
STANDARD TERMS AND CONDITIONS

CONDITIONS OF CONTRACT FOR SERVICES

Sport for life

sportscotland
the national agency for sport

These Conditions may only be varied with the written agreement of the Client. No terms or conditions put forward at any time by the Service Provider shall form any part of the Agreement unless specifically agreed in writing by the Client.

1. Definitions

In these Conditions:

“Agreement” means the Agreement between the Client and the Service Provider consisting of the Agreement Award Letter, these Conditions and any other documents (or parts thereof) specified in the Agreement Award Letter;

“Agreement Award Letter” means the document setting out the Client’s requirements for the Agreement;

“Client” means The Scottish Sports Council, trading as **sportscotland**, whose principal place of business is at Doges, Templeton on the Green, 62 Templeton Street, Glasgow, G40 1DA;

“Data Controller” has the meaning given in the Data Protection Laws;

“Data Processor” has the meaning given in the Data Protection Laws;

“Data Protection Laws” means any law applicable relating to the processing, privacy and use of personal data including data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the UK’s Information Commissioner or other relevant regulatory authority applicable to a party.

“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 Service Provider under the same or similar circumstances;

“Intellectual Property” means any patent, know how, trade mark, service mark, trade name, registered design, copyright, moral right, unregistered design right, database right, semiconductor topography right or any other industrial or commercial right including any application for registration or protection of the same of anywhere in the world;

“Invitation to Tender” means the Invitation to Tender issued by the Client on [];

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

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

“Premises” means Client’s offices, including, but not limited to, Doges, Templeton on the Green, 62 Templeton Street, Glasgow, G40 1DA;

“Pricing Schedule” means the pricing information detailed in Part 1 of the Schedule;

“Processing” has the meaning given in the Data Protection Laws;

“Service Provider” means the person, firm or company to whom the Agreement is issued, being [];

“Services” means the services to be provided by the Service Provider as specified in the Agreement;

“Sub-contract” means a contract between two or more Service Providers, at any stage of remoteness from the Client in a sub-contractive chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement;

“Sub-Processor” means any agent, subcontractor or other third party engaged by the Service Provider (or by any other Sub-Processor) for carrying out any processing activities in respect of the Personal Data;

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

“Term” means the duration of the Agreement, which shall continue in full force and effect until the completion of the Agreement, unless it is terminated earlier.

2. Change to Contract Requirements

2.1. The Client may order any variation to any part of the Services that for any other reason shall in the Client’s opinion be 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, method or sequence of the Services.

2.2. Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Service Provider shall comply with such oral order which must be confirmed in writing by the Client within two (2) working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said two (2) working day period.

2.3. Where any such variation of the Services made in accordance with Conditions 2.1 and 2.2 has affected or may affect the costs incurred by the Service Provider in providing the Services, the Service Provider will notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account (including such information as may be provided by the Service Provider in respect of the effect which such variation has had or may have on the costs incurred by the Service Provider in providing the Service) and may authorise such alteration to the sums to be paid to the Service Provider in accordance with the provisions of the Agreement as are, in the Client’s opinion, appropriate and reasonable in the circumstances.

3. Service Provider's Personnel

- 3.1. The Service Provider shall take the steps reasonably required by the Client to prevent unauthorised persons being admitted to any Premises. If the Client gives the Service Provider notice that any person is not to be admitted to or is to be removed from their Premises or is not to become involved in or is to be removed from involvement in the performance of the Agreement, the Service Provider shall take all reasonable steps to comply with such notice and if required by the Client the Service Provider shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 3.2 The Service Provider shall make available for the purposes of the delivery of the Services any individuals named on the Agreement Award Letter as key personnel. The Service Provider shall provide the Client with a list of the names and addresses of all others regarded by the Service Provider as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Services or any part of them, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Service Provider designate any person concerned with the Services or any part of it as a key person. The Service Provider shall not, without the prior written approval of the Client, make any changes in the key personnel referred to in this Condition.
- 3.3 The decision of the Client shall be final and conclusive as to whether any person is to be admitted to or is not to become involved in or is to be removed from involvement in the delivery of the Services or as to the designation or approval of key personnel and as to whether the Service Provider has furnished the information or taken the steps required of the Service Provider by this Condition.
- 3.4 The Service Provider shall bear the cost of any notice, instruction or decision of the Client under this Condition.

4. The Services

- 4.1 The Service Provider shall deliver the Services with reasonable skill, care and diligence in accordance with the Agreement.
- 4.2 The Service Provider shall provide the Client with such reports of its work on the Services at such intervals in such form as the Client may from time to time require, as a minimum as described in the Invitation to Tender.
- 4.3 Access to any Premises shall not be exclusive to the Service Provider but only such as shall enable the Service Provider to carry out the Services concurrently with the execution of work by others including the Client's staff and / or the Client's approved contractors. The Service Provider shall co-operate with such others as the Client may reasonably require.
- 4.4 The Client reserves the right by notice to the Service Provider to modify the Client's requirements in relation to the Services and any alteration to the Agreement fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement, the matter shall be determined by arbitration in accordance with the provisions of Condition 26 (Arbitration).

- 4.5 On completion of the Services, the Service Provider shall remove the Service Provider's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

5. Health and Safety

The Service Provider shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Client, whether specifically or generally. The Service Provider shall indemnify the Client against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.

6. Invoices

- 6.1. Invoices should be provided quarterly, in arrears and must show quarterly and year to date budget against actual broken down into the areas specified in the tender documentation. Payment will be made within 30 days of receipt and agreement of invoices by the Client.
- 6.2. Each invoice must bear details relating to the individual site, cost centre code and purchase order number (where applicable).
- 6.3. The Service Provider will aim to achieve 100% accurate invoicing. In the event that an invoice is queried, the Service Provider and the Client shall undertake to resolve the issue within 3 working days of the dispute having arisen.

7. Free-Issue Materials

Where the Client, for the purpose of the Agreement, issues materials free of charge to the Service Provider such materials shall be and remain the property of the Client. The Service Provider shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Agreement. The Service Provider shall notify the Client of any surplus materials remaining after completion of the Services and shall dispose of them as the Client may direct. Waste of such materials arising from bad workmanship or negligence of the Service Provider or any of the Service Provider's servants, agents, or Sub-contractors shall be made good the Service Provider's expense. Without prejudice to any other of the rights of the Client, the Service Provider shall deliver such materials whether processed or not, to the Client on demand.

8. Audit

- 8.1. The Service Provider shall keep and maintain, until 5 years after the Agreement has been completed, records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Service Provider, or in connection with any employees of the Service Provider paid for by the Client on a time charge basis. The Service Provider shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Agreement.
- 8.2. The provisions of this Condition 8 shall apply during the continuance of this Agreement and after its termination howsoever arising.

9. Anti – corruption

The Service Provider shall not offer or give, or agree to give, to any employee or representative of the Client any gift or consideration of any kind as an inducement of 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 this or any other contract with the Client or for showing or refraining from showing favour or disfavour to any person in relation to this of any such contract. The attention of the Service Provider is drawn to the criminal offences created by the Bribery Act 2010.

10. Intellectual Property

- 10.1. All Intellectual Property conceived or made by the Service Provider in the course of providing the Services will belong to the Client and the Service Provider hereby assigns and agrees to assign all its interest therein to the Client or its nominee. Whenever requested to do so by the Client, the Service Provider will, at the Service Provider's expense, execute any and all applications, assignments or other instruments which the Client deems necessary to give effect thereto.
- 10.2. The Client grants the Service Provider a licence to use the Intellectual Property conceived or made by Service Provider in the course of providing the Services for the purposes of fulfilling its obligations under this Agreement during the Term of this Agreement or for such other purposes and on such terms as the Client and the Service Provider shall agree in writing from time to time. For the avoidance of doubt, the Service Provider shall have no right to use the Intellectual Property created as a result of this Agreement other than as granted in this Condition 10.2 and shall not be entitled to grant any sub-licence of any Intellectual Property conceived or made by the Service Provider in the course of providing the Services without the prior consent of the Client in writing.
- 10.3. The Service Provider warrants and agrees that, in the course of providing the Services to the Client, the Service Provider shall not infringe the Intellectual Property or confidential information of any other party and that anything produced by the Service Provider may be freely used by the Client.
- 10.4. The Service Provider agrees to indemnify the Client and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Client, or for which the Client may become liable, with respect to any Intellectual Property infringement claim or other claim relating to the provision of the Services to the Client.

- 10.5. The provisions of this Condition 10 shall apply during the continuance of this Agreement and after its termination howsoever arising.

11. Indemnities and Insurance

- 11.1. Without prejudice to any rights or remedies of the Client the Service Provider shall indemnify the Client against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Service Provider.
- 11.2. The Service Provider shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Service Provider may be liable in respect of the Services provided by reason of the Agreement.
- 11.3. The Service Provider shall have in force and shall require any Sub-contractor to have in force:
- 11.3.1. Employer's Liability Insurance in the sum of not less than Ten Million Pounds (£10,000,000) Sterling for any one incident and unlimited in total, and
- 11.3.2. Public Liability Insurance for such sum and range of cover as the Service Provider 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 One Million Pounds (£1,000,000) Sterling for any one incident and unlimited in total, unless otherwise agreed by the Client in writing.
- 11.4. The Service Provider shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Service Provider is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, the Service Provider shall notify the Client without delay.
- 11.5. The policy or policies of insurance referred to in Condition 11.4 shall be shown to the Client whenever the Client requests, together with satisfactory evidence of payment premiums, including the latest premium due thereunder.

12. Discrimination

- 12.1. The Service Provider shall not harass or victimise a person or unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, political or other opinion and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 12.2. The Service Provider shall take all reasonable steps to secure the observance and compliance of this Condition 12 by all its employees, agents and/or representatives.

- 12.3. The provisions of this Condition 12 shall apply during the continuance of this Agreement and after its termination howsoever arising.

13. Blacklisting

The Service Provider must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of the Data Protection Laws by unlawfully processing Personal Data in connection with any blacklisting activities. Breach of this Condition 13 is a material default which shall entitle the Client to terminate the Agreement.

14. Termination

- 14.1. The Service Provider shall notify the Client in writing immediately upon the occurrence of any of the following events:

14.1.1. where the Service Provider is an individual and if a petition is presented for the Service Provider's bankruptcy or the sequestration of the Service Provider's estate or a criminal bankruptcy order is made against the Service Provider, or the Service Provider makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Service Provider's affairs; or

14.1.2. where the Service Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in Condition 14.1.1 or Condition 14.1.3 of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Service Provider to be wound up as an unregistered company; or

14.1.3. where the Service Provider is a company, if the company passes a resolution for winding-up 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 property under the terms of a floating charge; or

14.1.4. where the Service Provider provides inadequate services as defined within the tender documentation; or

14.1.5. where the Service Provider commits an act that is deemed by the Client to be so serious that the continuation of the Agreement cannot be permitted; or

14.1.6. where the Service Provider conducts itself in a manner which, in the reasonable opinion of the Client, brings or is likely to bring the Client into disrepute.

- 14.2. On the occurrence of any of the events described in Condition 14.1, or if the Service Provider shall have committed a material breach of this Agreement and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty (30) working days of being required by the Client in writing to do so, or, where the Service Provider is an individual, if the Service Provider shall die or be adjudged incapable of managing their affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the

Mental Health (Care and Treatment) (Scotland) Act 2003, the Client shall be entitled to terminate this Agreement by notice to the Service Provider with immediate effect. Thereupon, without prejudice to any other of the Client's rights, the Client may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Service Provider) all materials, plant and equipment on the Premises belonging to the Service Provider, and the Client shall not be liable to make any further payment for the Service Provider until the Services have been completed in accordance with the requirements of the Agreement, and shall be entitled to deduct from any amount (if any) due to the Service Provider, the difference shall be recoverable by the Client from the Service Provider.

14.3. The Client may terminate the Agreement by notice to the Service Provider with immediate effect in the event that:

14.3.1. the Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 82(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015.

14.3.2. The Service Provider has, at the time of Agreement 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.

14.4. The Client may also terminate the Agreement in the event of a failure by the Service Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law.

14.5. Any delay by the Client in exercising its rights to terminate under Conditions 14.2, 14.3, 14.4 or 14.5 shall not constitute a waiver thereof.

14.6. In the event of termination by the Client under Conditions 14.2, 14.3, 14.4 or 14.5, the total sum payable by the Client shall comprise a fee which takes into account the work actually completed to the Client's satisfaction within the aims, objectives and conditions of the Agreement. If this sum is less than the fees already paid, the Service Provider will refund the difference to the Client. If the work is not completed in accordance with the prescribed time-scale, the Client may make appropriate deductions from the final fee payable as detailed in Condition 6 (Invoices).

14.7. Termination under Conditions 14.2, 14.3, 14.4 or 14.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 8 (Audit), 10 (Intellectual Property), 12 (Discrimination), 22 (Freedom of Information) and 23 (TUPE).

15. Return of Documents

15.1. Where the Agreement has been terminated by the Client, the Service Provider will promptly upon the termination of the Agreement:-

15.1.1. return to the Client any document, paper, material or information supplied by or obtained from the Client in connection with the Agreement, or extracted from such documents, papers, materials or information; and

15.1.2. irretrievably delete any information relating to the Client stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its possession or under its control outside the Premises of the Client.

15.2. Where the Agreement has been terminated pursuant to Condition 14.3, the Service Provider may retain any documents papers, materials or information which shall be required by the Service Provider to prepare any report required under that Condition. Promptly upon submission of the report to the Client, the Service Provider will return any documents, papers, materials or information which the Service Provider may have retained in terms of this Condition 15.

16. Recovery of Sums Due

Wherever under this Agreement any sum of money is recoverable from or payable by the Service Provider, that sum may be deducted from any sum then due or which at any later time may become due, to the Service Provider under this Agreement or under any other agreement or contract with the Client.

17. Assignment and Sub-Contracting

17.1. The Service Provider shall not assign or Sub-contract any portion of the Agreement without the prior written consent of the Agreement. Sub-contracting any part of the Agreement shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Agreement or these Conditions.

17.2. Where the Client has consented to the placing of Sub-contracts, copies of each Sub-contract shall be sent by the Service Provider to the Client immediately it is issued.

17.3. Where the Service Provider enters a Sub-contract for the purpose of performing the Contract, the Service Provider shall cause a term to be included in such Sub-contract:

17.3.1. which requires payment to be made to the sub-Service Provider within a specified period not exceeding thirty (30) working 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 Client has made payment to the Service Provider and the sub-Service Provider's invoice includes Services in relation to which payment has been made by the Client then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the sub-Service Provider without deduction.

17.3.2. which notifies the sub-Service Provider that the contract forms part of a larger contract for the benefit of the Client and that should the sub-Service Provider have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-Service Provider to the Client.

17.3.3. in the same terms as that set out in this Condition 17.3 (including, for the avoidance of doubt, this Condition 17.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and sub-Service Provider as the case may be.

- 17.4. The Service Provider shall also include in every Sub-contract:
- 17.4.1. a right for the Service Provider to terminate that Sub-contract if the relevant sub-Service Provider 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 award despite the existence of exclusion) specified in Condition 14.3 occur; and
 - 17.4.2. a requirement that the sub-Service Provider includes a provision having the same effect as Condition 17.4.1 above in any Sub-contract which it awards.

18. Notices

Any notice given under or pursuant to the Agreement may be sent by hand or by post or by registered post or by any other means of 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 therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

19. Compliance with the Law Etc.

- 19.1. In providing the Services and otherwise when performing the Agreement, the Service Provider must comply in all respects with:
- 19.1 all applicable law;
 - 19.2 any applicable requirements of regulatory bodies; and
 - 19.3 Good Industry Practice.

20. Confidential information

- 20.1. The Service Provider acknowledges that in the course of the provision of the Services it will have access to confidential information relating to the business of the Client. The Service Provider has therefore agreed to accept the restrictions in this Condition 20.
- 20.2. The Service Provider shall not (except in the proper course of its duties) during its engagement or at any time thereafter improperly use or disclose to any third party any confidential or sensitive information relating to the business of the Client.

21. Data Protection

- 21.1. The Service Provider acknowledges that Personal Data described in Part 2 of the Schedule (Data Protection) will be Processed in connection with the Services under this Agreement. For the purposes of any such Processing, Parties agree that the Service Provider acts as the Data Processor and the Client acts as the Data Controller.
- 21.2. Both Parties agree to negotiate in good faith any such amendments to this Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 15 are without prejudice to any obligations and duties imposed directly on the Service Provider under Data Protection

Laws and the Service Provider hereby agrees to comply with those obligations and duties.

21.3. The Service Provider will, in conjunction with the Client and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

21.4. The Service Provider will provide the Client 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.

21.5. The Service Provider must:

21.5.1. process Personal Data only as necessary strictly in accordance with obligations under the Agreement and the Data Protection Laws and notify the Client immediately if it considers that any of the Client's instructions infringe Data Protection Laws, and any written instructions given by the Client (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the United Kingdom (UK) unless required to do so by Domestic law or Regulatory Body to which the Service Provider is subject; in which case the Service Provider must inform the Client of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Agreement or as is required by the Law;

21.5.2. take all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that the Service Provider Personnel:

- (a) are aware of and comply with the Service Provider's duties under this Condition;
- (b) are subject to appropriate confidentiality undertakings with the Service Provider or the relevant Sub-contractor;
- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose, divulge or allow access to, any of the Personal Data to any Data Subject or third party unless directed in writing to do so by the Client or as otherwise permitted by this Agreement; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data and are aware of their obligations under the Data Protection Laws, including a duty of confidentiality in respect of the Client Personal Data.

21.5.3. Implement appropriate technical and organisational measures including those set out in Part 3 of the Schedule (Data Protection) and in accordance with Article 32 of the UK GDPR to protect Personal Data against unauthorized or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorized 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.

21.6. The Service Provider shall not engage a Sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Client. In the case of general written authorisation, the Service Provider must inform

the Client of any intended changes concerning the addition or replacement of any other Sub-contractor and give the Client an opportunity to object to such changes.

- 21.7. If the Service Provider engages a Sub-contractor for carrying out Processing activities on behalf of the Client, the Service Provider must ensure that same data protection obligations as set out in this Agreement are imposed on the Sub-contractor by way of a written and legally binding contract, no less onerous than those imposed on the Service Provider under this Agreement, in particular providing sufficient guarantees to implement appropriate technical and organisational measures and that its processing of the Client Personal Data meets the requirements of the Data Protection Laws. The Service Provider shall remain fully liable to the Client for the performance of the Sub-contractor's performance of the obligations.
- 21.8. Taking into account the nature of the Processing and the information available, the Service Provider must assist the Client in complying with the Client'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 UK GDPR.
- 21.9. The Service Provider must:
 - 15.9.1 provide such information as is necessary to enable the Client to satisfy itself of the Service Provider's compliance with this Condition 15;
 - 15.9.2 inform the Client if in its opinion an instruction from the Client infringes any obligation under Data Protection Laws; and
 - 15.9.3 restrict any Processing, return or delete the Client Personal Data immediately as directed by the Client.
- 21.10. The Service Provider 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 Client containing the information set out in Article 30(2) of the UK GDPR.
- 21.11. If requested, the Service Provider must make such records referred to in Condition 15.10 available to the Information Commissioner on request and co-operate with the Information Commissioner in the performance of its tasks.
- 21.12. The Service Provider shall indemnify, and keep indemnified, fully on demand, the Client in respect of all claims, proceedings, actions, damages, fines, costs, expenses, losses or other liabilities which may arise out of, or in consequence of, a breach of Data Protection Laws where the Service Provider has not acted in accordance with the Client's written instructions of this Agreement and / or as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage, or distress caused to them as a result of the Service Provider's unauthorised Processing, unlawful Processing, destruction of and / or damage to any Client Personal Data processed by the Service Provider or any Sub-processors.
- 21.13. All right, title and interest in the Client Personal Data shall vest solely in the Client.

22. Freedom of Information (Scotland) Act 2002

- 22.1. As a public body, the Client falls under the requirements of the Freedom of Information (Scotland) Act 2002 (“the Act”) and the Environmental Information (Scotland) Regulations 2004 (“the Regulations”) to disclose any information (including this Agreement and ancillary written documents) it holds on to a particular topic when requested to do so by a person or body. In certain circumstances some of the information may be subject to an exemption and will not have to be disclosed.
- 22.2. The Client shall have regard to all instructions from the Service Provider regarding disclosure or non-disclosure of information, but for the avoidance of doubt the Client’s decision with regard to questions of disclosure or non-disclosure shall be final.
- 22.3. By signing this Agreement, the Service Provider is fully aware that some or all of the information provided by the Service Provider to the Client including any ‘sensitive and/or confidential’ information may be subject to disclosure under the Act or the Regulations. The Client agrees that it will consult with the Service Provider fully before the disclosure of any of the Service Provider’s ‘sensitive and/or confidential’ information.
- 22.4. The provisions of this Condition 22 shall apply during the continuance of this Agreement and after its termination howsoever arising.

23. TUPE

- 23.1. The Service Provider recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Agreement, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Service Provider on the commencement of the Agreement; (b) transfer to another Service Provider on the expiry of the Agreement.
- 23.2. During the period of six months preceding the expiry of the Agreement or after the Client has given notice to terminate the Agreement or the Service Provider stops trading, and within twenty (20) working days of being so requested by the Client, the Service Provider shall fully and accurately disclose to the Client, or to any person nominated by the Client, information relating to employees engaged in providing the Services in relation to the Agreement in particular, but not necessarily restricted to, the following:
 - 23.2.1. the total number of personnel whose employment with the Service Provider is liable to be terminated at the expiry of this Agreement but for any operation of law; and
 - 23.2.2. for each person, age and sex, 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
 - (i) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
 - (ii) details of pension entitlements, if any.

- 23.3. The Service Provider shall permit the Client to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential Service Providers as the Client considers appropriate in connection with any re-tendering. The Service Provider 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.
- 23.4. The Service Provider agrees to indemnify the Client 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 23.4.
- 23.5. In the event that the information provided by the Service Provider in accordance with this Condition 23 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 Service Provider becoming aware that the information originally given was inaccurate, the Service Provider shall notify the Client of the inaccuracies and provide the amended information. The Service Provider shall be liable for any increase in costs the Client may incur as a result of the inaccurate or late production of data.
- 23.6. The provisions of this Condition 23 shall apply during the continuance of this Agreement and after its termination howsoever arising.

24. Compliance with Anti-slavery and Human Trafficking Laws

- 24.1. In performing its obligations under this Agreement, the Service Provider shall:
 - 24.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
 - 24.1.2 not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 24.1.3 include in contracts with its direct sub-contractors and contractors provisions which are at least as onerous as those set out in this Condition;
 - 24.1.4 notify the Client 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 Agreement;
 - 24.1.5 maintain a complete set of records to trace the supply chain of all goods and services provided to the Client; and
 - 24.1.6 provide the Client and its third party representatives access to such records.
- 24.2. The Service Provider represents and warrants that 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.
- 24.3. The Service Provider shall prepare and deliver to the Client, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

- 24.4. The Client may terminate this Agreement with immediate effect by giving written notice to the Service Provider if the Service Provider commits a breach of this Condition 24.

25. Relationship between the Parties

- 25.1. Nothing in this Agreement shall be construed as constituting a partnership or joint venture between the parties or as constituting either party as the agent or employee of the other for any purpose.
- 25.2. Save as expressly specified in writing, the Service Provider shall not hold itself out as an agent of the Client, and shall not have any authority to act on behalf of the Client, have any authority to incur any expenditure in the name of or for the account of the Client, to conclude any contracts or incur any obligation or liability on behalf of or binding upon the Client, or to sign any document on the Client's behalf.

26. Arbitration

- 26.1. The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Agreement.
- 26.2. Any dispute or difference arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbiter to be agreed between the parties, and failing agreement within fourteen (14) working days after either party has given to the other a written request to concur in the appointment of an arbitrator, by the Scottish Arbitration Centre on the written application by any party. The seat of the arbitration shall be in Scotland. The language used in the arbitral shall be English. The decision of the arbiter shall be final and binding on both parties.
- 26.3. Any arbitration under Condition 26.2 is subject to the Arbitration (Scotland) Act 2010.

27. Headings

The headings to Conditions shall not affect their interpretation.

28. Governing Law

These Conditions shall be governed by and construed in accordance with Scottish law and the Service Provider 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 Client to take proceedings against the Service Provider 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.