unable to pay its debts as they fall due or for any reason suspends or ceases (or threatens to suspend or cease) to trade; or
- (b) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (c) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or a trustee is appointed to manage the Supplier's affairs; or
- (d) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (c) or (e) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
- (e) where the Supplier is a company, if the company passes a resolution for winding-up, dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the appointment of an administrator, if a Notice of Intention to appoint an administrator is issued, or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its Premises under the terms of a floating charge; or,
- (f) if any of the events occurs or proceeding is taken with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events or proceedings mentioned in Conditions 19.1 (a) to 19.1 (e) inclusive; or
- (g) the Supplier's financial position deteriorates to such an extent that in the Purchaser's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy,

and without prejudice to any other rights or remedies of the Purchaser, on the occurrence of any of the events described in Condition 20.1 (regardless of any failure by the Supplier to notify the Purchaser of any such event) the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.

20.2 Without prejudice to any other rights or remedies of the Purchaser, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty (30) days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003 the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.

- 20.3 The Purchaser may terminate the Contract in whole or in part at any time before delivery or performance of the Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Purchaser shall not be responsible for paying the Supplier compensation for work-in-progress at the time of termination.
- 20.4 In the event of termination of the Contract by the Purchaser and without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.
- 20.5 The Purchaser may terminate the Contract in the event that:
- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
 - (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
 - (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- 20.6 The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law.
- 20.7 The Purchaser may terminate the Contract in the event that the Supplier's conduct is in the opinion of the Purchaser (acting reasonably) undesirable, prejudicial or likely to cause damage to the business, professional, or personal goodwill and reputation of the Purchaser and/or HES or disparage the Purchaser's or HES's affiliates, shareholders, directors, officers, or employees, or be prejudicial to any business, professional, or personal relationships of the Purchaser or HES, or their respective representatives or likely to cause any detriment to HES's standing as a charity and as a non-departmental public body.
- 20.8 The Purchaser may terminate the Contract where the Purchaser has reasonable grounds for believing that the Services, whether as a result of any action of the Supplier or any of the Supplier's employees, representatives or sub-contractors before, during or after provision of the Services may:
- (a) endanger public order or the safety of any person;
 - (b) encourage, facilitate or carry out whether written, verbal and/or physical behaviour which is obscene, immoral or illegal;
 - (c) cause damage to the Premises.

- 20.9 In addition to the Purchaser's rights of termination under Condition 20.2, 20.3, 20.4, 20.5, 20.6, 20.7 and 20.8 the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than thirty (30) days' notice to that effect.
- 20.10 Termination under Condition 20.2, 20.3, 20.4, 20.5, 20.6, 20.7, 20.8 or 20.9 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 13, 15, 16, 19, 20 and 27.

21 RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract between the Supplier and the Purchaser and/or any agreement or contract between the Supplier and HES.

22. ASSIGNATION AND SUB-CONTRACTING

- 22.1 The Purchaser may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22.2 The Supplier shall not without the prior written consent of the Purchaser assign or sub-contract any or all of its rights and/or obligations under the Contract. Sub-contracting of the whole or part of the Contract by the Supplier shall not relieve the Supplier from any of its obligations under the Contract.
- 22.3 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be promptly sent by the Supplier to the Purchaser.
- 22.4 Where the Supplier enters into a sub-contract for the purpose of performing its obligation under the Contract, the Supplier shall procure if requested by the Purchaser, that the sub-contract is in the form and subject to such terms and conditions as the Purchaser may require and ensure that a term is included in such sub-contract which:
- 22.4.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, for the purpose of payment alone, where the Purchaser has made payment to the Supplier in respect of the Contract and the sub-contractor's invoice relates to the Contract then, to that extent, the invoice shall be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due to the sub-contractor to the Supplier, payment shall be made to the sub-contractor without deduction;
 - 22.4.2 notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to the Purchaser's Procurement Unit;
 - 22.4.3 is in the same terms as that set out in this Condition 22.4 (including for the avoidance of doubt this Condition 22.4.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be;
 - 22.4.4 provides a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 20.5 occur; and
 - 22.4.5 requires that the Supplier includes a provision having the same effect as Condition 22.4.1 above in any sub-contract which it awards.

22.5 The Supplier shall, upon the Purchaser's request, provide copies of each sub-contract to the Purchaser immediately upon its issue.

22.6 In this Condition, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

23. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by fax or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor. It shall be deemed effectively given on the day and time when such means of communication would ordinarily be received in normal business hours (having regard to the typical transmission time for that means of communication).

24. DISPUTE RESOLUTION

24.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

24.2 If any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination cannot be resolved in good faith, then they may, with the agreement of each of the parties, refer the dispute for mediation, arbitration or other alternative form of dispute resolution, but no party shall be obliged to agree to do so.

24.3 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining any other party from doing any act or compelling the other party to do any act.

25. TUPE

25.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Contract; (b) transfer to another supplier on the expiry of the Contract.

25.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within twenty (20) working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

- (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
- (b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
- (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
- (d) details of pensions entitlements, if any.

25.3 The Supplier shall permit the Purchaser to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Purchaser

considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

- 25.4 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Condition.
- 25.5 In the event that the information provided by the Supplier in accordance with this Condition becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.
- 25.6 The provisions of this Condition 25 shall apply during the continuance of this Contract and after its termination howsoever arising.

26. FREEDOM OF INFORMATION

The Purchaser is a Scottish public authority and is therefore subject to the provisions and obligations in the Freedom of Information (Scotland) Act 2002 ("FOSIA") and the Environmental Information (Scotland) Regulations 2004 ("EISR"). This means that any person who makes a valid request for recorded information held by or on behalf of the Purchaser will (subject to certain exceptions) be entitled to receive it. For the avoidance of any doubt, nothing in the Contract shall prevent, restrict or prohibit the Purchaser from complying with its obligations under FOISA and EISR and the Purchaser may disclose any information whatsoever relating or otherwise pertaining to the Contract where it considers that it is required to so under FOISA and EISR.

27. DATA PROTECTION

- 27.1 To the extent the Supplier Processes any Personal Data in connection with this Contract, the Supplier acknowledges that any Processing of Personal Data shall be in accordance with this Condition 27 and the Schedule (Data Protection). For the purposes of any such Processing, the parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.
- 27.2 Both parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both parties meet all their obligations under Data Protection Laws. The provisions of this Condition 27 are without prejudice to any obligations and duties imposed directly on the Supplier under the Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 27.3 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Services and the Contract, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 27.4 The Supplier will provide the Purchaser with the contact details of its Data Protection Officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 27.5 The Supplier must:
 - 27.5.1 agree and comply with the terms of the data Processing provisions set out in the Schedule (Data Protection);
 - 27.5.2 Process Personal Data only as necessary in accordance with obligations under the Contract and solely in accordance with any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the United Kingdom unless required to do so by law or the

regulatory body to which the Supplier is subject; in which case the Supplier must, unless prohibited by that law, inform the Purchaser of that legal requirement before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the law;

- 27.5.3 subject to Condition 27.5.2 only Process or otherwise transfer any Personal Data in or to any country outside the United Kingdom with the Purchaser's prior written consent;
- 27.5.4 take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representatives:
- (a) are aware of and comply with the Supplier's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 27.5.5 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 27.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 27.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that the sub-contract shall include data protection obligations no less onerous than as set out in this Contract. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 27.8 The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23, of the GDPR.
- 27.9 The Supplier must notify the Purchaser if it:
- (a) receives a Data Subject Access Request (or a purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint, or communication relating to either party's obligations under the Data Protection Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract;

- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within three (3) business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time. After notification the Supplier shall assist the Purchaser and comply with all reasonable requests of the Purchaser in dealing with the aforementioned requests or communications.

27.10 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of Personal Data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

- (a) ensuring an appropriate level of protection through technical and organisational measures (as defined in the Data Protection Laws) to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Purchaser with communication of a Personal Data breach to a Data Subject;
- (d) supporting the Purchaser with preparation of a data protection impact assessment;
- (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

27.11 At the expiry or termination of this Contract the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies at the Supplier's sole cost, unless United Kingdom law requires storage of the Personal Data. .

27.12 The Supplier must:

- (a) not to disclose or allow access to the Personal Data to any Data Subject or third party other than at the explicit request of the Purchaser or as may be specifically provided for in the Contract;
- (b) restrict any Processing, return or delete the Personal Data immediately as directed by the Purchaser.
- (c) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Condition 27.
- (d) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant Premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 27 and contribute as is reasonable to those audits and inspections;
- (e) inform the Purchaser if in its opinion an instruction from the Purchaser infringes any obligation under Data Protection Laws.

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

- 27.14 If requested, the Supplier must make such records referred to Condition 27.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 27.15 The parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 27.14 with minimum disruption to the Supplier's day to day business.
- 27.16 In this Condition 27 "Supplier Representatives" means all persons engaged by the Supplier in the performance of its obligations under the Contract including:
- (a) its employees and workers (including persons employed by a third party but working for and under the control of the Supplier);
 - (b) its agents, suppliers and carriers; and
 - (c) any sub-contractors of the Supplier (whether approved under Condition 22 or otherwise).

28. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

- 28.1 In performing its obligations under the agreement, the Supplier shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including, but not limited to, the Modern Slavery Act 2015; and
 - (b) not engage in any activity, practice or conduct outside the UK 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;
 - (c) include in contracts with its subcontractors and suppliers provisions which are at least as onerous as those set out in this Condition;
 - (d) notify the Purchaser as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract;
 - (e) permit the Purchaser and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this Condition.
- 28.2 The Supplier represents and warrants that at the date of this Contract it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 28.3 The Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this Condition 28.
- 28.4 The Supplier shall:
- (a) maintain a complete set of records to trace the supply chain of all Goods provided to the Purchaser in connection with this Agreement; and
 - (b) 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 Condition 28, to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations this Condition.

29. LIMITATION OF LIABILITY

- 29.1 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 29.2 Subject to Condition 29.5, the Purchaser's total aggregate liability in respect of all claims, losses or damages, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Contract shall in no event exceed the amount payable by the Purchaser for the Services supplied to it pursuant to this Contract.
- 29.3 Subject to Condition 29.5, the Purchaser shall not be liable to the Supplier (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 29.4 The Supplier acknowledges that in relation to any claim made by the Purchaser pursuant to this Contract the Purchaser shall be entitled to recover from the Supplier, in damages, any costs, losses or expenses incurred by the Purchaser which are in any way attributable to the Supplier's breach of this Contract including any costs incurred by the Purchaser in obtaining substitute services from a third party and any sums paid in advance by the Purchaser for Services not provided by the Supplier.
- 29.5 Notwithstanding any other provision of this Contract no party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute;
 - (d) any other act or omission, liability for which may not be limited under any applicable laws;
or
 - (e) without prejudice to the foregoing terms of this Condition 29.5, any claim under any indemnity given under this Contract.

30. FORCE MAJEURE

- 30.1 For the purposes of the Contract the following shall be considered "**Force Majeure Events**": any event affecting the performance of any provision of the Contract arising from or attributable to acts, events, omissions, or accidents which are beyond the reasonable control of either party including, but not limited to, any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, pandemic, epidemic or other natural physical disaster, transport, disruptions, failure or shortage of power supplies, war, military operations, riot, crowd disorder, strike, lock-outs or other industrial action, terrorist action, civil commotion and any legislation, regulations, guidance, ruling or omission of any relevant government, court, competent national authority or governing body or any partial, temporary or full closure of the Premises (or part thereof) due to any unforeseen or emergency events.
- 30.2 Any party that is subject to a Force Majeure Event shall not be in breach of the Contract and shall be excused from performance under the Contract while and to the extent that it is unable to perform due to any Force Majeure Event, provided that:
- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

- (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

30.3 If the circumstance of a Force Majeure Event continues for a period of three (3) months or longer, the party not affected by the Force Majeure Event shall have the right to propose termination of the Contract and only upon the written agreement of the other party shall the Contract terminate. This termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring before termination.

31. NO PARTNERSHIP, JOINT VENTURE OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

32. SEVERABILITY

If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.

33. RIGHTS OF THIRD PARTIES

33.1 Any person who is not a party to the Contract shall not have any rights under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce any of its provisions except for HES. For the purpose of this Condition 33.1 the Supplier acknowledges and agrees that the Purchaser is entering into the Contract for its own benefit and for the benefit of HES and that HES shall be entitled to enforce the terms of the Contract in its own name and/or jointly with the Purchaser.

33.2 If the Supplier is in breach of the Contract the Purchaser and Supplier intend, without prejudice to Condition 33.1, that the Purchaser may recover from the Supplier, as agent and trustee for HES, any sum in respect of HES's loss arising from that breach and, for these purposes, the Supplier agrees that losses of HES shall be deemed to be losses of the Purchaser.

34. FURTHER ASSURANCES

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract.

35. ENTIRE AGREEMENT

The Contract contains the whole agreement between the Purchaser and the Supplier relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

36. PUBLICITY

The Supplier shall not:

- (i) make any press announcements or publicise this Contract or its contents in any way; or
- (ii) use the Purchaser's name or brand in any promotion or marketing materials or announcement,

without the prior written consent of the Purchaser.

37. WAIVER

No failure or delay by any party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Purchaser to the Supplier in respect of any aspect of the performance of the Contract or any

omission on the part of the Purchaser to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations under this Contract.

38. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy provided for in this Contract or existing in law.

39. HEADINGS

The headings to Conditions shall not affect their interpretation.

40. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scots law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

SUPPLEMENTARY NOTICE

- THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT

1. PROTECTING THE ENVIRONMENT

Suppliers to Historic Environment Scotland Enterprises Limited are requested to satisfy themselves that no product will be supplied or used in the supply of Services to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2. LATE PAYMENT OF INVOICES

Suppliers to Historic Environment Scotland Enterprises Limited are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice, and in the second instance to the Historic Environment Scotland Procurement Unit, Room 3.15, Longmore House, Salisbury Place, Edinburgh, EH9 1SH, telephone 0131 668 8600. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.