

maintain proper records 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.

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

16. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser, 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 or any other contract with the Purchaser, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other such 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.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Save to the extent that the Goods and/or Services incorporate or utilise Intellectual Property Rights, confidential information, or other works furnished by the Purchaser, the Supplier warrants that the Goods do not and shall not infringe any Intellectual Property Rights of any third party in providing the Goods, and/or that nothing done by the Supplier in the performance of the Services or otherwise performing its obligations under the Contract shall infringe any patent, trade mark, registered design, copyright or other Intellectual Property Rights of any third party.

- 17.2 All Intellectual Property Rights (including, without limitation, copyright and confidential information) in the Goods and any materials, 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 of 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 Consent, 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 17.2 (b), to any third party without the Purchaser's prior written consent

- 17.3 The Supplier warrants that:

- (1) it is the sole owner of the 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, and will not assign or license, any of the rights assigned by this Contract;
- (4) the Supplier Background IP and the Intellectual Property Rights contained in the Goods 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 will not infringe the rights of any third party.

- 17.4 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 17.2 without the Purchaser's prior written consent.
- 17.5 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.
- 17.6 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 Goods and/or Services under this Contract and of any Intellectual Property Rights acquired by the Purchaser pursuant to this Contract.
- 17.7 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 17.
- 17.8 The provisions of this Condition 17 shall apply during the continuance of this Contract and after its termination howsoever arising.

18. HEALTH AND SAFETY

- 18.1 The Supplier represents and warrants to the Purchaser that (a) the Supplier is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of the Goods; (b) the Goods are designed and manufactured in accordance with applicable law, any applicable regulatory requirement and so as to be safe and without risk to the health or safety of persons using the same; and (c) the Supplier has informed the Purchaser about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
- 18.2 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 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.
- 18.3 The Supplier shall submit to the Purchase a completed health and safety risk assessment.
- 18.4 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.
- 18.5 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.
- 18.6 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 18.

19. INDEMNITY AND INSURANCE

- 19.1 Without prejudice to any rights or remedies of the Purchaser under the Contract (including the Purchaser's rights and remedies under Condition 13 hereof) the Supplier shall fully indemnify the Purchaser against all actions, suits, claims, demands, losses, liabilities, charges, costs and expenses which the Purchaser may suffer or incur (including as a result of or in connection with any damage to Premises or property, in respect of any injury to persons (whether fatal or otherwise) to any person or any claim against the Purchaser by any third party) which may result directly or indirectly from any defect

in the Goods, any breach of the Contract by the Supplier or the negligent or wrongful act or omission of the Supplier.

- 19.2 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, and
 - (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) product liability 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,
 - (d) 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
 - (e) such other insurances are required by applicable law.
- 19.3 The Supplier shall:
- (a) do nothing to invalidate any insurance policy or to prejudice the Purchaser's entitlement under it; and
 - (b) notify the Purchaser if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 19.4 The Supplier shall, if requested by the Purchaser at any time,
- (a) ensure that the Purchaser's interest is noted on the policy or policies of insurance referred to in Condition 19.2;
 - (b) provide the Purchaser 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 interest where applicable.
- 19.5 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 19.2.
- 19.6 This Condition 19 shall survive termination of the Contract and the Purchaser's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

20. DISCRIMINATION

- 20.1 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.

21. 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.

22. OFFICIAL SECRETS ACTS, CONFIDENTIALITY, AND ACCESS TO GOVERNMENT INFORMATION

- 22.1 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.
- 22.2 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.
- 22.3 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 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.
- 22.4 The provisions of this Condition 22 shall apply during the continuance of this Contract and after its termination howsoever arising.

23. TERMINATION

- 23.1 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 his or her 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
- (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 23.1 (a) to 23.1 (e) inclusive,
- (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 23.1 (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.

23.2 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.

23.3 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.

23.4 In the event of termination of the Contract by the Purchaser and without prejudice to any other of the Purchaser's other 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.

23.5 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.

- 23.6 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.
- 23.7 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 or disparage the Purchaser's affiliates, shareholders, directors, officers, or employees, or be prejudicial to any business, professional, or personal relationships of the Purchaser, or its representatives or likely to cause any detriment to the Purchaser's standing as a charity and as a non-departmental public body.
- 23.8 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) damage to the Premises.
- 23.9 In addition to the Purchaser's rights of termination under Condition 23.2 to 23.8, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than thirty (30) days' notice to that effect.
- 23.10 Termination under Conditions 23.2 to 23.9 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 15, 17, 19, 22, 23 and 28.

24. RECOVERY OF SUMS DUE

Wherever under the 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 the Contract or under any other agreement or contract with the Purchaser.

25. ASSIGNATION AND SUB-CONTRACTING

- 25.1 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.
- 25.2 The Supplier shall not without the prior the written consent of the Purchaser assign or sub-contract any or all its rights and obligations under the Contract.
- 25.3 Sub-contracting of the whole or part of the Contract by the Supplier shall not relieve the Supplier from any of its responsibilities under the Contract.
- 25.4 Where the Supplier enters into a sub-contract for the purpose of performing its obligations 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:
- 25.4.1 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 by the sub-contractor to the Supplier, payment shall be made to the sub-contractor without deduction;
 - 25.4.2 notifies the sub-contractor that the sub-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;

- 25.4.3 is in the same terms as that set out in this Condition 25.4 (including for the avoidance of doubt this Condition 25.4.3) 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;
- 25.4.4 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 23.3 occur; and
- 25.4.5 requires that the Supplier includes a provision having the same effect as Condition 25.4.1 above in any sub-contract which it awards.

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

25.6 In this Condition 25, '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.

26. 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).

27. DISPUTE RESOLUTION

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

27.2 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.

27.3 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.

28. DATA PROTECTION

28.1 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 28 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.

28.2 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 28 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.

28.3 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.

28.4 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.

28.5 The Supplier must:

28.5.1 agree and comply with the terms of the data Processing provisions set out in the Schedule (Data

Protection);

- 28.5.2 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;
- 28.5.3 subject to Condition 28.5.2 only Process or otherwise transfer any Personal Data in or to any country outside the United Kingdom with the Purchaser's prior written consent;
- 28.5.4 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;
- 28.5.5 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.
- 28.6 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.
- 28.7 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.
- 28.8 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.
- 28.9 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.

- 28.10 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.
- 28.11 At the expiry or termination of the 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.
- 28.12 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 28.
 - (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 28 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.
- 28.13 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.
- 28.14 If requested, the Supplier must make such records referred to Condition 28.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 28.15 The parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 28.14 with minimum disruption to the Supplier's day to day business.

28.16 In this Condition 298“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 25 or otherwise).

29. 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 ("FOISA") 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.

30. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

30.1 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) maintain a complete set of records to trace the supply chain of all Goods provided to the Purchaser in connection with this Contract; and 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.

30.2 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.

30.3 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this Condition.

30.4 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
- (d) 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 30, 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.

31. TUPE

31.1 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.

- 31.2 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 the 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.
- 31.3 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.
- 31.4 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.
- 31.5 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.
- 31.6 The provisions of this Condition 31 shall apply during the continuance of the Contract and after its termination howsoever arising.

32. LIMITATION OF LIABILITY

- 32.1 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 the Contract.
- 32.2 Subject to Condition 32.4, 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 the Contract shall in no event exceed the amount payable by the Purchaser for the Goods and Services supplied to it pursuant to the Contract.
- 32.3 Subject to Condition 31.4, 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.
- 32.4 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.

32.5 Notwithstanding any other provision of the 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 32.4, any claim under any indemnity given under the Contract.

33. FORCE MAJEURE

33.1 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 (subject to the Purchaser’s obligation as outlined in clause 4.2).

33.2 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.

33.3 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.

34. 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).

35. 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.

36. RIGHTS OF THIRD PARTIES

No term of the Contract shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

37. 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.

38. ENTIRE AGREEMENT

This 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.

39. 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.

40. 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 this 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.

41. 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.

42. HEADINGS

The headings to Conditions shall not affect their interpretation.

43. 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 are requested to satisfy themselves that no product will be supplied or used in the supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause [REDACTED] consumes a disproportionate [REDACTED] 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 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.