

reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant 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 Contract.

8. CORRUPT GIFTS OR PAYMENTS

The Consultant shall not offer or give or agree to give, to any member, employee or representative of the Client 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 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 or any such Contract. The attention of the Consultant is drawn to the criminal offences created by the Bribery Act 2010.

9. PATENTS, INFORMATION AND COPYRIGHT

9.1 It shall be a condition of the Contract that, except to the extent that the Services

9.1 It shall be a condition of the Contract that, except to the extent that the Project incorporate designs furnished by the Client, that nothing done by the Contractor in the performance of the Project shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Contractor shall **indemnify** the Client and the Crown against all actions, claims, demands, costs and expenses which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

9.2 The Intellectual Property Rights (IPR) for this project rest with the Contractor and every effort must be made by the Contractor to exploit them.

9.3 The Contractor will grant to the Client a non-exclusive and Royalty free licence in perpetuity and at no cost to the Client for dissemination by the Client within the Scottish Government and to Public Bodies, including without prejudice to the foregoing generality Non Cliental Public Bodies, Local Authorities, and Health Boards, and to all reports including Progress Reports, documents, specifications, instructions, plans, drawings, patents, models, designs, software, source codes, or other materials whether in writing or in electronic or other media produced and/or supplied in the provision of this Contract.

9.4 The Contractor will grant to the Client the power to allow the Client to extend their licence granted in terms of Clause 9.3 on the same terms to any Public Body including without prejudice to the foregoing generality Non Cliental Public Bodies, Local Authorities, and Health Boards.

9.5 The provisions of this Condition 9 shall apply during the continuance of this Contract and after its termination howsoever arising.

10. INDEMNITIES AND INSURANCE

10.1 The Consultant shall indemnify and keep indemnified the Client, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client or the Crown, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from

any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents.

10.2 The Consultant (if an individual) represents that the Consultant is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Consultant by reason of this Contract.

10.3 The Consultant shall effect with an insurance company or companies acceptable to the Client a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Consultant contained in this Contract in the sum of £1 million at least in respect of any one incident and unlimited in total, unless otherwise agreed by the Client in writing.

10.4 If requested, by the Client the Consultant shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

11. DISCRIMINATION

The Consultant must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Client.

12. BLACKLISTING

The Consultant 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 Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Client to terminate the Contract.

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

13.1 The Consultant undertakes to abide and procure that the Consultant's employees abide by the provisions of The Official Secrets Acts 1911 to 1989.

13.2 The Consultant shall keep secret and not disclose and shall procure that the Consultant's employees keep secret and do not disclose any information of a confidential nature obtained by the Consultant by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

13.3 All information related to the Contract with the Consultant will be treated as commercial in confidence by the Client except that:

- (a) The Consultant may disclose any information as required by law or judicial order to be disclosed.

(b) The Client may disclose any information as required by law or judicial order to be disclosed, further the Client may disclose all information obtained by the Client 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, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Client shall if the Client sees fit disclose such information but is unable to impose any restrictions upon the information that the Client provides to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MP's). Such disclosure shall not be treated as a breach of this agreement.

13.4 The provisions of this Condition 13 shall apply during the continuance of this Contract and after its termination howsoever arising.

14. TERMINATION

14.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

(a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of the Consultant's estate or a criminal bankruptcy order is made against the Consultant, or the Consultant 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 trustee is appointed to manage the Consultant's affairs; or

(b) where the Consultant is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or

(c) where the Consultant 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.

14.2 On the occurrence of any of the events described in paragraph 14.1, or if the Consultant 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 7 days of being required by the Client in writing to do so, or, where the Consultant is an individual, if the Consultant 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 Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

14.3 The Client 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 Consultant 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 Consultant 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.

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

14.5 In addition to his rights of termination under paragraph 14.2, 14.3 or 14.4, the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 7 days' notice to that effect. In the event of such termination, the Consultant shall, if required to do so by the Client, prepare and submit to the Client a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

14.6 Termination under paragraphs 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 7 (Audit), 9 (Patents, information and copyright) and 13 (Official Secrets Acts, etc.).

15. RETURN OF DOCUMENTS

15.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Client or any Government Department in connection with the Contract, or extracted from such documents, papers, materials or information.

15.2 Where the Contract has been terminated pursuant to paragraph 14.5, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant to prepare any report required under that paragraph. Promptly upon submission of the report to the Client, the Consultant will return any documents, papers, materials or information which the Consultant may have retained in terms of this paragraph.

16. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Consultant, that sum may be deducted from any sum then due or which at any later time may become due, to the Consultant under this Contract or under any other agreement or contract with the Client or with any department, agency or authority of the Crown.

17.ASSIGNATION AND SUB-CONTRACTING

17.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract 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 Consultant to the Client immediately it is issued.

17.3 Where the Consultant enters into a sub-contract must ensure that a provision is included which:

17.3.1 requires payment to be made of all sums due by the Consultant to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Client in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Consultant 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 Consultant, payment must be made to the sub-contractor without deduction;

17.3.2 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; and

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

17.4 The Consultant shall also include in every sub-contract:

17.4.1 a right for the Consultant 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 14.3 occur; and

17.4.2 a requirement that the sub-contractor includes a provision having the same effect as 17.4.1 in any sub-contract which it awards.

In this condition 17.4, 'sub-contract' means a contract between two or more contractors, 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.

18. 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 telex, teletext, facsimile transmission 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, 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. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Consultant the servant of the Client or the Crown.

20. COMPLIANCE WITH THE LAW ETC.

In providing the services and otherwise when performing the Contract, the Consultant must comply in all respects with:

- 20.1 all applicable law;
- 20.2 any applicable requirements of regulatory bodies; and
- 20.3 Good Industry Practice.

In this condition, '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 Contractor under the same or similar circumstances.

21. DISPUTE RESOLUTION

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

21.2 Any dispute or difference arising out of or in connection with the Contract, 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 arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the

arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

21.3 Any arbitration under 21.2 is subject to the Arbitration (Scotland) Act 2010.

22. HEADINGS

The headings to Conditions shall not affect their interpretation.

23. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scots law and the Consultant 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 Consultant 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

LATE PAYMENT OF INVOICES

Consultants to the Scottish Government 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 Director of Procurement, Area 3A South, Victoria Quay, Edinburgh EH6 6QQ. Telephone 0131-244-3878. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Consultants' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT