



PERFORMANCE AUDIT GROUP 2021 AGREEMENT

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SERVICES CONTRACT

-BETWEEN-

**THE SCOTTISH MINISTERS ACTING THROUGH TRANSPORT SCOTLAND (THE
“EMPLOYER”)**

-AND-

TURNER AND TOWNSEND PROJECT MANAGEMENT LTD (THE “SERVICE PROVIDER”)

-RELATING TO THE SUPPLY OF- PERFORMANCE AUDIT GROUP 2021 SERVICES

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AGREEMENT

between

THE SCOTTISH MINISTERS (hereinafter referred to as the "Scottish Ministers")

and

TURNER AND TOWNSEND PROJECT MANAGEMENT LTD

having its registered office at:

Atria One, Level 2

Edinburgh

EH3 8EX

(hereinafter referred to as the "Performance Audit Group 2021")

WHEREAS by invitation to tender dated 31 March 2021 the Scottish Ministers invited tenders in respect of the provision of the Performance Audit Group 2021 Services and having considered Tenders received (26 May 2021) have decided to accept the Tender submitted by Turner and Townsend Project Management Ltd.

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:**INTERPRETATION**

In this Agreement:

"Contract" means and consists of this Agreement and the following documents, which shall be deemed to form and to be read and to be construed as part of the Contract, namely:

Conditions of Contract

Schedule 1 - Specification

Schedule 2 - Pricing

Schedule 3 - Example Report Templates

Schedule 4 – Ordering and Management Arrangements

Schedule 5 – Service Levels and Key Performance Indicators (KPI)

Schedule 6 – Transparency Reports and Service Provider Sensitive Information

Schedule 7 – Data Protection

Schedule 8 - Adjudication

Schedule 9 – Cyber Security Requirements

Schedule 10 – Form of Tender and Parent Company Guarantees

Schedule 11 – Clarifications to the Contract

Schedule 12 – Tender Documentation included in the Contract

Schedule 13 – Motorway Passes

Schedule 14 – Environmental Sustainability

Schedule 15 – The M6 DBFO Project

Schedule 16 – M80 Stepps to Haggs DBFO Contract

Schedule 17 – M8 M73 M74 Motorway Improvements Project

"Schedule" means a schedule listed in this Clause.

APPOINTMENT AND STATUS OF THE PERFORMANCE AUDIT GROUP 2021

The Performance Audit Group 2021 shall execute the Services in accordance with, and shall be bound in all respects by, the terms and conditions and other requirements specified in the Contract.

AMENDMENTS TO THIS CONTRACT

Except where otherwise provided, this Contract shall not be varied or amended unless such variation or amendment shall have been agreed to in writing by the Employer on behalf of the Scottish Ministers and the Service Provider Authorised Person on behalf of the Service Provider.

IN WITNESS WHEREOF, these presents, consisting of this and the preceding page, together with the Schedules and the documents forming the Contract and annexed hereto, are executed as follows:

subscribed for and on behalf of the said

by

....., being the proper and duly authorised officer, at London on September 2021 before the following witness:

..... (Signed)

.....(Signed - Witness)

.....(Full Name of Witness)

.....(address)

and they are subscribed by [redacted] being an officer of the Scottish Ministers, at

Glasgow on September 2021 before the following witness:

.....(Signed)

..... (Signed - Witness)

..... (Full Name of Witness)

..... (address)

CONDITIONS OF CONTRACT**PREAMBLE:**

ONE The Employer requires the provision of Services;

TWO On 1 December 2020 the Employer's contract notice relating to the Services was published in the Official Journal of the European Union with reference number 2020/S 234-579015.

THREE On 7 January 2021 the Service Provider completed its ESPD;

FOUR On 31 March 2021 the Employer issued its Invitation to Tender to potential Service Providers (including the Service Provider) in respect of the provision of services;

FIVE On 26 May 2021 the Service Provider submitted its Tender;

SIX On the basis of the Tender, the Employer has selected the Service Provider to supply the Services under the Contract;

SEVEN The Contract establishes standard terms of supply for the provision of services;

EIGHT The Contract also includes:

- a Specification setting out the Services that the Service Provider has undertaken to provide
- Service Levels setting out particular levels of service that the Service Provider has undertaken to provide.
- a Pricing Schedule setting out details of the pricing of the Services
- details of the Services Delivery Team involved in the provision of the Services:
- details of the Service Provider's information which is deemed to be Service Provider Sensitive Information:
- Management Arrangements and Ordering Procedures prescribing the procedures for ordering particular Services; and
- Management Arrangements for the strategic management of the relationship between the Parties.

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CONDITIONS OF CONTRACT**SUBSTANTIVE PROVISIONS:****SECTION A: INTRODUCTORY PROVISIONS****1. DEFINITIONS AND INTERPRETATION**

In the Contract, unless the context otherwise requires, the following terms have the meanings given to them below:

“Agreement” means the Contract documentation signed and executed by the Employer and the Service Provider.

“Assignee” has the meaning given in Clause 35 (Assignment).

“Baseline Personnel Security Standard” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

“Contract Commencement Date” means 2021.

“Contract” means this Contract between the Parties consisting of [71] clauses and [17] Schedules.

“Contracting Authority” has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015;

“Control” has the meaning given in section 450 of the Corporation Tax Act 2010.

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

“Core Staff” means those staff identified as fulfilling the core roles identified in Table B of Schedule 2.

“Cyber Security Incident” means any thing, event, act or omission which gives, or may give, rise to:

(i) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);

(ii) reduced integrity of an information system, data or electronic communications network;

(iii) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;

(iv) disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;

(v) unauthorised changes to firmware, software or hardware;

(vi) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;

(vii) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;

(viii) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or

(ix) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the UK GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal

requirements in connection with cybersecurity and/or privacy

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

“Data Protection Laws” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR.

“Default” means any breach of the obligations of a Party (including material breach) or any negligent act, omission or statement of a Party in connection with or in relation to the Contract.

“Deliverable” means anything to be delivered by the Service Provider to the Employer and identified as a deliverable in accordance with the Ordering Procedures.

“Employee Liabilities” means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory, or supervisory body and of implementing any requirements which may arise from such investigation) including:

- i) claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and
- ii) compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees.

“Employee Liability Information” has the meaning given in TUPE Regulations

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.

“Employer” means the Scottish Ministers and for the purpose of this procurement competition and the Contract also means Transport Scotland acting on behalf of the Scottish Ministers.

“Employer Authorised Person” means a person authorised in writing by the Employer to sign Employer Instructions and communicate and agree actions with the Service Provider on behalf of the Employer.

“Employer Property” means any corporeal moveable property issued or made available to the Service Provider by the Employer in connection with the Contract

“Employer Protected Information” means any information provided by the Employer to the Service Provider which:

- i) carries a protective marking such as Official, Secret or Top Secret; or
- ii) is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption

within the meaning of section 2(2) of FOISA) **“Equipment”** means equipment, plant, tackle, materials and other items supplied and used by the Service Provider’s Representatives in the performance of the Service Provider’s obligations under the Contract.

“ESPD” means an Economic Operator’s European Single Procurement Document as issued to the economic operators as part of the selection process

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Service Provider to the Employer or any Incoming service provider as set out in Clause 67 (Exit Management).

“Exit Plan” means the exit management plan developed by the Service Provider and approved by the Employer in accordance with Clause 67.3 (Exit Management).

“Exit Management Date” means each of the following:

- i) the date of a Termination Notice; and
- ii) if no Termination Notice has been served in relation to this Contract except for any Partial Termination, the expiry of the later of the Initial Term and any extension of the Contract agreed in writing

“FOISA” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

“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.

“Incoming Employees” means individuals whose employment transfers to the Service Provider by the operation of TUPE Regulations.

“Intellectual Property Rights” means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto).

“ITT” means the Employer’s Invitation to Tender.

“Judicial Order” means an ineffectiveness order or an order shortening the duration of the contract made in relation to the Contract under Chapter 6 of the Public Contracts (Scotland) Regulations 2015.

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider’s compliance with the Specification, the Service Levels, the Ordering Procedures and the terms of the Contract, set out in Schedule 4.

“Milestone” means any event or task which must be completed by a particular date,

such as the delivery of a Deliverable, identified as a milestone in accordance with the Ordering Procedures.

“Mobilisation Period” means the period during which the Service Provider is required to mobilise all resources necessary to commence delivery of services on the Services Commencement Date.

“Order” means an order for particular Services placed in accordance with the Ordering Procedures.

“Ordering Procedures” means the procedures for ordering particular Services set out at Schedule 4.

“Outgoing Employee” means those staff employed by the outgoing service provider immediately prior to the Commencement of Service Date who by virtue of this Contract transfer to the Service Provider.

“Party” means either of the Employer or the Service Provider.

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

“Pricing Schedule” means the details of the pricing of the Services set out in Schedule 2.

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

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

“Relevant Transfer” has the meaning given in regulation 2(1) of TUPE Regulations.

“Request” for Information means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.

“Right of Access” has the meaning given in the Data Protection Laws.

“Schedule” means a schedule annexed to, and forming part of, the Contract.

“Scottish Ministers” has the meaning given in Clause 44 of the Scotland Act 1998.

“Services Delivery Team” means the staff structure and individuals agreed with the Employer who are essential to the proper provision of the Services to the Employer.

“Service Levels” means the Service Levels identified as such in this Contract.

“Service Provider” means Turner and Townsend Project Management Ltd.

“Service Provider Authorised Person” means a person authorised by the Service Provider and notified in writing to the Employer to:

- i) Receive instructions from the Employer
- ii) Sign reports to the Employer
- iii) Communicate and agree actions with the Employer on behalf of the Service Provider

“Service Provider Representatives” means all persons engaged by the Service Provider in the performance of its obligations under the Contract including:

- i) its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);
- ii) its agents, service providers and carriers; and
- iii) any sub-contractors of the Service Provider .

“Service Provider Sensitive Information” means any information provided by the Service Provider to the Employer (disregarding any protective marking or assertion of confidentiality) which:

is specified as Service Provider Sensitive Information in Schedule 6 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and

is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

“Services” means the services as are to be supplied by the Service Provider to the Employer as set out in the Specification and as may be ordered in accordance with the Ordering Procedures.

“Services Commencement Date” means 1 October 2021.

“Specification” means the Employer’s general requirements for the provision of services set out in Schedule 1.

“Staffing Information” means such information as the Employer may request in an anonymised format or otherwise including:

- i) ages;
- ii) dates of commencement of employment or engagement;
- iii) sex;
- iv) job or role descriptions and objectives of role;
- v) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- vi) the identity of the employer or relevant contracting party;
- vii) their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;
- viii) their wages, salaries and profit sharing arrangements as applicable;
- ix) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- x) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- xi) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- xii) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- xiii) any other Employee Liability Information.

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

“Supplier(s)” means as a collective term economic operators providing services to, or works for, the Scottish Ministers, including but not limited to, the Operating Companies, the DBFO Companies and the Traffic Scotland Systems Contractor.

“Tender Submission” means the tender submitted by the Service Provider to the

Employer in response to the ITT.

“Termination Notice” means notice issued in accordance with Clauses 11, 62 and 63 of this contract.

“Transparency Information” means the Transparency Reports and the content of this Contract.

“Transparency Reports” means a report in accordance with Schedule 6 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Employer in the interests of transparency

“TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014

“Value Added Tax” has the meaning given in the Value Added Tax Act 1994.

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

“Working Hour” means an hour between 0900 hours and 1700 hours on a Working Day.

2 The interpretation and construction of the Contract is subject to the following provisions:

- i) words importing the singular meaning include, where the context so admits, the plural and vice versa;
- ii) words importing the masculine include the feminine and neuter;
- iii) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- iv) references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;
- v) references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- vi) reference to expiry or termination of the Contract includes the making of a Judicial Order;
- vii) the words include, includes and including are to be construed as if they were immediately followed by the words without limitation; and
- viii) headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

3 Condition Precedent: Requirement for a Parent Company Guarantee

- 3.1 It shall be a condition of this Contract that, if required by the Employer, the Service Provider shall deliver a validly executed parent company guarantee in the form set out in Schedule 8 to this Contract. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Employer. The parties acknowledge that if this condition has not been fulfilled any performance of this Contract by the Service Provider shall be at the risk of the Service Provider and the Employer shall not be liable for and the Service Provider irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Service Provider has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Employer shall have the right to terminate the Contract by notice in writing to the Service Provider

4 Nature of the Contract

- 4.1 The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 4.2 Save to the extent specifically provided for in this Contract, the Service Provider acknowledges that it is not the exclusive Service Provider of the Services to the Employer and as such no guarantee of work or volume of work has been granted by the Employer.

5 Period

- 5.1 The period of the Contract is from and including the Contract Commencement Date to and including 30 September 2027, unless the Contract is extended, or terminated earlier under Clause 6.1
- 5.2 The Services Commencement Date shall be 1 October 2021.
- 5.3 The Mobilisation Period shall be from the Contract Commencement Date to the Services Commencement Date.
- 5.4 The Employer may, by giving notice to the Service Provider, extend the period of the Contract to a date falling no later than 30 September 2031. Subject to that constraint, the Employer may extend the period of the Contract on more than one occasion.

6 Break

- 6.1 The Employer may terminate the Contract at any time by giving not less than 3 months' notice to the Service Provider.

7 Specification and Service Levels

- 7.1 The Service Provider must provide the Services in compliance with this Contract which includes the Specification. In particular, the Service Provider must meet or exceed the Service Levels.

8 Pricing Schedule

- 8.1 The Pricing Schedule 2 sets out details of the pricing of the Services.
- 8.2 The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Contract.
- 8.3 Accordingly, the Service Provider may not unilaterally increase the prices in the Pricing Schedule.

9 Ordering Procedures and Management Arrangements

- 9.1 The Ordering Procedures and Management Arrangements are given in Schedule 4.

- 9.2 The Ordering Procedures may be invoked by the Employer at any time during the period of the Contract.
- 9.3 The Service Provider must maintain the capacity to supply the Services throughout the period of the Contract.
- 9.4 The Parties must comply with the Management Arrangements

SECTION B: MISCELLANEOUS PROVISIONS INCLUDING THOSE RELATING TO PRICE, PAYMENT AND INFORMATION

10 Service Provider's Status

- 10.1 At all times during the period of the Contract the Service Provider is an independent service provider and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Employer and any Service Provider Representative. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

11 Notices

- 11.1 Any notice or other communication which is to be given by a Party to the other under the Contract must be:
- i) given in writing;
 - ii) addressed in accordance with Clause 11.2; and
 - iii) sent by letter (delivered by hand, first class post or by recorded delivery or special delivery) or e-mail.
- 11.2 Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
- i) 2 Working Days after the day on which the letter was posted; or
 - ii) 4 Working Hours after the communication was sent, in the case of email.

For the purposes of this clause, the address of each Party is:

For the Employer:

Transport Scotland
Roads Directorate
58 Port Dundas Road
Glasgow
G4 0HF
Tel:01412727100
E-mail: [REDACTED]@transport.gov.scot

For the Service Provider:

Turner and Townsend
Project Management Ltd
AtriaOne, Level2
Edinburgh
EH3 8EX
Tel: [REDACTED]

E-mail: Service Provider e-mail address for notices [REDACTED]@tumtown.co.uk]

Either Party may change its address details by serving a notice in accordance with this clause.

Notices under Clause 66 (Termination on Insolvency or Change of Control) may be sent to the Employer's trustee, receiver, liquidator or administrator, as appropriate.

12 Price

12.1 In consideration of the Service Provider's performance of its obligations relating to an Order, the Employer must pay:

- i) the price due in accordance with the Pricing Schedule and the Ordering Procedures; and
- ii) a sum equal to the Value Added Tax chargeable at the prevailing rate.

12.2 The Service Provider may not suspend the provision of services if it considers that the Employer has failed to pay the price due.

13 Payment and Invoicing

13.1 The Employer must pay all sums due to the Service Provider within 28 days of receipt of a valid invoice.

13.2 The Service Provider must render invoices for each calendar month.

13.3 The Service Provider must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Services provided. The Service Provider must supply such other documentation reasonably required by the Employer to substantiate any invoice, including the requirements of Schedule 2.

13.4 Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.

13.5 Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by the Employer, the sums referred to in this clause must be properly invoiced by the Service Provider

13.6 In this clause 13, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

14 Recovery of Sums Due

14.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider to the Employer, the Employer may deduct that sum from any sum due to the Service Provider whether under the Contract or otherwise.

14.2 The Service Provider must make any payments due to the Employer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Employer to the Service Provider.

15 Data Protection

15.1 The Service Provider acknowledges that Personal Data described in the scope of Schedule 7 (Data) may be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Service Provider acts as the Processor and the Employer acts as the Controller.

- 15.2 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 clause 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.
- 15.3 The Service Provider will, in conjunction with the Employer 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.
- 15.4 The Service Provider will provide the Employer 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.
- 15.5 The Service Provider must:
- i) process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Employer (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law, inform the Employer 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 Service Provider's obligations under this Contract or as is required by the Law;
 - ii) subject to clause 15.5i) only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Employer's prior written consent;
 - iii) take all reasonable steps to ensure the reliability and integrity of any Service Provider Representatives who have access to the Personal Data and ensure that the Service Provider Representatives:
 - a) are aware of and comply with the Service Provider's duties under this clause;
 - 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 or divulge any of the Personal Data to any third party unless directed in writing to do so by the Employer or as otherwise permitted by this Contract; and
 - d) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - e) implement appropriate technical and organisational measures including those in accordance with Article 32 of the UK 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.

- 15.6 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 Employer. In the case of general written authorisation, the Service Provider must inform the Employer of any intended changes concerning the addition or replacement of any other sub-contractor and give the Employer an opportunity to object to such changes.
- 15.7 If the Service Provider engages a sub-contractor for carrying out Processing activities on behalf of the Employer, the Service Provider must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable to the Employer for the performance of the sub-contractor's performance of the obligations.
- 15.8 The Service Provider must provide to the Employer reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR.
- 15.9 The Service Provider must notify the Employer if it:
- i) receives a Right of Access by the Data Subject (or purported Right of Access by the Data Subject);
 - ii) receives a request to rectify, block or erase any Personal Data;
 - iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - iv) receives any communication from the Supervisory Authority or any other
 - v) regulatory authority in connection with Personal Data processed under this Contract; or
 - vi) receives a request from any third Party for disclosure of Personal Data where
 - a) compliance with such request is required or purported to be required by law or regulatory order;
 - b) and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Employer from time to time.
- 15.10 Taking into account the nature of the Processing and the information available, the Service Provider must assist the Employer in complying with the Employer'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. These obligations include:
- i) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
 - ii) notifying a Personal Data breach to the Employer without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - iii) assisting the Employer with communication of a personal data breach to a Data Subject;
 - iv) supporting the Employer with preparation of a data protection impact assessment;

- v) supporting the Employer with regard to prior consultation of the Supervisory Authority.

- 15.11 At the end of the provision of Services relating to processing the Service Provider must, on written instruction of the Employer, delete or return to the Employer all Personal Data and delete existing copies unless national law to which the Service Provider is subject requires storage of the Personal Data.
- 15.12 The Service Provider must:
- i) provide such information as is necessary to enable the Employer to satisfy itself of the Service Provider's compliance with this clause 15;
 - ii) allow the Employer, 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 clause 15 and contribute as is reasonable to those audits and inspections;
 - iii) inform the Employer, if in its opinion, an instruction from the Employer infringes any obligation under Data Protection Laws.
- 15.13 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 Employer containing the information set out in Article 30(2) of the UK GDPR.
- 15.14 If requested, the Service Provider must make such records referred to clause 15.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 15.15 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 15.14 with minimum disruption to the Service Provider's day to day business.
- 15.16 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Employer publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Service Provider should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

16 Transparency and Freedom of Information

- 16.1 The Service Provider acknowledges that the Employer is subject to the requirements of FOISA and the Environmental Information Regulations. The Service Provider shall:
- i) provide all necessary assistance and cooperation as the Employer may reasonably request to enable the Employer to comply with its obligations under FOISA and Environmental Information Regulations;
 - ii) transfer to the Employer all Requests for Information relating to this Contract that the Service Provider receives as soon as practicable and in any event within 2 Working Days of receipt;
 - iii) provide the Employer with a copy of all information held on behalf of the Employer which is requested in a Request For Information and which is in the Service Provider's possession or control. The information must be provided within 5 Working Days (or such other period as the Employer may reasonably specify) in the form that the Employer requires.

- iv) not respond directly to a Request For Information addressed to the Employer unless authorised in writing to do so by the Employer.
- 16.2 If the Request for Information appears to be directed to information held by the Employer, the Service Provider must promptly inform the applicant in writing that the Request for Information can be directed to the Employer.
- 16.3 If the Employer receives a Request for Information concerning the Contract, the Employer is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 16.4 The Service Provider acknowledges that the Employer may, acting in accordance with the Employer's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Service Provider or the Contract:
- i) in certain circumstances without consulting the Service Provider, or
 - ii) following consultation with the Service Provider and having taken its views into account.
- 16.5 Where 15.4.1 applies the Employer must take reasonable steps, if practicable, to give the Service Provider advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Service Provider after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 16.6 Where a Request for Information concerns Service Provider Sensitive Information specified in Schedule 6 (having regard to the justifications and durations set out there), the Employer must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information.
- 16.7 The Service Provider acknowledges that Transparency Reports and the content of this Contract including any Amendments, agreed from time to time, (together the "Transparency Information") are not Service Provider Sensitive Information. However, if the Employer believes that publication of any element of the Transparency Information should be treated as Service Provider Sensitive Information the Employer may, in its discretion exclude such information from publication.
- 16.8 Notwithstanding any other provision of this Contract, the Service Provider hereby gives consent for the Employer to publish to the general public, the Transparency Information in its entirety. The Employer shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 16.9 The Service Provider shall assist and co-operate with the Employer to enable the Employer to publish the Transparency Information including the preparation of Transparency Reports.
- 16.10 The Employer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Service Provider.

16.11 The Service Provider agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Employer upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Employer may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 18.2iii)) publish such Information. The Service Provider shall provide to the Employer within 5 working days (or such other period as the Employer may reasonably specify) any such Information requested by the Employer.

17 Employer Protected Information

17.1 The Service Provider must:

- i) treat all Employer Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Employer Protected Information against disclosure;
- ii) only use the Employer Protected Information for the purposes of performing its obligations under the Contract;
- iii) only disclose the Employer Protected Information to such Service Provider Representatives that are directly involved in the performance of the Contract and need to know the information; and
- iv) not disclose any Employer Protected Information without the prior written consent of the Employer.

17.2 The Service Provider must immediately notify the Employer of any breach of security concerning the Employer Protected Information. The Service Provider must fully co-operate with the Employer in any investigation that the Employer considers necessary to undertake as a result of any such breach of security.

17.3 Clause 17.1 does not apply to the extent that:

- i) disclosure is required by law or by order of any competent court or tribunal;
- ii) information is in the possession of the Service Provider without restriction as to its disclosure prior to its disclosure by the Employer;
- iii) information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- iv) information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- v) information is independently developed without access to the Employer Protected Information.

17.4 Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Service Provider is a material breach for the purposes of Clause 65(Termination Rights).

18 Service Provider Sensitive Information

18.1 The Employer must:

- i) treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
- ii) not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- iii) Clause 18.1 does not apply to the extent that:

- iv) disclosure is required by law or by order of any competent court or tribunal;
- v) information is in the possession of the Employer without restriction as to its disclosure prior to its disclosure by the Service Provider;
- vi) information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- vii) information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- viii) information is independently developed without access to the Service Provider Sensitive Information.

18.2 Nothing in this Contract prevents the Employer from disclosing any Service Provider Sensitive Information or any other information concerning the Service Provider or the Contract:

- i) pursuant to a Request for Information concerning the information (see clause 16 (Transparency and Freedom of Information));
- ii) in accordance with the Employer's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
- iii) in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
- iv) in accordance with any future policies of the Employer concerning the routine disclosure of government information in the interests of transparency;
- v) to any consultant, service provider or other person engaged by the Employer in connection with the performance of the Services, for example to conduct a gateway review;
- vi) in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the 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, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Employer shall if the Employer sees fit disclose such information but is unable to impose any restrictions upon the information that the Employer provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
- vii) in response to any inquiry of the European Commission concerning the Contract; or;
- viii) for the purpose of any examination by any auditors of the Employer (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Employer has used its resources.

18.3 The Service Provider consents to the publication of the Contract by the Employer, subject to such redactions as the Employer may decide to make. The Employer may consult with the Service Provider to inform its decisions concerning redaction (for example to exclude any Service Provider Sensitive Information) but any decisions taken by the Employer are final and conclusive.

19 Audit and Records Management

- 19.1 In this Clause 19, the following terms have the following meanings:- the 'Act' means the Public Records (Scotland) Act 2011;
- 19.2 'Records Management Plan' means the plan prepared by the Employer and approved by the Keeper of the Records of Scotland under section 1 of the Act;
- 19.3 The Service Provider must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.
- 19.4 The Service Provider must on request, and without any charge to the Employer, afford the Employer, or the Employer's representatives, such access to those records as may reasonably be requested by the Employer in connection with the Contract.
- 19.5 The Service Provider shall, for the period of the Contract, provide the Employer with all assistance requested by the Employer acting reasonably to assist the Employer in complying with its obligations under the Act and with the Employer's Records Management Plan where such compliance is in respect of records created or to be created by the Service Provider on behalf of the Employer in terms of this Contract. This assistance will be at no cost to the Employer.
- 19.6 At the end of the Contract, the Service Provider shall transfer all records to the Employer, such transfer to include full ownership of the records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the Employer. The Service Provider shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Employer on the same terms.
- 19.7 If the Service Provider shall become bankrupt (whether voluntarily or compulsorily), unable to pay its debts, insolvent or make arrangements with its creditors or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntarily or compulsorily), otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then immediately upon the occurrence of any of these events, the records which would, in terms of clause 19.6 fall to be offered to the Employer shall be deemed to be held on trust by the Service Provider on behalf of the Employer. The Service Provider shall thereafter, if and when so required by the Employer, transfer the records in question to the Employer, such transfer to be on the same terms as would apply to a transfer made in terms of clause 19.6.

20 Publicity

- 20.1 The Service Provider must not make any press announcement or otherwise publicise the Contract in any way, except with the prior written consent of the Employer.

SECTION C: PROVISION OF SERVICES

21 Provision of the Services

- 21.1 The Service Provider must provide the Services:
- i) in accordance with the Contract including Specification Schedule 1 and the Service Levels Schedule 5 and the Ordering Procedures Schedule 4;
 - ii) in accordance with the requirements of each Employer Instruction.
- 21.2 The Service Provider acknowledges that the Employer relies on the skill, care, diligence and judgment of the Service Provider in the supply of the Services and the performance of its obligations under the Contract.

21.3 For each Employer Instruction for the provision of the Services, communicated by the Employer in accordance with the Ordering Procedures, the provisions of this Section C apply.

21.4 The period for any Employer Instruction agreed in accordance with the Ordering Procedures may be brought to an earlier end upon notice by the Employer.

22 Change to Contract Requirements

22.1 The Employer may order any variation to any part of the Services that for any other reason shall in the Employer'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.

22.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 20.1 hereof shall be valid unless given or confirmed in the form of a variation order given by the Employer. All such orders shall be given in writing provided that if for any reason the Employer 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 Employer within 2 working days of the giving of such oral order by the Employer, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

22.3 Where any such variation of the Services made in accordance with Condition 20.1 and 20.2 has affected or may affect the costs incurred by the Service Provider in providing the Services, the Service Provider will notify the Employer in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Employer, 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 Contract as are, in the Employer's opinion, appropriate and reasonable in the circumstances.

23 Inspection of the Trunk Road Network and Nature of Services

23.1 The Service Provider is deemed to have inspected the Roads Network before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services.

23.2 The Employer shall, at the request of the Service Provider, grant such access as may be reasonable for this purpose

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

24 Services Delivery Team

24.1 The Service Provider will establish and maintain a close working relationship with the the Employer and their Suppliers as required for the efficient delivery of the Services. The Service Provider will ensure that the ease, speed and clarity of communication between its staff and the respective officers of the the Employer and their Suppliers is effective and is continually reviewed and improved in agreement with the Employer.

24.2 The Service Provider acknowledges that the staff structure and individuals agreed with the Employer to form the Services Delivery Team are essential to the proper provision of the Services to the Employer.

24.3 The submission of individuals for approval for core roles in the Services Delivery Team, as defined in Schedule 2, shall give details of their contract of employment with the Service Provider including:

- i) Whether their contract of employment is permanent or is for a fixed duration.
- ii) Where the individuals contract of employment with the Service Provider is for a fixed duration, the remaining duration of their contract from the date on which they will commence in the core role.
- iii) The period of notice to be given by the Service Provider and the individual in the event of termination of their employment.

24.4 The Services Delivery Team agreed with the Employer must not be released from providing the Services without the approval of the Employer, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, retirement, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Service Provider must immediately give notice of that fact to the Employer, and in these circumstances provide an equivalent replacement for the released individual in accordance with this clause 24.

24.5 The Service Provider shall give a minimum of three calendar months notice of their intention to replace a member of the core Services Delivery Team other than for the reasons listed in clause 24.4.

24.6 The Service Provider shall appoint and seek to retain individuals in core Service Delivery Team roles for a minimum of two years to promote knowledge and experience of the Scottish Trunk Roads Network and the contracts to be monitored and audited by the Service Provider.

24.7 To facilitate the retention of knowledge and experience in the Services Delivery Team, the Service Provider shall report the percentage turnover of Service Delivery Team Core Staff on a monthly basis to the Employer.

24.8 This percentage shall be calculated for a rolling twelve month period as the number of Core Staff roles where the role holder has changed, divided by the number of approved Core Staff roles, expressed as a percentage.

24.9 For the initial twelve months of the contract, the calculation shall be for the period between the Services Commencement Date and the date of the report.

24.10 The maximum staff turnover for Core Staff shall be ten percent unless otherwise agreed by the Employer.

24.11 Where the actual turnover of Core Staff exceeds ten percent, or other threshold agreed by the Employer, the Service Provider shall submit written proposals to the Employer detailing how they will improve staff retention in the Core Team.

24.12 The Service Provider may propose replacement(s) to the Services Delivery Team (and must do so when an individual(s) in the Services Delivery Team is to be released from providing the Services), in which case:

- i) appropriate arrangements must be made to minimise any adverse impact on the Contract which could be caused by the change in the individual (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
- ii) the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.
- iii) Any proposed replacement to a Services Delivery Team is subject to the approval of the Employer. Subject to the Service Provider's compliance with this clause, the Employer must not unreasonably withhold such approval.

25 Offers of Employment

- 25.1 For the duration of the Contract and for a period of 12 months thereafter the Service Provider must not employ or offer employment to any of the Employer's employees who have been associated with the Contract and/or the contract management of the Contract without the Employer's prior approval.
- 25.2 This clause does not prevent the Service Provider from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Employer's employees.

26 Staff transfer at commencement

- 26.1 The Parties agree that the commencement of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Incoming Employees.
- 26.2 The Service Provider is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 26.3 The Service Provider indemnifies the Employer against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Employer may incur in respect of the emoluments and outgoings referred to in clause 26.2.

27 Information about Service Provider Employees

- 27.1 The Employer may at any time by notice require the Service Provider to disclose such information as the Employer may require to the Employer or at the direction of the Employer to any prospective incoming service provider relating to the manner in which the Services are organised or about any employee who is wholly mainly assigned to carrying out activities in provision of the Services, whether employed by the Service Provider or Service Provider Representatives ("Assigned Employee"). The information required by the Employer about Assigned Employees may include Employee Liability Information and/or Staffing Information.
- 27.2 The Service Provider must disclose by notice all such information as is required by the Employer under clause 27.1, within such reasonable period specified by the Employer. The Service Provider acknowledges that the Data Protection Act 2018 does not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.
- 27.3 The Service Provider consents to the disclosure by the Employer of all information provided by the Service Provider under this clause to other service providers that the Employer may invite to tender or appoint for services to be provided in substitution for the Services.
- 27.4 The Employer shall be permitted to use and disclose all of the information provided by the Service Provider under this clause for the purpose of rendering the Services and/or inviting bids from any prospective Incoming service provider.

28 Staff transfer on expiry or termination

- 28.1 The Parties agree that the ceasing of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Outgoing Employees.

- 28.2 The Service Provider shall comply, and shall procure that each Service Provider Representative shall comply, with all of its obligations under TUPE Regulations and shall perform and discharge, and procure that each Service Provider Representative shall perform and discharge all of its obligations in respect of all the Outgoing Employees arising in respect of the period up to (and including) the date of the Relevant Transfer.
- 28.3 The Service Provider indemnifies the Employer and any incoming service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Employer or any incoming service provider may suffer as a result of or in connection with:
- i) the provision of information pursuant to clause 27;
 - ii) any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Service Provider in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - iii) any failure by the Service Provider to comply with its obligations under regulations 13 or 14 of TUPE Regulations or any award of compensation under regulation 15 of TUPE Regulations save where such failure arises from the failure of the Employer or any incoming service provider to comply with its obligations under regulation 13 of TUPE Regulations; and
 - iv) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Employer to comply with any legal obligation to such trade union, body or person.
 - v) any act or omission of the Service Provider or any Service Provider Representative whether occurring before, on or after the date of the Relevant Transfer or any other matter, event or circumstance occurring or having its origin on or before the date of the Relevant Transfer.
 - vi) the breach or non-observance by the Service Provider or any Service Provider Representative occurring on or before the date of the Relevant Transfer of any collective agreement applicable to the Outgoing Employees or any custom or practice in respect of any Outgoing Employees that a Incoming service provider is contractually bound to honour.
 - vii) any claim made by or in respect of any person employed by the Service Provider or any Service Provider Representative other than an Outgoing Employee for whom it is alleged the Employer or a Incoming service provider may be liable by virtue of this Contract or TUPE Regulations.
- 28.4 The Service Provider is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 28.5 The Service Provider indemnifies the Employer and any incoming service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Employer or incoming service provider may incur in respect of the emoluments and outgoings referred to in clause 28.4

- 28.6 The Service Provider shall, and shall procure that each Service Provider Representative shall, promptly provide to the Employer and any Incoming service provider, in writing such information as is necessary to enable the Employer and/or the Incoming service provider to carry out their respective duties under regulation 13 of TUPE Regulations, as the case may be.
- 28.7 The Service Provider shall provide, and shall procure that each Service Provider Representative shall provide, all reasonable cooperation and assistance to the Employer and any Incoming service provider to ensure the smooth transfer of the Outgoing Employees including, without prejudice to the foregoing generality, providing sufficient information in advance of the date of the Relevant Transfer to ensure that all necessary payroll arrangements can be made to enable the Outgoing Employees to be paid as appropriate.
- 28.8 The Service Provider warrants to the Employer that during the period of 6 months immediately prior to the expiry of the Contract it will not (and will ensure that any Service Provider Representatives will not) without the prior consent of the Employer:
- i) increase the total employment costs of the Assigned Employees [in any material way];
 - ii) amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Assigned Employee other than where such amendment or variation has previously been agreed in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services;
 - iii) terminate or give notice to terminate the employment or engagement of any Assigned Employee, other than in circumstances in which the termination is for reasons of misconduct or lack of capability;
 - iv) transfer away, remove, reduce or vary the involvement of any of the Assigned Employees from or in the provision of the Services other than where such transfer or removal:
 - a) was planned as part of the individual's career development;
 - b) takes place in the normal course of business; and
 - c) will not have any adverse impact upon the delivery of the Services by the Service Provider, provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;
 - v) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services 6 months prior expiry of the Contract.

29 Security

- 29.1 The Service Provider must comply with the Employer's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 29.2 The Service Provider must notify the Employer of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

30 Community Benefits

- 30.1 No later than thirty (30) days after the Commencement of Service Date, the Service Provider shall provide to the Employer its Training and Employment Plan. This Plan shall contain details of the Service Provider's approach to training and employing its staff and include:
- i) details of the person(s) in the organisation who will be responsible for managing the training scheme and overseeing the proposals,
 - ii) details of the education and training providers who will be involved with the delivery of the Service Providers Training and Employment Plan,
 - iii) details of the type of accredited and non-accredited training expected to be offered and who are expected to be the main beneficiaries of this training,
 - iv) details of any employment skills targets and how these will be managed, and
 - v) details of how health and safety training will be managed,
- 30.2** From the Commencement of Service Date, the Service Provider shall provide a bi-annual update of the Training and Employment Plan to the Employer containing the details required by this Clause **30.2** as well as providing updates on compliance in accordance with the requirements of Clause **30**
- 30.3 During each Annual Period the Service Provider shall, as a minimum:
- i) ensure that either one member of existing staff or one new recruit is trained in a relevant qualification to Scottish Vocational Qualifications Level 7 or equivalent,
 - ii) ensure that either one member of existing staff or one new recruit is undertaking relevant professional training,
 - iii) provide two work experience placements related to this Contract in accordance with the requirements of the work experience element of the UK Government's policies.
 - iv) ensure that all costs incurred by each person undertaking a work experience placement shall be paid by the Service Provider.

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

31 Parties' pre-existing Intellectual Property Rights

- 31.1 Except as expressly provided for in the Contract, neither Party acquires any interest in or license to use the other Party's Intellectual Property Rights as they subsist at the Commencement Date or as developed independently of the Contract.

32 Specially Created Intellectual Property Rights

- 32.1 All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Service Provider on behalf of the Employer for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract belong to the Employer.
- 32.2 The Service Provider assigns to the Employer, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause **32.1**. This assignation takes effect on the Commencement Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Service Provider. The Service Provider must execute all documentation necessary to effect this assignation.

33 Licences of Intellectual Property Rights

- 33.1 The Service Provider grants to the Employer a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Employer reasonably requires in order to enjoy the benefit of the Services.
- 33.2 The Service Provider must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Employer a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Employer an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

34 Claims relating to Intellectual Property Rights

- 34.1 The Service Provider must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 34.2 The Service Provider must promptly notify the Employer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.
- 34.3 Where a claim to which this clause applies is made, the Service Provider must, at its expense, use its best endeavours to:
- i) modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or
 - ii) procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Employer, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 34.4 The Service Provider must not without the consent of the Employer make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

35 Assignment

- 35.1 The Service Provider may not assign its interest in the Contract or any part of it without the prior written consent of the Employer.
- 35.2 Notwithstanding clause **35.1**, the Service Provider may assign to another person (an Assignee) the right to receive the price due to the Service Provider under the Contract subject to:
- i) deduction of sums in respect of which the Employer exercises its right of recovery under clause **14** (Recovery of Sums Due); and
 - ii) all the related rights of the Employer under the Contract in relation to the recovery of sums due but unpaid.

- 35.3 The Service Provider must notify or ensure that any Assignee notifies the Employer of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Employer to redirect payments or invoices accordingly. In the absence of such notification the Employer is under no obligation to vary its arrangements for making payments or for handling invoices.
- 35.4 Subject to clause 35.6, the Employer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- i) any Contracting Authority; or
 - ii) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Employer; or
 - iii) any private sector body which substantially performs the functions of the Employer,
 - iv) provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.
- 35.5 Any change in the legal status of the Employer such that it ceases to be a Contracting Authority shall not, subject to clause 35.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Employer.
- 35.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 35.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Employer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the Transferee):
- i) the rights of termination of the Employer in clauses 65 (Termination Rights) and 66 (Termination on Insolvency and Change of Control) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - ii) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Service Provider.
- 35.7 The Employer may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Employer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

36 Change of Control

- 36.1 The Service Provider must notify the Employer:
- i) whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and
 - ii) immediately following a change of Control that has occurred.

37 Sub-Contracting

- 37.1 The Service Provider may not sub-contract its obligations under the Contract to other sub- contractors without the prior written consent of the Employer. Sub-contracting of any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall be responsible for the acts and omissions of its sub-Service Providers as though they are its own.
- 37.2 Where the Service Provider enters into a sub-contract the Service Provider must ensure that a provision is included which:
- i) requires payment to be made of all sums due by the Service Provider 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 Employer has made payment to the Service Provider 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 Service Provider 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 Service Provider, payment must be made to the sub-contractor without deduction;
 - ii) notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Employer 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 Employer;
 - iii) requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Contract, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - iv) is in the same terms as that set out in this clause 37.2 (including for the avoidance of doubt this clause 37.2iv) subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and sub-contractor as the case may be.
- 37.3 The Service Provider shall also include in every sub-contract:
- i) a right for the Service Provider 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 legal obligations) specified in clause 65.2 occur; and
 - ii) a requirement that the sub-contractor includes a provision having the same effect as i) in any sub-contract which it awards.
- 37.4 In this clause, 'sub-contract' means a contract between two or more service providers, at any stage of remoteness from the Employer 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.
- 37.5 Where requested by the Employer, copies of any sub-contract must be sent by the Service Provider to the Employer as soon as reasonably practicable.
- 37.6 Where the Service Provider proposes to enter into a sub-contract it must:

- i) advertise its intention to do so in at least one trade journal, [at least one newspaper circulating in [refer to locality]] and the Public Contracts Scotland Portal; and
- ii) follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

38 Supply Chain Transparency and Protections

38.1 Knowledge of the supply chain

38.1.1 In performing its role, the Service Provider will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the "Service Provider's Suppliers") prepare and maintain a written supplier code of conduct or supplier policy that addresses the following.

- a) child labour,
- b) forced labour,
- c) working hours,
- d) wages,
- e) discrimination,
- f) health and safety,
- g) freedom of association,
- h) collective bargaining,
- i) disciplinary practices,
- j) humane treatment of workers,
- k) training,
- l) engagement with NGOs, and
- m) worker grievance procedures .

38.1.2 The Service Provider will provide the Employer with a copy of the Service Provider's suppliers codes of conduct or supplier policies on request.

38.1.3 The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers prepare and maintain appropriate policies and procedures to identify, manage and mitigate labour and human rights risks in their supply chains relevant to this Contract (the "Service Provider Supply Chain").

38.1.4 The Service Provider will, within 20 Working Days of the Contract Commencement Date, provide the Employer with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the Service Provider Supply Chain. The Service Provider will notify the Employer of any changes as soon as reasonably practicable.

38.2 Supply chain working conditions

38.3 The Service Provider will submit an annual written report to the Employer outlining the Service Provider's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Service Provider Supply Chain.

- 38.4 The Service Provider will take all reasonable steps to ensure that all Goods supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.
- 38.5 In respect of the Service Provider Supply Chain and the Service Provider's Suppliers, the Service Provider must ensure the following:
- i) forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;
 - ii) child labour is not used in any stage of manufacturing or in the provision of services or supplies;
 - iii) workers do not undertake excessive working hours. For the purposes of this Contract, working hours must not exceed the maximum set by local law; a working week must not be more than 60 hours per week, including overtime, except in emergency or unusual situations and workers shall be allowed at least one day off every seven days;
 - iv) compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits; in compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates; that deductions from wages as a disciplinary measure shall not be permitted; that for each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed; and that all use of temporary, dispatch and outsourced labour will comply with local laws;
 - v) all workers must have the right to form and join trade unions, of their own choosing, to bargain collectively and to engage in peaceful assembly and the right of workers to refrain from such activities must be respected;
 - vi) workers must not be subject to any harsh or inhumane treatment, including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be the threat of any such treatment;
 - vii) workers must not be subject to harassment or unlawful discrimination; and
 - viii) workers must be provided with safe and healthy working conditions.
 - ix) In respect of the Service Provider Supply Chain and the Service Provider's Suppliers, the Service Provider will use its reasonable endeavours to ensure the following:
 - x) compliance with all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;
 - xi) implementation of an appropriate (e.g. anonymous) whistleblowing policy which encourages openness and ensures support and protection from detrimental treatment for workers which raise genuine concerns.

39 Managing risks in the supply

- 39.1 The Service Provider will use its reasonable endeavours to require the Service Provider's Suppliers to audit, evaluate and report in writing to the Service Provider not less than once every twelve (12) months on performance against the Service Provider's Suppliers' codes of conduct and or supplier policies and their policies on labour and human rights impacts in respect of the Service Provider Supply Chain. The Service Provider shall provide the Employer on request with a copy of any such reports in so far as they relate to the Service Provider Supply Chain.

39.2 The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers undertake a defined program of supply-chain audits. Audits must be undertaken by third party accredited certification bodies and independently verified. These audits must either include or be supplemented by external consultation and engagement with local labour unions or civil society organisations/NGOs, and off-site worker interviews to gain a more accurate understanding of working conditions. The Service Provider shall provide the Employer on request with a copy of any such audits, and supplementary evidence where relevant, in its possession or control in so far as they relate to the Service Provider Supply Chain.

40 Corrective and preventive measures to ensure social responsibility in the supply chain

40.1 The Service Provider will use its reasonable endeavours to ensure the outcomes of the Service Provider's Suppliers supply-chain audits are subject to corrective actions by the Service Provider's Suppliers in a timely manner. The Service Provider shall provide the Employer on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to the Service Provider Supply Chain .

40.2 The Service Provider will use its reasonable endeavours to actively engage with the Service Provider Supply Chain to ensure continuous improvement in labour and human rights standards and supplier compliance with such standards .

40.3 The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Service Provider Supply Chain not less than once every twelve (12) months

41 Measures to control the supply chain

41.1 The Service Provider will use its reasonable endeavours to provide the Employer on request with evidence of direct and ongoing collaboration by the Service Provider's suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Service Provider supply chain.

41.2 The Service Provider will use its reasonable endeavours to ensure that all contracts in the Service Provider supply chain give the Employer a right to terminate the sub-contract if the supplier fails to comply with legal obligations in the fields of environmental, social, labour or human rights law.

42 Amendment

42.1 Except where otherwise provided, the Contract may be amended only by the written agreement of both Parties.

42.2 Schedule 2 makes special provision for the variation of the Pricing.

42.3 Variations to the Services may be instructed by the Employer.

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

43 Compliance with the Law etc.

43.1 In providing the Services and otherwise when performing the Contract, the Service Provider must comply in all respects with:

- i) all applicable Law;
- ii) any applicable requirements of regulatory bodies; and
- iii) Good Industry Practice.

iv) Schedule 9 (Cyber Security Requirements).

44 Official Secrets Acts

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

45 Service Provider's responsibility for staff etc.

45.1 The Service Provider is responsible for the acts and omissions of all Service Provider Representatives relating to the Contract as though such acts and omissions are the Service Provider's own.

45.2 The Service Provider must ensure that all Service Provider Representatives:

- i) are appropriately experienced, skilled, qualified and trained;
- ii) carry out their activities connected with the Contract faithfully and diligently and with all due skill, care and diligence; and
- iii) obey all lawful and reasonable directions of the Employer when carrying out activities under the Contract.

46 Access to the Employer's premises

46.1 Any access to, or occupation of, the Employer's premises which the Employer may grant the Service Provider from time to time is on a non-exclusive licence basis free of charge. The Service Provider must use the Employer's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Employer's premises to such individuals as are necessary for that purpose.

46.2 The Service Provider must comply with the Employer's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.

46.3 At the Employer's written request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Employer's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Employer may reasonably request.

46.4 The Service Provider must ensure that any individual Service Provider Representative entering the Employer's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Service Provider acknowledges that the Employer has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.

46.5 In accordance with the Employer's policies concerning visitor access, entry to the Employer's premises may be granted to individual Service Provider Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.

46.6 The Employer may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Employer's premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Employer acting reasonably, be undesirable.

46.7 The Employer must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.

46.8 All decisions of the Employer under this clause are final and conclusive

47 Service Provider's Equipment

47.1 The Service Provider must provide all Equipment necessary to perform the Services.

- 47.2 But the Service Provider must not, without the Employer's approval:
- i) bring Equipment onto the Employer's premises; or
 - ii) leave Equipment on the premises.
- 47.3 Any Equipment brought onto the Employer's premises:
- i) remains the property of the Service Provider; and
 - ii) is at the Service Provider's own risk and the Employer has no liability for any loss of or damage to the Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Employer's Default.
- 47.4 The Service Provider must keep all Equipment brought onto the Employer's premises in a safe, serviceable and clean condition. The Employer may at any time require the Service Provider to remove from the Employer's premises any Equipment which in the opinion of the Employer acting reasonably is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Service Provider's expense as soon as reasonably practicable.
- 47.5 On completion of any required activities on the Employer's premises or at the end of a Working Day (as appropriate), the Service Provider must at its own expense:
- i) remove all Equipment; and
 - ii) leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Service Provider's activities.
- 47.6 The Service Provider is solely responsible for making good any damage to the Employer's premises or any objects contained therein, other than wear and tear, which is caused by the Service Provider.
- 48 Employer Property**
- 48.1 Where the Employer issues Employer Property to the Service Provider, the Employer Property remains at all times the property of the Employer.
- 48.2 The Service Provider undertakes the safe custody of the Employer Property and to that end must:
- i) keep the Employer Property in good order and condition (excluding wear and tear);
 - ii) comply with any particular Employer security requirements in relation to the Employer Property.
 - iii) use any Employer Property solely in connection with the Contract and for no other purpose; and
 - iv) store the Employer Property separately and ensure that it is clearly identifiable as belonging to the Employer.
- 48.3 The Employer Property is deemed for the purposes of clause [48.2i\)](#) to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Employer otherwise within 5 Working Days of receipt.
- 48.4 The Service Provider must not:
- i) modify or replace the Employer Property;
 - ii) use the Employer Property as security for a loan or other obligation;
 - iii) sell, or attempt to sell or part with possession of the Employer Property; or
 - iv) allow anyone to obtain a lien over, or right to retain, the Employer Property.

- 48.5 By prior arrangement, the Service Provider will grant the Employer access, during Working Hours, to any premises of the Service Provider to recover any Employer Property.
- 48.6 The Service Provider undertakes the due return of the Employer Property and as such is liable for all loss of, or damage to, the Employer Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Employer's Default. The Service Provider must notify the Employer promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Employer Property.

49 Health and Safety etc.

- 49.1 While on the Employer's premises, the Service Provider must comply with the Employer's policies concerning health and safety and fire and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 49.2 The Service Provider must immediately inform the Employer in the event of any incident occurring in the performance of its obligations under the Contract on the Employer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 49.3 The Employer must promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Employer's premises and which may affect the Service Provider in the performance of its obligations under the Contract.
- 49.4 The Service Provider must promptly make available its statutory health and safety policy statement to the Employer on request.

50 Offences

- 50.1 The Service Provider must not commit or attempt to commit any offence:
- i) under the Bribery Act 2010;
 - ii) of fraud, uttering, or embezzlement at common law; or
 - iii) of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 50.2 Breach of clause **50.1** is a material breach for the purposes of clause **65** (Termination Rights).
- 50.3 Compliance with Anti-Slavery and Human Trafficking Laws
- 50.4 In performing its obligations under this Contract, the Service Provider shall:
- i) 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;
 - ii) 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;
 - iii) include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause;
 - iv) notify the Employer 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;

- v) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Employer; and
- vi) provide the Employer and its third party representatives access to such records.

- 50.5 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.
- 50.6 The Service Provider shall prepare and deliver to the Customer, 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.
- 50.7 The Employer may terminate this Contract with immediate effect by giving written notice to the Service Provider if the Service Provider commits a breach of this clause.

51 Tax Arrangements

- 51.1 Where the Service Provider is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 51.2 Where the Service Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 51.3 The Employer may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses **51.1** and **51.2** above or why those clauses do not apply to it.
- 51.4 A request under sub-clause **51.3** above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 51.5 The Employer may supply any information which it receives under clause **51** to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 51.6 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause **51** by all of their servants, employees, agents, consultants and sub-contractors.
- 51.7 Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause **51** subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

52 Discrimination

- 52.1 The Service Provider 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 Employer.

53 Blacklisting

53.1 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 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 Employer to terminate the Contract.

54 Environmental Sustainability

54.1 The Service Provider agrees to comply with the requirements for environmental sustainability given in Schedule 14 Environmental Sustainability.

55 Conflicts of interest

55.1 The Service Provider must take appropriate steps to ensure that the Employer is not placed in a position where, in the reasonable opinion of the Employer, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Employer under the Contract.

55.2 The Service Provider must disclose by notice to the Employer full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

55.3 Breach of this clause by the Service Provider is a material breach for the purposes of clause 65 (Termination Rights).

SECTION G FINAL PROVISIONS

56 Warranties and Representations

56.1 The Service Provider warrants and represents that:

- i) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- ii) in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- iii) it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- iv) as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Employer prior to execution of the Contract;
- v) no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- vi) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

- vii) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- viii) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- ix) in the 3 years prior to the Commencement Date:
- x) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- xi) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- xii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- xiii) it has made appropriate inquiries (for example as regards the Employer's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;
- xiv) it is familiar with the Employer's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;
- xv) it has in place appropriate technical and organisational measures to safeguard any Employer Protected Information provided by the Employer;
- xvi) there are no actual or potential conflicts between the interests of the Service Provider and the duties owed to the Employer under the Contract, save as may have been specifically disclosed in writing to the Employer prior to execution of the Contract; and
- xvii) it is deemed to have undertaken any inspection or enquiry as may reasonably have been possible in relation to any premises at which the services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

57 Indemnity

- 57.1 The Service Provider shall indemnify the Employer against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Service Provider.
- 57.2 The Employer shall indemnify the Service Provider in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Service Provider acting in accordance with the Employer's specific written instructions.
- 57.3 This indemnity provision shall not apply if the Service Provider
- i) acts on the Employer's specific written instructions but fails to notify the Employer in accordance with clause [15.12\(iii\)](#) of this Contract;

ii) fails to comply with any other obligation under the Contract.

58 Limitation of Liability

58.1 Neither Party is liable to the other Party under the Contract for any:

- i) loss of profits, business, revenue or goodwill; or
- ii) indirect or consequential loss or damage.

But clause 58.1 does not exclude any liability of the Service Provider for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Service Provider.

58.2 The liability of either Party under the Contract for Defaults is limited to £10,000,000 in the aggregate.

But neither Party excludes or limits liability to the other Party for:

- ii) death or personal injury caused by its negligence;
- iii) misrepresentation;
- iv) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
- v) any breach of any obligations under Data Protection Laws.

59 Insurances

59.1 The Service Provider must effect and maintain with a reputable insurance company:

- i) public liability insurance in the sum of not less than £10,000,000.
- ii) professional indemnity insurance in the sum of not less than £10,000,000.
- iii) employer's liability insurance in the sum of not less than £5,000,000.

59.2 Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.

59.3 The Service Provider must give the Employer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

60 Force Majeure

60.1 Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of two months, either Party may terminate the Contract with immediate effect by notice.

60.2 Any delay or other failure by the Service Provider in performing its obligations under the Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

60.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 60.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.

60.4 Save as otherwise provided in this Contract, the only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

61 Dispute Resolution

61.1 Any arbitration under clause 62 is subject to the Arbitration (Scotland) Act 2010.

61.2 Disputes

61.2.1 As soon as the Employer or Service Provider is aware of a potential Dispute, they shall so notify the other Party in writing.

61.2.2 The Employer Authorised Person and the Service Provider Authorised Person will meet within seven days of receipt of such notification to try to resolve the potential Dispute.

61.2.3 If the potential Dispute is not resolved within a reasonable period of time (such period of time to be agreed by the Employer Authorised Person and the Service Provider Authorised Person at the aforementioned meeting) the Parties shall define in writing those parts of the Dispute that remain unresolved.

61.2.4 If Notice of Dispute is thereafter to be served by either Party, the serving of such Notice shall not be unreasonably delayed.

61.2.5 Disputes shall be resolved in accordance with the provisions set out in this Clause 61.

61.2.6 The disputes resolution procedures are adjudication and arbitration.

61.2.7 Where any dispute or difference arises between the Parties either Party may serve notice in writing (hereinafter referred to as a Notice of Dispute) at any time on the other to refer the Dispute to adjudication.

61.2.8 The Notice of Dispute shall contain but not be limited to the following:

- i) date of the Notice of Dispute,
- ii) a concise summary of the nature and background of the Dispute and the issues arising,
- iii) the relevant clauses in the Conditions of Contract which the party giving notice believes gives the basis of entitlement,
- iv) a statement of the relief claimed,
- v) the date of the relevant Claim Notification (if relevant),
- vi) if not previously appointed, suggested name (or names) for an Adjudicator.

61.2.9 Within 21 days of the issue of the Notice of Dispute the Party issuing the Notice of Dispute shall provide the other Party with the following information to the extent that it is in their possession:

- i) the date of any Employer's determination of the relevant claim,
- ii) a reference to any agreed record of a meeting between the Employers Representative and the Service Providers Representative in which the subject matter of the Dispute has been raised,
- iii) a statement of any matters that the Employers Representative and the Service Providers Representative have already agreed in relation to the procedure for determination of the Dispute, and

- iv) two copies of all documents that have an important and direct bearing on issues in relation to the Dispute and on which the claimant to the Dispute intends to rely.

- 61.2.10 For the purposes of this Contract the Dispute shall be that stated in the Notice of Dispute and for the purposes of all matters arising concerning this Contract the word Dispute shall be construed accordingly.
- 61.2.11 Unless this Contract has already been terminated or abandoned pursuant to the other provisions of this Contract, the existence of a Dispute shall not alter the obligations of the Parties under this Contract.
- 61.2.12 The Dispute shall be referred to and decided in the first instance by the Adjudicator acting as an independent adjudicator but not as an arbiter.
- 61.2.13 Any decision of the Adjudicator shall be final and binding upon the Parties, unless and until there is either:
- i) a final determination by legal proceedings, or
 - ii) a subsequent amicable settlement between the Parties specifically setting aside the decision of the Adjudicator, or
 - iii) the Dispute is referred to arbitration and an arbitral award has been made.
- 61.2.14 Unless this Contract has already been terminated by the Employer the Service Provider shall in every case continue to proceed with the Services with all due diligence regardless of the nature of any Dispute.
- 61.2.15 Where either Party intends to register any decision of an Adjudicator in the Books of Council and Session for preservation and execution the other Party, shall on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.
- 61.3 Adjudication
- 61.3.1 The adjudication procedure is given in Schedule 8.
- 61.3.2 Unless the Parties agree otherwise in writing:
- i) any concessions made by one Party to the Adjudicator, or
 - ii) any concessions or agreements (other than a settlement agreement) that are made in the course of discussions pursuant to settlement of a Dispute,
- shall be without prejudice and shall not be raised by either Party in any subsequent arbitration or other legal proceedings.

62 Arbitration

- 62.1 If the Parties agree a Dispute may be settled directly by arbitration, the requirements of Clauses 61.2 and 61.3 concerning adjudication may be waived. In which case, either Party may serve a notice in writing on the other to refer the Dispute to the arbitration of a single arbiter. Such notice shall be referred to as a Notice of Arbitration.
- 62.2 Where the Adjudicator's decision pursuant to Clause 61.3:
- i) is not accepted by either of the Parties, or
 - ii) where the Adjudicator has failed to make a decision in accordance with the procedure and timescales set out, or
 - iii) where, subsequent to the Adjudicator's decision concerning the Dispute, where the Adjudicator's decision is not accepted by one of the Parties and the Parties have failed to reach an amicable settlement between themselves,

- iv) either Party may serve a notice in writing on the other to refer the Dispute to the arbitration of a single arbiter by a Notice of Arbitration.

62.3 The Notice of Arbitration shall contain the following:

- i) date of the Notice of Arbitration,
- ii) description of the Dispute,
- iii) the relevant findings in the Adjudicator's decision which the Party giving notice disputes,
- iv) the amount disputed,
- v) the date of the relevant Adjudicator's decision,
- vi) if not previously appointed, suggested name (or names) for an arbiter, and
- vii) if applicable, the date of agreement between the Parties that the Dispute shall be settled directly by arbitration.

62.4 The arbiter shall be agreed in writing between the Parties or (failing such written agreement between the Parties, within 30 days of either Party serving on the other a written notice to concur in the appointment of an arbiter) a person to be appointed on the application of either Party to the President for the time being of the Institution of Civil Engineers.

62.5 If an arbiter:

- i) declines the appointment, or
- ii) after appointment shall be removed by order of a competent court, or
- iii) shall be incapable of acting, or
- iv) dies,

and the Parties do not within 30 days of the vacancy arising fill the vacancy then the President of the Institution of Civil Engineers may on the application in writing of either Party appoint an arbiter to fill the vacancy.

62.6 Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration (Scotland) Act 2010 as the case may be or any statutory re- enactment or amendment thereof of the time being in force.

62.7 The award of the arbiter shall be final and binding on the Parties.

62.8 The Adjudicator shall not be eligible for appointment as an arbiter unless the Parties both agree otherwise in writing.

63 Severability

63.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

64 Waiver and Cumulative Remedies

64.1 Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.

64.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 11 (Notices).

64.3 A waiver of any Default is not a waiver of any subsequent Default.

64.4 The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

65 Termination Rights

65.1 The Employer may terminate the Contract by notice to the Service Provider with immediate effect if the Service Provider commits a Default and:

- i) the Service Provider has not remedied the Default to the satisfaction of the Employer within 20 Working Days, or such other period as may be specified by the Employer, after issue of a notice specifying the Default and requesting it to be remedied;
- ii) the Default is not in the opinion of the Employer, capable of remedy; or
- iii) the Default is a material breach of the Contract.

65.2 The Employer may also terminate the Contract in accordance with any provisions of the Schedules

65.3 The Employer may terminate the Contract in the event that:

- i) 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;
- ii) the Service Provider 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
- iii) the Contract should not have been awarded to the Service Provider 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.

65.4 The Employer may also terminate the Contract 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 or employment law.

65.5 The Employer may also terminate the Contract where, at any time before the term of the Contract, the Service Provider or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits an offence referred to in paragraph (1) of that regulation.

66 Termination on Insolvency and Change of Control

66.1 The Service Provider shall notify in writing immediately, and the Employer may terminate the Contract with immediate effect by notice, where in respect of the Service Provider:

- i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

- ii) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- iii) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- iv) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- v) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- vi) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- vii) being a small company within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
- viii) a debt relief order is entered into; or
- ix) any event similar to those listed above occurs under the law of any other jurisdiction.

66.2 The Employer may terminate the Contract by notice with immediate effect within 6 months of being notified that a change of Control has occurred in accordance with clause 36.1 (Change of Control); or where no such notification has been given, the date that the Employer becomes aware of the change of control.

66.3 But the Employer may not terminate the Contract under 66.2 where approval of the change of control has been granted by notice by the Employer.

67 Exit Management

67.1 The Service Provider shall perform its relevant Exit Management obligations as part of the Contract whether applicable on either the expiry or early termination of this Contract.

67.2 The Service Provider agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Employer and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Service Provider agrees that the Employer may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 61 (Dispute Resolution). If a court of competent jurisdiction finds that the Service Provider has breached (or attempted or threatened to breach) any such obligation, the Service Provider agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Service Provider shall not oppose the entry of an appropriate order compelling performance by the Service Provider and restraining the Service Provider from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

- 67.3 A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Employer within three (3) months after the Contract Commencement Date and shall include or address the matters specified in Clause 67.4. The Employer shall provide to the Service Provider the Employer's comments on the plan within one (1) month of the Employer's receipt of the plan. The Service Provider shall take into account the comments and suggestions of the Employer and shall issue the final version of the Exit Plan to the Employer within ten (10) Working Days of receipt of the Employer's comments.
- 67.4 The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
- i) the activities required to enable the Employer to re-tender the Employer Requirements and/or the provision of the Services;
 - ii) the activities necessary to support any Incoming service provider or the Employer in carrying out any necessary due diligence relating to all or part of the Services;
 - iii) details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;
 - iv) support for the Incoming service provider or the Employer during their preparation of any relevant plan for the transition of the System to the Incoming service provider or Employer, including prior to and during such transition period;
 - v) the maintenance of a 'business as usual' environment for the Employer during the period when Exit Management obligations are applicable; and
 - vi) all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Incoming service provider or the Employer.
- 67.5 No amendment of the Exit Plan shall be made without prior written consent of the Employer.
- 67.6 The Service Provider shall perform its relevant Exit Management obligations as part of the Contract whether applicable on either the expiry or early termination of this Contract.

68 Consequences of Expiry or Termination

- 68.1 Where the Employer terminates the Contract under clause 65 (Termination Rights) and makes other arrangements for the provision of services, the Service Provider indemnifies the Employer against all costs incurred in making those arrangements.
- 68.2 Where the Employer terminates the Contract under clause 6 (Break), the Employer indemnifies the Service Provider against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).
- 68.3 Any indemnity given by the Employer under clause 68.2 is subject to the Service Provider:
- i) taking all reasonable steps to mitigate its loss;
 - ii) taking all reasonable steps to recover its losses under any insurance policies held by it; and
 - iii) submitting a fully itemised and costed list of losses which it seeks to recover from the Employer together with supporting evidence.
- 68.4 Except as provided for in clauses 57 (Indemnity), 68.1 and 68.2, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.
- 68.5 On expiry or termination of the Contract the Service Provider must as soon as reasonably practicable return to the Employer all Employer Property and Employer Protected Information in its possession; and destroy or delete any copies of Employer Protected Information (whether physical or electronic) in its possession, provided that the Service Provider may retain such copies of the Employer Protection Information, howsoever stored, as required for legal, regulatory or professional body requirements, insurance or risk management purposes.
- 68.6 Should the Service Provider wish to retain a copy of such documentation for purposes not set out in clause 68.5 above, a request can be made to the Employer. Permission to retain documentation will be at the sole discretion of the Employer. Such permission shall not be unreasonably withheld
- 68.7 The following provisions survive the expiry or termination of the Contract:
- Clause 1 (Definitions and Interpretation);
 - Clause 14 (Recovery of Sums Due);
 - Clause 15 (Data Protection);
 - Clause 16(Transparency and Freedom of Information);
 - Clause 17 (Employer Protected Information);
 - Clause 18 (Service Provider Sensitive Information);
 - Clause 19 (Audit and Records Management);
 - Clause 20 (Publicity);
 - Clause 25 (Offers of Employment);
 - Clause 26 (Staff transfer at commencement);
 - Clause 27 (Information about Service Provider Employees);
 - Clause 28(Staff transfer on expiry or termination);
 - Clause 28 (Parties' pre-existing Intellectual Property Right);
 - Clause 31 (Specially Created Intellectual Property Rights);

Clause 32 (Licences of Intellectual Property Rights);
Clause 33 (Claims relating to Intellectual Property Rights);
Clause 43 (Official Secrets Acts);
Clause 46 (Service Provider's Equipment);
Clause 47 (Employer Property);
Clause 50 (Tax Arrangements);
Clause 53 (Environmental Sustainability);
Clause 55 (Warranties and Representations);
Clause 56 (Indemnity);
Clause 57 (Limitation of Liability);
Clause 58 (Insurances);
Clause 60 (Dispute Resolution);
Clause 63 (Waiver and Cumulative Remedies);
Clause 69 (Governing Law and Jurisdiction); and
Schedule 9 (Cyber Security Requirements).

68.8 Immediately upon termination of the Contract for any reason whatsoever the Service Provider shall render such reasonable assistance to the Employer or third party nominated by the Employer, if requested, as may be necessary to effect an orderly assumption by an incoming service provider of the Services previously performed by the Service Provider under the Contract. The Service Provider shall be entitled to charge for such termination services in accordance with Schedule 2.

69 Entire Agreement

69.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the ESPD or Tender or otherwise).

69.2 In the event of, and only to the extent of, any conflict between the clauses of the Conditions of Contract, the Schedules and any document referred to in the Contract, the following order of precedence applies:

- i) the clauses of the Conditions of Contract;
- ii) the Schedules; and
- iii) any other document referred to in the Contract.

70 Governing Law and Jurisdiction

70.1 The Contract is governed by and interpreted in accordance with Scottish law and, subject to clause 61 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts

71 Requirements for working on Trunk Roads including Motorways

71.1 The Service Provider agrees that it has recognised the risks inherent in working on, or stopping on, the trunk roads network and that these risks are addressed in their health and safety plans and safe working practices.

- 71.2 The Service Provider agrees that it will comply with the safety requirements for working on, or stopping on, Motorways including those set out Schedule 13, or any amended process.

SCHEDULES

SCHEDULE 1 - SPECIFICATION

SCHEDULE 2 - PRICING

SCHEDULE 3 - EXAMPLE REPORT TEMPLATES

SCHEDULE 4 - ORDERING AND MANAGEMENT ARRANGEMENTS

SCHEDULE 5 - SERVICE LEVELS AND KEY PERFORMANCE INDICATORS (KPI)

SCHEDULE 6 - TRANSPARENCY REPORTS AND SERVICE PROVIDER SENSITIVE INFORMATION

SCHEDULE 7 - DATA PROTECTION

SCHEDULE 8 - ADJUDICATION

SCHEDULE 9 - CYBER SECURITY REQUIREMENTS

SCHEDULE 10 - FORM OF TENDER AND PARENT COMPANY GUARANTEES

SCHEDULE 11 - CLARIFICATIONS TO THE CONTRACT

SCHEDULE 12 - TENDER DOCUMENTATION INCLUDED IN THE CONTRACT

SCHEDULE 13 - MOTORWAYS PASSES

SCHEDULE 14 - ENVIRONMENTAL SUSTAINABILITY

SCHEDULE 15 - THE M6 DBFO PROJECT

SCHEDULE 16 - M80 STEPPS TO HAGGS DBFO CONTRACT

SCHEDULE 17 - M8 M73 M74 MOTORWAY IMPROVEMENTS PROJECT

SCHEDULE 1 - SPECIFICATION

This and the following 3 pages comprise Schedule 1 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

1 Introduction

The services to be provided relate principally to the contracts between the Scottish Ministers and:

Term Contracts for Management and Maintenance of the Scottish Trunk Road Network

The M6 DBFO Project

M80 Stepps to Haggs DBFO Contract

M8 M73 M74 Motorway Improvements Project (following completion of construction)

Transport Scotland Systems Contract

Traffic Scotland Operations and Infrastructure Systems Contract

Some of the above contracts will be re-tendered during the term of the Contract and tenderers should note that the requirements for services under this Contract may be varied to take account of new contracts between the Scottish Ministers and Suppliers.

The Service Provider shall undertake and provide the following services for the Scottish Ministers.

Reports shall be recorded in accordance with the templates shown in Schedule 3.

2 Auditing and monitoring of Suppliers and contracts for the operation, management, maintenance and improvement of the trunk road network.

2.1 Taking account of available budgets for the Contract, assess the risks to the Employer presented by their Supplier contracts and propose an audit and monitoring programme for the consideration of the Employer

2.2 Taking account of changing risk profiles for any reason, continuously review and develop the agreed audit regime for monitoring the performance of Suppliers.

2.3 The audit and monitoring services will include:

- i) Routine inspections of the network in accordance with a programme/schedule agreed with The Employer.

This schedule will state frequencies of inspections which may vary depending on locations and time of day or year, the presence of major works, severe weather conditions and any other relevant issue.

The purpose of these inspections is to ensure that:

Issues and defects on the network are correctly identified and acted on by the Suppliers in accordance with the timescales and other requirements of the respective contracts.

Data required to be entered into Supplier and Employer systems is complete and accurate and is entered into systems within the times required by relevant contracts.

- 2.4 Specific inspections of works, issues and defects on the network in accordance with Suppliers programmes and other occurrences affecting the network.

Specific inspections will include for:

Reporting on compliance of works (compliant works) with Specifications, Standards and relevant Contract Documents.

Reporting on the quantum of compliant works to advise the Employer on the payments due to Suppliers in accordance with the appropriate payment mechanisms set out in contracts.

- 2.5 Carry out audits of Supplier systems for recording and holding data relevant to works carried out for The Employer.

Systems to be audited will include those holding data which is required by Supplier contracts with The Employer including but not restricted to:

Quality management systems

Health and safety systems

Information management systems

Environmental management systems

- 2.6 Carry out audits of data entered into The Employer systems by Suppliers in accordance with their contractual obligations

Systems to be audited will include those holding data which is required by Supplier contracts with The Employer including but not restricted to the Employer's Asset Management Performance System (AMPS).

3 Financial checks and recommendations

- 3.1 Make recommendations to the Employer regarding payments to Suppliers having examined requests for payment from Suppliers to verify that the rates, measured quantities and sums requested are true and accurate and that the sums requested are in accordance with the terms of the contracts with the Suppliers.

- 3.2 Prepare expenditure and budget reports for the Employer based on analysis of the Employer and Supplier systems

- 3.3 Reporting on Supplier requests for new rates for works.

4 Prepare reports to assist the Employer to respond to enquiries.

Prepare reports to assist the Employer to respond to enquiries received from all sources. The preparation of these reports will take account of data and information held by:

the Employer systems

Supplier systems where these are made available to the Employer in terms of their contracts

The Service Provider's knowledge base

Industry best practice and new technology

5 Report on the performance of Suppliers

- 5.1 Report on monitoring and auditing activities

Prepare reports to inform Suppliers and the Employer on the output from monitoring and auditing activities

Process notification of non-compliance with contracts to Suppliers

Monitor responses and corrective actions taken by Suppliers to remedy non-compliance with contracts and inform the Employer of further actions required.

5.2 Prepare Supplier performance reports

Collate key indicators (KPI) for the activities of Suppliers in accordance with individual contracts

Produce summary annual reports showing the performance of Suppliers in delivering the requirements of contracts and comparing performance of Suppliers

Analyse Supplier performance data and provide data and reports for input to the Employer Performance Management Framework.

6 Reporting on commercial issues arising from the Employer's contracts with Suppliers for the operation, management, maintenance and improvement of the trunk road network.

6.1 Reporting on the value for money achieved for the Employer by Suppliers undertaking works.

Reporting on the value for money achieved by Suppliers for the Employer taking account of whole life costs and available budgets

Reporting on the prices and rates claimed by Suppliers and the effects of the claimed prices and rates on value for money for the Employer.

6.2 Provide reports and advice to the Employer to assist in responding to commercial issues raised by Suppliers including but not restricted to:

Claims for additional payments resulting from variations to contracts

Claims for extensions to times allowed within contracts

Resolution of issues arising from interpretation of the contract wording

Issues arising from procurement of works undertaken by Suppliers for the Employer

Issues arising from procurements undertaken by the Employer.

7 Provide assistance and advice to the Employer for the evaluation of tender submissions

7.1 Tender evaluation will be carried out by the Employer. If required by the Employer, the Service Provider will provide assistance and advice to the Employer tender evaluation panels on topics including but not restricted to:

Technical solutions proposed by tenderers

Rates, lump sums and other prices submitted by tenderers

Programmes of work submitted by tenderers.

8 Provide assistance and advice for the preparation of new contracts.

Provide summary reports, including recommendations, on contractual and commercial issues which should be considered for the drafting of future contracts

These reports will be provided bi-annually during May and November

Provide staff to assist in the development and drafting of new contracts either through secondments or specifically instructed tasks as required by the Employer

Provide staff to assist in the procurement of new contracts either through secondments or specifically instructed tasks as required by the Employer.

9 Identify opportunities for improvements to systems and services

9.1 The Service Provider will provide advice and recommendations for the improvement of the Employer systems and practices where the opportunity for such improvement is identified in the delivery of the services required by the Employer.

10 Provide advice and assistance for the assessment of Supplier insurances

10.1 If instructed by the Employer the Service Provider will examine and assess Supplier insurance policies to ensure their compliance with their contracts with the Employer.

11 Scottish Ministers Agent/Representative for DBFO Contracts

11.1 Carry out the duties of Scottish Ministers Agent/Representative for DBFO contracts including:

The M6 DBFO Project

M80 STEPPS TO HAGGS DBFO CONTRACT

M8/M73/M74 Motorway Improvements Project

12 Other Duties

12.1 Supporting the Employer by attending meetings with the Employer and Suppliers and taking minutes of meetings as required.

12.2 Provide training for the Employer's staff as required.

12.3 Undertake other duties instructed by the Employer in accordance with the scope and terms of the contract.

SCHEDULE 2 - PRICING

This and the following 23 pages comprise Schedule 2 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

1 Basis for the Remuneration of the Service Provider.

- 1.1 The Service Provider's Person-hour Rates contained within Table B of this Schedule shall subject to the other provisions of the Contract apply in respect of determining the remuneration to the Service Provider for the performance of the Services where such Services have been instructed in writing by the Employer.
- 1.2 The Service Provider will not be entitled to any remuneration or other payment of whatsoever nature other than those referred to in this Schedule 2 of the Contract.
- 1.3 The Service Provider will not be reimbursed for any resources including staff resources in the performance of the Services unless prior written consent has been granted for such resources. For the avoidance of doubt the Service Provider will not be entitled to reimbursement for any particular member of the Services Delivery Team unless the Employer has instructed such employment of any particular member of the Services Delivery Team in advance of the particular part of the Services having commenced.
- 1.4 Each of the Service Provider's Person-hour Rates contained within Table B of this Schedule 2 shall be all-inclusive rates and shall include for all costs whatsoever (without prejudice to the generality), other than that such rates are exclusive of Value Added Tax and may be adjusted in accordance with this Schedule 2. Such all-inclusive rates shall include for but not be limited to the following costs as will be necessary to permit the Service Provider to perform the Services in accordance with the requirements of the Contract and to the satisfaction of the Employer:
 - a) Basic time.
 - b) Productive and non productive overtime payments.
 - c) Bonuses and / or incentive payments.
 - d) National Insurance.
 - e) Holidays with pay.
 - f) Sickness benefits.
 - g) Pension and life insurance benefits.
 - h) All travel and subsistence wherever incurred (subject to Schedule 2 Clause [1.10](#)).
 - i) Cars and / or car allowances, taxation, running costs, insurance, toll charges and fees.
 - j) Provision, running and maintenance costs of vehicles.
 - k) Training.
 - l) Administration (including, managerial, clerical and administrative staff. Such staff shall include all necessary Director input by the Service Provider (including Director input by any sub-consultants or sub-contractors) employed in the performance of the Services.

- m) Provision of Carbon Management data to the Employer in accordance with Schedule 13.
- n) Provision of staff to meet as a minimum the various quality levels of qualification and or experience described for each such category of staff in Schedule 2 Paragraph 3 of the Contract.
- o) Subject to the other provisions of this Schedule 2, provision running and maintenance of all office accommodation, office equipment, supplies, relevant documents, sundry equipment and all other accessories.
- p) Subject to the other provisions of this Schedule 2, provision of computers, information and communication technology systems and other associated equipment and supplies including all necessary hardware and software programmes, associated licences, support, maintenance, upgrades, replacements and the like together with all necessary specialist support maintenance and help staff.
- q) All taxes, charges, levies, imposts or payments of any kind which the Service Provider is obliged to pay by law to make on behalf of persons employed by it including all mobilisation and demobilisation requirements and costs in relation to any written instruction from the Employer.
- r) All external specialised computing services.
- s) All computing services and equipment, including computerised accounts work and the like.
- t) All production, printing and reproduction of all documents, drawings, maps, records and the like including provision of all materials, equipment and resources to so produce, print and reproduce and the like.
- u) Any obligation of the Service Provider whether specific and or implied from the Contract.
- v) All Service Providers' head office and subsidiary offices and the like costs and charges including inter alia liaison and co-ordination and attendance at meetings with the relevant Project Manager.
- w) All Service Providers' costs of whatsoever nature in the procurement of and employment of sub-consultant and sub-contractors.
- x) Profit.

1.5 The Service Provider's Person-hour Rates contained in this Schedule 2 forming part of the Contract, shall apply from the Services Commencement Date for an initial period of not less than 1 year. Subject to the provisions of paragraph 1.11 of this Schedule of Service Provider's Person-hour Rates, and with the prior written agreement of the Employer, such rates may be adjusted annually within the limits of the figures stated in the tables published by the Office for National Statistics in the ANNUAL SURVEY OF HOURS AND EARNINGS (ASHE). The tables applicable for adjustment of rates shall be in accordance with Table A below:

1.6 TABLE A

Category of Staff	ANNUAL SURVEY OF HOURS AND EARNINGS (ASHE) TABLE 14.1.a
Civil Engineering Staff	Weekly Pay – Gross for Civil Engineers Code 2121
Accountancy staff	Weekly Pay – Gross for Chartered and Certified Accountants – Code 2421
IT Staff	Weekly Pay – Gross for Information technology and telecommunications professionals Code 213

- 1.7 Where the Employer has given written consent for the use of staff resources not included in the categories of staff given in Table A, any adjustment to rates shall be based on the category Civil Engineering Staff and Weekly Pay – Gross for Civil Engineers - Table 14.1a
- 1.8 Any such adjustment shall apply only to the rates and prices entered in the Schedule of Service Provider's Person-hour Rates forming part of the Contract unless otherwise consented to in writing by the Employer. Each such rate so adjusted shall for the purposes of the Contract be deemed to and shall replace the rates contained previously in the Schedule of Service Provider's Person-hour Rates forming part of the Contract, prior to any such agreed adjustment
- 1.9 The Service Provider may apply in writing to the Employer to seek an adjustment to its Service Provider's Man-hour Rates in accordance with Clause 1.5 for each year commencing the second year from the Services Commencement Date, when it wishes to seek an adjustment to such rates. Any such application by the Service Provider for consideration of an adjustment in the rates shall be made in writing to the Employer at least 6 weeks prior to the date from which the Service Provider considers the adjustment may be appropriate and the relevant Project Manager shall respond in writing within 4 weeks. No payment shall be made at the adjusted Service Provider's Person-hour Rates until such application in writing has been consented to in writing by the Employer. The Service Provider shall not be entitled and shall not be paid any retrospective payments where the Service Provider has failed to comply in all respects with the provisions of this paragraph. For the avoidance of doubt, any adjustment to the rates will be based on the most recently published tables available at the date of the adjustment of the rates (whether these are provisional or revised),
- 1.10 In addition, to the remuneration described in the other parts of the this Schedule 2 the Service Provider shall be reimbursed all additional consented to costs where the Employer has granted prior written consent before such costs have been incurred or likely to be incurred by the Service Provider. The Service Provider shall also be reimbursed all consented to travelling costs incurred in travelling to a work location outwith Scotland in order to attend meetings outside Scotland with third parties as part of the performance of the Contract. Such additional costs shall be determined by the Employer by comparison with the travelling costs, which would have been incurred by the Service Provider if the Services or part of the Services had been performed in Scotland.
- 1.11 The Service Provider's Person-hour Rates contained in this Appendix shall, subject to the provisions of clause 1.14 of this Appendix include for all hours worked by the Service Provider by any person consented to in writing by the Employer during any calendar day.

- 1.12 Subject to any other provision of the Contract, for the performance of the Services or part of the Services as instructed in writing by the Employer, the Service Provider will be paid a maximum of 150 hours at the relevant Person-hour Rate for any four week period for any individual.
- 1.13 In exceptional circumstances, the Service Provider may make a written request to the Employer to temporarily increase the number of paid hours for an individual above the 150 hours stated in Clause 1.12 of this Schedule 2 - Pricing, giving reasons for the increase and the benefit to the Employer. The Service Provider shall obtain the written consent of the Employer prior to including any such additional hours in their invoices submitted to the Employer.
- 1.14 All Hours claimed for reimbursement by the Service Provider will be on the basis of complete 15 minute periods (in all cases rounded down). All incomplete 15 minute periods shall be rounded down. For example where the Service Provider's staff performing a part of the Services works for 1 hour and 14 minutes the number of Service Provider's Person- hours entitled to be claimed and reimbursed is one. Where the Service Providers person performing a part of the Services works for 1 hour and 29 minutes, the number of Service Provider's Person-hours entitled to be claimed and reimbursed is 1 hour and 15 minutes.
- 1.15 The Service Provider will provide the Employer with details of costs and expenses showing the allocation of each member of staff, and other resources used, against each Employer's Instruction and Task contained in an Employer's Instruction. This information shall be provided in an electronic format (e.g. spreadsheet) approved by the Employer. This information shall be cross referenced to invoices submitted by the Service Provider to allow reconciliation of documentation submitted by the Service Provider in support of requests for payment. The sufficiency of the information provided shall be at the sole discretion of the Employer.
- 1.16 Each individual staff classification in Table B shall have a rate entered against it that reflects the reasonable cost of providing the staff resource in accordance with the requirements of the Contract. Consequently, Nil or Zero rates shall not be considered acceptable. Rates and prices shall be expressed to two decimal places

TABLE B

Staff Classification - Core Roles	Person-hour Rate (£) (to 2 decimal places)
Performance Audit Group Manager	
Technical and Systems Manager	
Contracts and Commercial Manager	
Financial Manager	
Structures Advisor	
Operations Engineer	
Operations Engineer (DBFO)	
Measurement Engineer/Quantity Surveyor	
Senior Financial Officer	
Financial Officer	
Measurement and Technical Compliance Engineer	
Systems Auditor	
Site Technician	
Trainee Site Technician	
Traffic Analyst	
Electrical and Street Lighting Advisor	

Staff Classification – As Required Roles	Person-hour Rate (£) (to 2 decimal places)
Contracts and Commercial Advisor	
Contracts and Commercial Specialist	
Financial Specialist	
Procurement Advisor	
Insurance Advisor	
Technical Advisor – Health and Safety	
Technical Advisor – Environmental and Sustainability	
Technical Advisor – Winter Maintenance	
Technical Advisor – IT	
Technical Advisor – IT – Systems and Data	
Technical Advisor – Intelligent Transport Systems (ITS)	
Technical Advisor – Landscaping	
Technical Advisor – Walking Cycling and Active Travel	
Technical Advisor – Community Engagement and Communications	
Technical Advisor – Project Procurement Support	

- 1.17 If during the period of the contract, the Employer or the Service Provider identifies a requirement for staff not included in the staff classifications given in Table B, notwithstanding any other provisions of this Contract, the use of such additional staff may be approved by the Employer.
- 1.18 Rates for additional staff will be no greater than the Service Provider's tendered rates taking account of the disciplines, qualifications, experience and knowledge given for staff classifications in this Schedule 2.
- 1.19 Approval of additional staff and the rates for additional staff will be at the sole discretion of the Employer.
- 2 Descriptions for Staff Classifications**
- 2.1 For the purposes of approving staff proposed by the Service Provider, the Employer will take account of qualifications, knowledge and experience.
- 2.2 Consideration will be given to the relevance of experience and also to the context of when the experience was gained in accordance with the categories shown below:
- i) Directly related experience post qualification
 - ii) Directly related experience pre-qualification

- iii) Other relevant experience post qualification which contributes to transferable skills
- iv) Other relevant experience pre-qualification which contributes to transferable skills

- 2.3 The Employer may wish to meet with proposed staff to assess their knowledge of relevant topics prior to approval.
- 2.4 Approval of Service Provider's staff for delivery of the Services shall be at the sole discretion of the Employer.

3 Core Roles

3.1 Performance Audit Group Manager

3.1.1 Role:

Overall responsibility for the delivery of the Services and for providing advice to Employer, including reviewing the content and quality of technical and commercial outputs and reports.

3.1.2 Role Requirements

Chartered Civil Engineer or equivalent

Comprehensive experience of construction, management and maintenance within the construction sector

Comprehensive experience of contractual and commercial issues relevant to construction, management and maintenance within the construction sector

Demonstrable comprehensive knowledge of maintenance, management and construction works, and contractual and commercial issues, associated with construction, management and maintenance within the construction sector

3.1.3 Key Tasks:

To ensure that the delivery and overall performance of the Services is achieved including the provision of sufficient resources

Ensure liaison and effective communications between the Service Provider, the Employer and the Employer's Suppliers

Provide expert advice and reports on issues arising from the audit and monitoring of Suppliers of services relating to the financial and business practices and systems and the technical and commercial issues associated with the construction, management and maintenance of a roads network

Provide expert advice on issues identified by the Employer relating to the financial and business practices and systems relating to, and the construction, management and maintenance of a roads network

To be fully conversant with and understand the relevant Supplier contracts

Ensure that the Services Delivery Team are fully conversant with and understand the relevant Supplier contracts.

3.2 Technical and Systems Manager

3.2.1 Role

Responsible for coordination, reviewing and auditing of services relating to technical and systems outputs and reports.

3.2.2 Role Requirements

Chartered Civil Engineer or equivalent

Comprehensive experience of construction, management and maintenance within the construction sector

Comprehensive experience of contractual and commercial issues relevant to construction, management and maintenance within the construction sector

Demonstrable comprehensive knowledge of technical issues associated with maintenance, management and construction within the construction sector

Demonstrable comprehensive knowledge of contractual and commercial issues relevant to construction, management and maintenance within the construction sector

3.2.3 Key Tasks:

Ensure the delivery and overall performance of the technical and systems auditing and monitoring outputs of the Services

Coordinate the delivery of Services with other members of the Service Provider's team

Provide expert advice on issues arising from the audit and monitoring of Suppliers relating to the construction, management and maintenance of a roads network

Provide expert advice on issues identified by the Employer relating to the construction, management and maintenance of a roads network

Provide expert advice to the Employer relating to the technical, contractual and systems aspects of Supplier contracts

Plan technical and systems audit strategies and update as required

Carry out ad-hoc exercises instructed by the Employer

To be fully conversant with and understand the relevant Supplier contracts.

3.3 **Contracts and Commercial Manager**

3.3.1 Role

Responsible for coordination, reviewing and auditing the delivery of services relating to contractual and commercial outputs and reports.

3.3.2 Role Requirements

Chartered Civil Engineer or equivalent Chartered professional

Comprehensive experience of construction, management and maintenance within the construction sector

Comprehensive experience of contractual and commercial issues relevant to construction, management and maintenance within the construction sector

Demonstrable Comprehensive knowledge of technical issues associated with construction contracts

Demonstrable comprehensive knowledge of contractual and commercial issues relevant to the construction sector.

3.3.3 Key Tasks

Ensure the delivery of contractual and commercial analysis and advice.

Coordinate the delivery of Services with other members of the Service Provider's team

To be fully conversant with and understand the relevant Supplier contracts

Provide expert advice on contractual and commercial issues arising from the Employer's contracts with Suppliers relating to the construction, management and maintenance of a roads network

Provide expert advice on the development of new contracts relating to the construction, management and maintenance of a roads network.

3.4 Financial Manager

3.4.1 Role

Responsible for coordination, reviewing and auditing the delivery of services relating to financial and business systems outputs.

3.4.2 Role Requirements

Chartered Accountant

Comprehensive experience of audit, monitoring of financial and business systems and practices.

Comprehensive experience of analysis and review of payments made to Suppliers.

Demonstrable comprehensive knowledge of financial and business systems and practices.

3.4.3 Key Tasks:

Ensure the delivery of audit, monitoring and reports related to management of financial and business systems and practices associated with Supplier contracts.

Coordinate the delivery of Services with other members of the Service Provider's team

Maintain a system for the receipt, processing and recommendation for payment of Operating Company and the DBFO invoices.

Assist the Employer as required in carrying out its finance functions and responsibilities.

Plan a finance audit strategy and update as required.

Plan a business systems audit strategy and update as required.

Carry out ad-hoc exercises instructed by the Employer

To be fully conversant with and understand the relevant Supplier contracts.

3.5 Operations Engineer

3.5.1 Role

Review, investigation, and analysis of technical, contractual, and commercial issues arising from Supplier contracts.

3.5.2 Role Requirements

Chartered Civil Engineer or equivalent

Significant experience of auditing, monitoring, investigation and analysis of technical, contractual, and commercial issues relevant to the construction, management and maintenance of a roads network

Demonstrable significant knowledge of auditing, monitoring, investigation and analysis of technical and commercial issues relevant to the construction, management and maintenance of a roads network

Demonstrable moderate knowledge of the operation and maintenance processes and procedures associated with a roads network.

3.5.3 Key Tasks:

Investigate, analyse and report on technical compliance with Suppliers contracts.

Analyse programmes of works submitted by Suppliers and report on the value for money being provided by the Suppliers to the Employer.

Investigate, analyse and report on technical solutions proposed by Suppliers taking account of technical options, good practice and value for money.

Liaise with other members of the services delivery team to ensure coordinated investigation, analysis and reporting to the Employer.

To be fully conversant with and understand the relevant Supplier contracts.

3.6 Measurement Engineer/Quantity Surveyor

3.6.1 Role

Review, investigation, and analysis of measurement, and contractual issues arising from Suppliers contracts.

3.6.2 Role Requirements

Chartered Civil Engineer or Chartered Quantity Surveyor or equivalent Chartered professional

Significant experience of analysis of tender submissions and reporting on value for money for contracts relating to the construction sector

Significant experience of analysis of contract rates and assessment of value for money for contracts relating to the construction sector

Significant experience of analysis of claims for payment to Suppliers for construction contracts

Demonstrable significant knowledge of analysis of tender submissions and reporting on value for money for construction contracts

Demonstrable significant knowledge of analysis of contract rates and assessment of value for money for construction contracts

Demonstrable significant knowledge of analysis of claims for payment to Suppliers for contracts relating to the construction sector.

3.6.3 Key Tasks

Analyse tender submissions from Suppliers and report on value for money taking account of market conditions.

Analyse requests for new rates submitted by Suppliers and report on justification of rates in the context of tendered rates.

Analyse programmes of works submitted by Suppliers and report on the value for money being provided by the Suppliers to the Employer.

Analyse requests for payment from Suppliers and report on compliance with contracts, good practice, and value for money.

Liaise with other members of the services delivery team to ensure coordinated investigation, analysis and reporting to the Employer.

To be fully conversant with and understand the relevant Supplier contracts.

3.7 Senior Financial Officer

3.7.1 Role

Investigations and analysis of financial data associated with Supplier contracts and prepare reports for the Employer.

3.7.2 Role Requirements

Graduate in Accountancy or equivalent

Significant experience of auditing, monitoring, investigation and analysis of business and financial systems and financial data

Demonstrable significant knowledge of auditing, monitoring, investigation and analysis of business and financial systems and financial data

3.7.3 Key Tasks

Provide regular financial reporting for the Employer

Check statements and invoices submitted by Suppliers and verify their consistency with records held in Supplier and Employer systems

Undertake site and desk top audits and preparation of audit reports

Prepare recommendations for payment of statements and invoices received from Suppliers, as required by the Employer

Undertake value for money and inter-supplier comparison exercises

Liaise with other members of the services delivery team to ensure coordinated investigation, analysis and reporting to the Employer.

To be fully conversant with and understand the relevant Supplier contracts.

3.8 Financial Officer

3.8.1 Role

Carry out audits, investigations and analysis of financial data associated with Supplier contracts and prepare reports for the Employer.

3.8.2 Role Requirements

Graduate or HNC/HND in accountancy or equivalent

Basic experience of auditing, monitoring, investigation and analysis of financial data

Demonstrable basic knowledge of auditing, monitoring, investigation and analysis of financial data.

3.8.3 Key Tasks

Assist with regular management reporting to the Employer

Maintain a register of statements and invoices submitted by Suppliers

Reconcile the financial monitoring system with amounts invoiced and ordered

Undertake site and desk top audits and preparation of audit reports

Assist with value for money and inter-supplier comparison exercises

Monitor performance of the Suppliers using Key Performance Indicators.

To be fully conversant with and understand the relevant Supplier contracts

3.9 Measurement and Technical Compliance Engineer

3.9.1 Role

On-site and office auditing, monitoring, assessment and verification of measured quantities and technical compliance with contracts, processes and standards.

3.9.2 Role Requirements

Incorporated Engineer or Graduate Engineer with significant experience;

OR

HNC/HND in Civil Engineering or equivalent with Comprehensive experience.

OR

An individual with Extensive relevant Experience

Specified level of experience in both on-site and office assessment and verification of measured quantities and compliance with contracts, processes and standards

Demonstrable knowledge of maintenance and construction works associated with the construction, management and maintenance of a roads network

3.9.3 Key Tasks

Review, audit and monitor on-site works and associated records and report on compliance with contract documentation and good working practices

Review, audit and monitor on-site works and associated records and report on the veracity of Suppliers request for payments

Review, audit and monitor on-site works and associated records and provide information for the Employer's responses to disputed contractual issues.

To be fully conversant with and understand the relevant Supplier contracts.

3.10 Systems Auditor

3.10.1 Role

Carry out auditing and monitoring of Employer and Supplier systems in accordance with programmes agreed with the Employer.

3.10.2 Role Requirements

Graduate or technician in relevant field

Moderate experience of auditing, monitoring and reporting on the compliance and effectiveness of business, quality and IT systems.

Demonstrable moderate knowledge of auditing, monitoring and reporting on the compliance and effectiveness of business, quality and IT systems.

3.10.3 Key Tasks:

Auditing, monitoring and reporting on business and quality systems used by Suppliers to verify contractual compliance and good practices.

To be fully conversant with and understand the relevant parts of Supplier contracts.

3.11 Site Technician

- 3.11.1 **Role**
Carry out inspections, auditing, and monitoring in accordance with programmes agreed with the Employer.
- 3.11.2 **Role Requirements**
Technician with HNC/HND in civil engineering or equivalent or a Graduate; all with moderate experience
OR
An individual with comprehensive relevant experience
Specified level of experience of inspecting, monitoring and reporting on Supplier compliance with contracts, specifications and good practice associated with the construction, management and maintenance of roads and structures.
Demonstrable knowledge of maintenance and construction works associated with the construction, management and maintenance of a roads network
- 3.11.3 **Key Tasks:**
Inspect, audit and monitor asset inventory collection and updating for a roads network.
Inspect, audit, and monitor to assess the effectiveness and contractual compliance of Suppliers in respect of inspection regimes set out in Employer's contracts.
Issue notices based on site inspections and observations in accordance with Supplier contracts
Verify that Suppliers records are true and accurate and confirm that works have been carried out in accordance with Specifications and other contract documentation
Verify that quantities and values claimed by Suppliers are a true record.
Contribute to reports required by the Employer.
To be fully conversant with and understand the relevant parts of Supplier contracts
- 3.12 Trainee Site Technician**
- 3.12.1 **Role**
Provide assistance for inspections, auditing, and monitoring in accordance with programmes agreed with the Employer.
- 3.12.2 **Role Requirements**
HNC/HND + Limited Experience
OR
Basic Experience + Structured Training
Specified level of experience of inspecting, monitoring and reporting on Supplier compliance with contracts, specifications and good practice associated with the construction, management and maintenance of roads and structures.
Basic knowledge of maintenance and construction works associated with the construction, management and maintenance of a roads network
- 3.12.3 **Key Tasks**

Provide assistance for inspection, auditing and monitoring asset inventory collection and updating for a roads network.

Provide assistance for inspection, auditing and monitoring to assess the effectiveness and contractual compliance of Suppliers in respect of inspection regimes set out in Employer's contracts.

Provide assistance for the issue notices based on site inspections and observations in accordance with Supplier contracts

Provide assistance for the verification that Suppliers records are a true and accurate and confirm that works have been carried out in accordance with Specifications and other contract documentation

Provide assistance for the verification that quantities and values claimed by Suppliers are a true record.

Contribute to reports required by the Employer.

To be conversant with and understand the relevant parts of Supplier contracts

3.13 Structures Advisor

3.13.1 Role

Responsible for coordination, reviewing and auditing the delivery of services relating to roads network structures technical and commercial outputs and reports.

3.13.2 Role Requirements

Chartered Civil or Structural Engineer or equivalent

Extensive experience of the maintenance, management and construction of roads network structures

Demonstrable extensive knowledge of the maintenance, management and construction of roads network structures.

3.13.3 Key Tasks:

Ensure the delivery of audit, monitoring and reports related to roads network structures

Coordinate the delivery of Services with other members of the Service Provider's team

Provide expert advice on issues arising from the audit and monitoring of Suppliers relating to the roads network structures

Provide expert advice on issues identified by the Employer relating to roads network structures

Plan a roads structures audit strategy and update as required

Carry out ad-hoc exercises instructed by the Employer

To be fully conversant with and understand the relevant Supplier contracts, related industry practices and design codes.

Liaise with other members of the services delivery team to ensure coordinated investigation, analysis and reporting to the Employer.

3.14 Technical Advisor – Winter Maintenance

3.14.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving winter maintenance works and services associated with a roads network.

3.14.2 Role Requirements

Chartered professional relevant to role

Comprehensive experience of technical specifications and technical standards and legislation associated with winter maintenance works and services required for a roads network.

Demonstrable comprehensive knowledge of technical specifications and technical standards and legislation associated with winter maintenance works and services required with a roads network.

Demonstrable moderate experience of contract development.

3.14.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers involving winter maintenance operations associated with a roads network.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with winter maintenance operations required for a roads network.

To be fully conversant with and understand the relevant parts of Supplier contracts

Produce reports on the delivery and effectiveness of Suppliers works and services associated with winter maintenance.

3.15 Technical Advisor – Electrical and Street Lighting

3.15.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving electrical and street lighting works and services.

3.15.2 Role Requirements

A member of the Institution of Lighting Professionals or Institution of Engineering and Technology.

Comprehensive experience of technical specifications and technical standards and legislation associated with electrical and street lighting works and services.

Demonstrable comprehensive knowledge of technical specifications and technical standards and legislation associated with electrical and street lighting works and services.

Demonstrable moderate experience of contract development.

3.15.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers involving electrical and street lighting works and services.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with electrical and street lighting works and services.

To be fully conversant with and understand the relevant parts of Supplier contracts

Produce reports on the delivery and effectiveness of Suppliers works and services associated with electrical and street lighting works and services.

3.16 Technical Advisor – Health and Safety

3.16.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers associated with health and safety in the roads sector

3.16.2 Role Requirements

Chartered professional relevant to role

Comprehensive experience of technical specifications and technical standards and legislation associated with health and safety within the construction sector.

Demonstrable comprehensive knowledge of technical specifications and technical standards and legislation associated with health and safety in the construction sector.

Demonstrable moderate experience of contract development.

3.16.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers associated with health and safety in the roads sector

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with health and safety in the roads sector.

To be fully conversant with and understand the relevant parts of Supplier contracts

Produce reports on the delivery and effectiveness of Suppliers works and services associated with health and safety in the roads sector.

3.17 Technical Advisor – Environmental and Sustainability

3.17.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers associated with the environmental and sustainability aspects of a roads network.

3.17.2 Role Requirements

Chartered professional relevant to role.

Comprehensive experience of technical specifications and technical standards associated with environment and sustainability aspects of a roads network

Demonstrable comprehensive knowledge of technical specifications and technical standards associated with environment and sustainability aspects of a roads network or relevant to role.

Demonstrable moderate experience of contract development.

3.17.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers associated with the environmental and sustainability aspects of a roads network.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with the environmental and sustainability aspects of a roads network.

To be fully conversant with and understand the relevant parts of Supplier contracts

3.18 Technical Advisor – IT

3.18.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving information technology.

3.18.2 Role Requirements

Chartered professional relevant to role

Comprehensive experience of information technology related technical specifications and technical standards

Demonstrable comprehensive knowledge of information technology related technical specifications and technical standards

Demonstrable moderate experience of contract development

3.18.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers involving information technology.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with information technology.

To be fully conversant with and understand the relevant parts of Supplier contracts.

Produce reports on the delivery and effectiveness of Suppliers works and services associated with information technology.

3.19 Technical Advisor - Intelligent Transport Systems (ITS)

3.20 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving intelligent transport systems and traffic signals.

3.20.2 Role Requirements

Chartered professional relevant to role

Comprehensive experience of technical specifications and technical standards associated with design, development, construction, management and maintenance of intelligent transport systems and traffic signals

Demonstrable comprehensive knowledge of technical specifications and technical standards associated with design, development, construction, management and maintenance of intelligent transport systems and traffic signals

Demonstrable moderate experience of contract development.

3.20.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers involving the development, construction, management and maintenance of intelligent transport systems and traffic signals.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with the design, construction, management and maintenance of intelligent transport systems and traffic signals.

To be fully conversant with and understand the relevant parts of Supplier contracts

Produce reports on the delivery and effectiveness of Suppliers works and services associated with intelligent transport systems and traffic signals.

3.21 Technical Advisor - Landscape

3.21.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving the construction, management and maintenance of landscaping designs, works and services.

3.21.2 Role Requirements

Chartered professional relevant to role

Comprehensive experience of landscaping related technical specifications and technical standards

Demonstrable comprehensive knowledge of landscaping related technical specifications and technical standards

Demonstrable moderate experience of contract development.

3.21.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers involving the construction, management and maintenance of all aspects of landscaping designs, works and services.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with landscaping designs, works and services.

To be fully conversant with and understand the relevant parts of Supplier contracts.

Produce reports on the delivery and effectiveness of Suppliers works and services associated with landscaping designs, works and services.

3.22 Technical Advisor – Walking Cycling and Active Travel

3.22.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving the construction, management and maintenance of walking, cycling and active travel schemes and initiatives.

3.22.2 Role Requirements

Incorporated Engineer

Significant experience of developing active travel schemes and initiatives

Significant knowledge of standards, policies and guidance associated with active travel

Moderate knowledge of road networks

3.22.3 Key Tasks:

Review, analyse and advise on technical specifications and technical standards associated with the Employer's contracts with Suppliers involving the construction, management and maintenance of walking, cycling and active travel schemes and initiatives.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to technical specifications and technical standards associated with walking, cycling and active travel schemes and initiatives.

To be fully conversant with and understand the relevant parts of Supplier contracts

Produce reports on the delivery and effectiveness of Suppliers works and services associated with walking, cycling and active travel schemes and initiatives.

3.23 Technical Advisor – Community Engagement and Communications

3.23.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving the management and maintenance of systems, processes and deliverables associated with community engagement and communications.

3.23.2 Role Requirements

Degree in an appropriate subject or professional qualification from a recognised body

Significant experience of business improvement, media relations and community engagement

Moderate experience of community engagement in trunk road or similar environment

Moderate experience of communication with stakeholders

3.23.3 Key Tasks:

Review, analyse and advise on technical and operational standards, systems, processes and deliverables associated with the Employer's contracts with Suppliers involving community engagement and communications.

Advise on regulatory compliance, standards and best practice in the development and management of contracts with respect to community engagement and communications.

To be fully conversant with and understand the relevant parts of Supplier contracts

Produce reports on the delivery and effectiveness of Suppliers services associated with community engagement and communications.

3.24 Contracts and Commercial Advisor

3.24.1 Role

Provide advice on the contractual issues which may arise as a result of the Employer's contracts with Suppliers involving the construction, management and maintenance of all aspects of a roads network.

3.24.2 Role Requirements

Chartered Civil Engineer or equivalent Chartered professional

Comprehensive experience of the construction sector

Comprehensive experience of contractual and commercial issues relevant to the construction sector contracts

Significant experience of contract development

Demonstrable comprehensive knowledge of maintenance, contractual and commercial issues relevant to the construction sector

Demonstrable comprehensive knowledge of the Scottish, UK, and EU contract case law related to the construction sector

3.24.3 Key Tasks:

Review, analyse and advise on contractual issues which may arise as a result of the Employer's contracts with Suppliers involving the construction, management and maintenance of all aspects of a roads network including:

Resolution of issues arising from interpretation of contract wording

Issues arising from variations to Supplier contracts

Issues arising from application of contract rates

Claims for extension of time and/or additional payments

Issues arising from procurement of works undertaken by Suppliers for the Employer.

Assess and advise on issues which may arise as a result of proposed contract variations.

To be fully conversant with and understand the relevant Supplier contracts.

3.25 Contracts and Commercial Specialist

3.25.1 Role

Provide advice on the development of contracts and the resolution of contractual issues, including adjudication and arbitration, relevant to the Employer's contracts with Suppliers involving the construction, management and maintenance of all aspects of a roads network

3.25.2 Role Requirements

Chartered Civil Engineer or equivalent Chartered professional

Significant experience of the construction sector

Significant experience of contractual and commercial issues relevant to the construction sector

Significant experience of contract development

Significant experience of dispute resolution processes including adjudication and arbitration processes

Demonstrable significant knowledge of contractual and commercial issues relevant to the construction sector

Demonstrable significant working knowledge of the Scottish, UK, and EU contract case law related to the construction sector

Demonstrable significant knowledge of contract development and drafting

Demonstrable significant knowledge of adjudication and arbitration processes.

3.25.3 .Key Tasks:

Review, analyse and advise on contractual issues which may arise as a result of the Employer's contracts with Suppliers involving the construction, management and maintenance of all aspects of a roads network including:

Resolution of issues arising from interpretation of contract wording

Issues arising from variations to Supplier contracts

Issues arising from application of contract rates

Claims for extension of time

Issues arising from procurement of works undertaken by Suppliers for the Employer

Assess and advise on issues which may arise as a result of proposed contract variations.

To be fully conversant with and understand the relevant Supplier contracts.

3.26 Financial Specialist

3.26.1 Role

Provide advice on financial and commercial issues including the provision of forensic accounting services.

3.26.2 Role Requirements

Chartered Accountant or equivalent Chartered Professional.

Comprehensive experience of financial and commercial issues and forensic accounting

Demonstrable comprehensive knowledge of financial and commercial issues and forensic accounting

3.26.3 Key Tasks:
Review, analyse and advise on financial and commercial issues arising from Supplier contracts and as required by the Employer.

To be fully conversant with and understand the relevant Supplier contracts.

3.27 Procurement Advisor

3.27.1 Role

Provide advice on procurement as required by the Employer.

3.27.2 Role Requirements

Chartered Procurement professional

Comprehensive experience of delivering procurements

Comprehensive knowledge of the Scottish, UK, and EU procurement legislation

Comprehensive knowledge of the Scottish, UK, and EU procurement case law

3.27.3 Key Tasks:

Provide advice on the preparation of procurement documentation of Supplier contracts, as required by the Employer

Provide advice on the conduct of procurements and resolution of issues that may arise during and following the procurement of Supplier contracts, as required by the Employer.

To be fully conversant with and understand the relevant Supplier contracts.

3.28 Insurance Advisor

3.28.1 Role

Review Supplier insurance arrangements and advise the Employer of their compliance with contractual requirements.

3.28.2 Role Requirements

Chartered Insurance Practitioner

Comprehensive experience of indemnities and insurance related to the construction sector.

3.28.3 Key Tasks:

To provide expert advice, support and recommendations on any matters associated with the indemnities and insurance provision and cover related to the management, maintenance and construction of a roads network, as required by the Employer.

3.29 Traffic Analyst

3.29.1 Role

Review traffic data provided by Suppliers as a basis of payment for DBFO type contracts.

3.29.2 Role Requirements

Graduate with significant experience plus

Moderate experience of measurement, analysis and reporting traffic flow data and;

Moderate experience of payment models based on traffic flow data.

OR

HNC/HND with comprehensive experience plus

significant experience of measurement, analysis and reporting traffic flow data

significant experience of payment models based on traffic flow data.

3.29.3

Key Tasks

Analysis and reporting on traffic flow data

Application of payment models and reporting and verification of payments to Suppliers.

Review of traffic data collection methods.

To be fully conversant with and understand the relevant parts of Supplier contracts.

3.30

Operations Engineer – DBFO contracts

3.30.1

Role

Undertake management agent duties delegated by the Employer in accordance with the terms of the contracts.

3.30.2

Role Requirements

Chartered Civil Engineer or equivalent Chartered professional

Significant experience of the construction, management and maintenance of all aspects of a roads network

Significant experience of contractual and commercial issues relevant to the construction, management and maintenance of a roads network

Moderate experience of the operation and maintenance processes and procedures associated with roads network DBFO type contracts

Demonstrable significant knowledge of maintenance, contractual and commercial issues relevant to the construction, management and maintenance of a roads network

Demonstrable moderate knowledge of the operation and maintenance processes and procedures associated with roads network DBFO type contracts.

3.30.3

Key Tasks:

Carry out the duties of the Scottish Minister's Agent or Representative as defined in Schedules 15, 16 and 17 and the DBFO contracts and as instructed by the Employer.

To be fully conversant with and understand the relevant Supplier contracts.

3.31

Technical Advisor – Project Procurement Support

3.31.1

Role

Provide advice on the preparation of procurement documentation and tools which may arise as a result of the Employer's contracts with Suppliers.

3.31.2

Role Requirements

Chartered professional relevant to role

Significant experience of compiling procurement documents including pricing models.

Significant experience of analysing tender submission technical detail and contract rates and reporting on value for money for contracts.

Demonstrable significant knowledge of compiling procurement documents including pricing models.

Demonstrable significant knowledge analysing tender submission technical detail and contract rates and reporting on value for money for contracts

3.31.3 Key Tasks:

Engaging with stakeholders to develop contract scope and itemisation.

Compiling project task papers to support the development of contracts and key recommendations

Interrogating tender returns to confirm compliance with requirements

Analysing tender return contract rates to establish and report on value for money

3.32 Technical Advisor – IT – Systems and Data

3.32.1 Role

Provide advice on the technical and operational issues which may arise as a result of the Employer's contracts with Suppliers involving information systems, and the analysis and interrogation of data which supports business decisions and contract performance measures.

3.32.2 Role Requirements

Comprehensive experience of using information technology systems to monitor Supplier compliance with contract objectives.

Demonstrable comprehensive knowledge of information technology related technical specifications and technical standards

Moderate experience of numerical analysis involving large data sets, and the ability to interpret technical data and systems.

3.32.3 Key Tasks:

Interrogate, analyse and advise on Supplier performance as defined by contractual key performance indicators.

Review and advise on Supplier compliance with contractual key performance indicators,

Be fully conversant with and understand the relevant parts of Supplier contracts in order to monitor compliance.

Produce ad hoc reports relating to key performance indicators .

Assist in the development of new or amended system based key performance indicators

SCHEDULE 3 - EXAMPLE REPORT TEMPLATES

This and the following 14 pages comprise Schedule 3 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

1 Introduction

- 1.1 The following report templates are provided for the guidance of tenderers and show the information that should be included to meet the Employer's requirements.
- 1.2 Reports should be submitted electronically as Microsoft Word or Adobe Acrobat documents which include as a minimum all the information shown in the templates.
- 1.3 A document register will be maintained by the Service Provider showing the unique identifier and index fields for each report along with a link to the electronic version of the report. The reports register will be in the form of a Database provided by the Employer.
- 1.4 The Employer will store copies of reports and the reports register within their own systems.
- 1.5 Index fields for reports are shown below in Table 1 and data will be entered into the Employer's database by the Service Provider for fields appropriate to the report as agreed with the Employer.

Table 1

Employer's Instruction Title	Text
Employer's Instruction date	Date dd/mm/yyyy
Employer's Instruction Number	Six digits -999999
Employer's Instruction task Number	Four digits -9999
Report ID	Unique numeric identifier for each report
Report Type	Validated text
Date due	Date dd/mm/yyyy
Report Frequency	Validated text
KPI Number	Two digits – 99
Report stage	Validated text
Report version	Two digits – 99
Report date	Date dd/mm/yyyy
Report Title	Text
Contract	Validated text
Inspection or Review date	Date dd/mm/yyyy
Report by	Text
Route	Text
Start link	Five digits -99999
Start section	Two digits – 99
Start chainage	Six digits -999999
End link	Five digits -99999
End section	Two digits – 99
End chainage	Six digits -999999
Summary report text	Text
Additional report text location	Hyperlink to file holding report as Word or Adobe document
Start Easting	Six digits -999999
Start Northing	Six digits -999999

End Easting	Six digits -999999
End Northing	Six digits -999999

1.6 Inspection Services Report

1.6.1 This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

1.6.2 Reports for Inspection Services will include the index fields shown in Table 1 and as a minimum the following information:

1.6.3 Table 2

FIELD	DESCRIPTION OF FIELD CONTENTS
Inspection start time	10.00
Inspection finish time	17.00
Weather	Dry,cloudy,wind sw 10mph - weather details relevant to the inspection
Purpose of Inspection	Index field - entry from menu of inspections
Records referred to	OC records references:
Output	Notes on compliance with contract and standards
Comments	e.g. Drainage requires follow up inspection during period of heavy rain

1.7 Works Planning and Programming Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This reports on works planning and programming examining the compliance of the Supplier with the processes and requirements given in contracts and will include the index fields shown in Table 1 and as a minimum the following information:

Table 3

FIELD	DESCRIPTION OF FIELD CONTENTS
Type of Review	Index field - entry from menu
Purpose of Review	Text description of objectives of review
Programmes attached	Reference documents
Programmes prepared in accordance with the contract?	Can be Yes/No or additional commentary
Programmes submitted within required timescales?	Can be Yes/No or additional commentary
Programmes approved by the Employer?	Can be Yes/No or additional commentary
Works carried out in compliance with the programmes?	Commentary on achievement of programme dates
Have the programmes been updated? – give details	Summary of programme updates
Programmes prepared making best use of available data?	Commentary of data used and how appropriate and effective this has been

1.8 Technical Compliance Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This examines the compliance of works carried out or managed by the Supplier against the technical requirements, Specifications, and good working practices for the works given in contracts and will include the index fields shown in Table 1 and as a minimum the following information:

Table 4

FIELD	DESCRIPTION OF FIELD CONTENTS
Type of work	e.g. patching
Specification references	Sections /clauses
Comments on compliance with contract	List of non-compliances and comments on remedial actions that may be undertaken by the contractor to
Comments on methods of work, working practices, improvements	Assessment of the approach taken to complete the works and suggestions for possible improvements in

1.9 Measurement and Financial Management Assurance Services

1.9.1 Measurement Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This examines the measurements recorded on site along with records held in management and financial systems to establish that measurements used to record the progress of the works and for preparation of statements and invoices are true and accurate and will include the index fields shown in Table 1 and as a minimum the following information:

Table 5

FIELD	DESCRIPTION OF FIELD CONTENTS
Weather	Dry,cloudy,wind speed 10mph - weather details relevant to the inspection
Included records	OC records references:
Output	Example A - for works undertaken by Bills of Quantities. For each BOQ item, the report show the claimed quantity and the SPMS provider's quantity for work completed to the standards required by the. contract documentation. Example B for works carried out as inclusive lump sum itemsThe report will show the items and quantities shown as complete in the management systems and/or included in requests for payment. The report will compare the quantities measured by SPMS compared to the works required to be completed for payment of the lump sum.

Comments	The report will comment on any differences between the contractor's measurements and those of the SPMS provider, the outcome of joint measurements or reconciliations, and clearly state the measurement quantities that should be accepted by the Employer for payment.
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1.9.2 Measurement - Payment Adjustment Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract.

Proposals by the Service Provider which improve reports will be considered by the Employer.

This examines the measurements recorded on site drawing comparisons with records held in management and financial systems to establish that measurements used to record the progress of the works and for preparation of statements and invoices are true and accurate and will include the index fields shown in Table 1 and as a minimum the following information:

Table 6

FIELD	DESCRIPTION OF FIELD CONTENTS
Weather	Dry, cloudy, wind speed 10mph – weather details relevant to the inspection
Measurement Reports	References to Measurement Reports to be used as a basis for the adjustment of payments
Output	A statement of the terms of the contract documentation on which the payment adjustment is based and a statement and calculations to show the basis for the payment adjustment.
Comments	Additional information commenting on any performance issues that have led to the payment adjustment and how performance may be improved

1.10 Financial Reports

1.10.1 Statement and Invoices Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

These reports will examine the statements and invoices submitted by Suppliers to consider compliance with contracts and records of works and will make recommendations to the Employer on any adjustments to the payments which should be made to the Suppliers. Reports will establish that the invoices and statements reflect the progress of the works and that statements and invoices are true and accurate. Reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 7

FIELD	DESCRIPTION OF FIELD CONTENTS
Statement or invoice reference	Service Provider's Reference

Claimed value of statement or invoice	£0000.00
Recommended payment for works covered by statement or invoice	£0000.00
Amount to be deducted from statement or invoice if required	£0000.00
Amount to be added for sums held back from previous statements	£0000.00
Recommended sum to be paid	£0000.00
Comments	Additional information/explanations

1.10.2 Summary Budget Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

A summary budget report will provide additional detailed information showing each scheme or individual type of work contained within the budget category as required.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 8

FIELD	DESCRIPTION OF FIELD CONTENTS
Budget categories included in the report	Set by Employer and entered into management systems
Budget profiles agreed with Employer	From budget profiles issued to Suppliers
Sums deducted from budget categories category	£0000.00 - sums paid to Supplier within budget
Sums committed for completed works not invoiced	Value of completed works not yet paid
Sums committed for ordered works not yet undertaken	Sums for works ordered and committed but not yet paid for
Projected uncommitted expenditure for each budget heading	Uncommitted expenditure from programmes

1.10.3 Financial Systems Reconciliation report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

Reports which reconcile data in financial systems operated by the Employer, and data in statements and invoicing presented by Suppliers.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 9

FIELD	DESCRIPTION OF FIELD CONTENTS
Report Type	Index Field – validated text
Report Stage	Index Field – validated text
Report Title	Text
Records of expenditure by budget category in system A	The systems may be contract dependent. Typically system A may be the Integrated Roads Information
Records of expenditure by budget category in system B	Records – spreadsheet
Records of expenditure by budget category in system ?	Records – spreadsheet
Statement showing relationships	relationships between systems data
Statement explaining reconciliation of figures in systems	Explanation of reconciliation

1.11 Management Systems Assurance Reports

1.11.1 Data Integrity Review Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report summarises the completeness and validity of data in systems used by the Employer and Suppliers e.g. Asset Management Performance System (AMPS).

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 10

FIELD	DESCRIPTION OF FIELD CONTENTS
Report ID	Unique numeric identifier for each report
Contract	Index field – validate text - e.g. OC NW Bear

Inspection or Review Date	Index field - dd/mmm/yyyy
Report by	Index field - Surname,initial
Report Date	Index field - dd/mmm/yyyy
Route	Index field - A84
Report Type	Index Field – validated text
Report Stage	Index Field – validated text
Report Title	Text
System name	e.g AMPS
Name/description of records reviewed	Budgets records reviewed
Start data date range	Data reviewed from
End data date range	Data reviewed to
References to sources reports or records used as a basis for rev	Source reports or records
Output	Conclusion and recommendations

1.11.2 Process Compliance Review Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This details the compliance with processes required by contracts.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer:

Table 11

FIELD	DESCRIPTION OF FIELD CONTENTS
System name	e.g AMPS, Supplier quality system
Name/description of records reviewed	e.g H&S processes
System name	e.g AMPS, Supplier quality system
Name/description of records reviewed	e.g H&S processes
Reviewed period start date	dd/mmm/yyyy
Reviewed period end date	dd/mmm/yyyy
References to sources reports or records used as a basis for review.	Contract document references

1.12 Performance Reports

1.12.1 KPI Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews the achievement of contractual KPIs by Suppliers.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 12

FIELD	DESCRIPTION OF FIELD CONTENTS
Description of areas for performance improvement	Identify areas of activity to be reviewed
Commentary on current performance	Comments on current performance based on KPIs and observations from audit and monitoring activities
Commentary on potential for performance improvement	Identify potential for performance improvement
Summary of implications	Consideration of the implications of implementing improvements - pros and cons - financial costs and
Recommended actions	Recommendations for actions to be taken to achieve improved performance

1.13 Risk Mitigation Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews the Employer's Risk Registers and reports on the activities and performance of Suppliers with respect to how they mitigate the Employer's risks.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 13

FIELD	DESCRIPTION OF FIELD CONTENTS
Items from the Employer's Risk registers	Risks reviewed in the report

Risk mitigation statement	Statement drawing on the audit and monitoring activities and considering whether or not the services or activities of the Supplier have or will reduce or increase the risks. This statement should provide objective data in support of the conclusions reached.
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1.14 Performance Improvement Summary Report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews the performance of Suppliers and identifying opportunities for performance improvement.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table A and as a minimum the following information:

Table 14

FIELD	DESCRIPTION OF FIELD CONTENTS
Description of areas for performance improvement	Identify areas of activity to be reviewed
Commentary on current performance	Comments on current performance based on KPIs and observations from audit and monitoring activities
Commentary on potential for performance improvement	Identify potential for performance improvement
Summary of implications	Consideration of the implications of implementing improvements - pros and cons - financial costs
Recommended actions	Recommendations for actions to be taken to achieve improved performance

1.15 Advice on Responding to Enquiries report

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report gathers information from systems and providing the Employer with advice on responding to enquiries from politicians, members of the public and others.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 15

FIELD	DESCRIPTION OF FIELD CONTENTS
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Copy of Enquiry or Brief provided by Employer	Copy of information provided by Employer setting out the requirements for the report
Statement of relevant data or documentation held in the Employer systems.	Statement/list of data relevant to enquiry from Employer's systems
Statement of relevant data or documentation held by Suppliers which is available to the Employer.	Statement/list of data relevant to enquiry from Supplier systems

Draft response for consideration and use by the Employer in preparing their response	The draft response should recognise the political and commercial risks inherent in the Employer's duties and responsibilities, and where appropriate should provide optional statements for inclusion in responses based on verifiable information held in the systems.
Comments	Explanatory notes that the Employer may wish to take into account in preparing their response.

1.16 Reports on the value for money

1.17 Value for Money report - Proposals and Schemes

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

These reports review scheme options and achievement of optimal solutions and value for money.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 16

FIELD	DESCRIPTION OF FIELD CONTENTS
Scheme or Works Identifier	Scheme ID as entered in AMPS
Scheme or Works Description	e.g resurfacing and drainage improvements
Reference Date	dd/mmm/yyyy
Statement of asset condition	Details of defects, residual life, risks
Statement of parameters for designs and proposals	Existing and projected traffic flows, loadings, environmental affects, legislative and technical
Statement of works options with costs and service life	Options for works giving future service performance
Statement of budget considerations and Scottish Government policies/guidance	Comment on the available budgets and how this affects the choice of options
Output	Evaluation of the decision making process and comments on the achievement of the optimal option

1.17.2 Commercial Report - Prices and Rates

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews the effect the choice of item rates or prices has on the overall cost of works.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer. The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 17

FIELD	DESCRIPTION OF FIELD CONTENTS
Scheme or Works Identifier	Schem ID as entered in AMPS
Scheme or Works Description	e.g resurfacing and drainage improvements
Reference Date	dd/mmm/yyyy
List of rates /prices reviewed	List of rates or prices being reviewed
Statement referenced to report 9.1 where the choice of Bill of Quantity or pricing item should be considered in evaluating options in report 9.1	This may be related to scheme or works options and within any option for a proposal or a scheme there may be choices of rates or prices and these should be examined to establish the best value for money for the Scottish Ministers. Consideration should be given to the commercial advantage that be associated a particular option. Example 2 Methods of working should also be considered to confirm that the Supplier value for money for the Scottish Ministers has not been reduced in order to favour the commercial interests of the Supplier.

1.18 Reports to assist in responding to commercial, contractual and procurement issues raised by Suppliers.

1.18.1 Report on Claims Resulting from Variations

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews the validity and value of claims resulting from variations to contracts.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 18

FIELD	DESCRIPTION OF FIELD CONTENTS
Details of the variation	Copy of the variation and communications

Details of the claim for additional payments	Details of the communications claiming additional payment
Statement	Statement considering the validity of the claim and referencing the contract documentation to support the conclusions reached

1.18.2 Report on Claims for Extension of Time

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews the validity and claims for extensions of time.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 19

FIELD	DESCRIPTION OF FIELD CONTENTS
Details of contract programmes	Copy of the reasons and communications for extension of time
Details of the claim for extensions of time	Details of the communications claiming extension of time
Statement	Statement considering the validity of the claim and referencing the contract documentation to support the conclusions reached

1.18.3 Report on Resolution of Issues - Interpretation of Contract Wording

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews issues resulting from the interpretation of contract wording.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 20

FIELD	DESCRIPTION OF FIELD CONTENTS
Brief provided by the Employer	Copy of Brief provided by the Employer
Statement	Statement considering the points set out in the Brief and associated correspondence and documentation and making recommendations regarding the interpretation of the contract wording.

1.18.4 Report on Issues arising from Procurements carried out by Suppliers

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

This report reviews issues resulting procurement carried out for the Employer by their Suppliers.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 21

FIELD	DESCRIPTION OF FIELD CONTENTS
Brief provided by the Employer	The Employer's Brief will set out the issues to be considered and may include correspondence from the Employer and Suppliers.
Statement	Statement considering the points set out in the Brief and associated correspondence/ documentation as well as making recommendations based on procurement best practice and to guarantee compliance with Public Contracts (Scotland) Regulations.

1.19 Report on Issues arising from Procurements undertaken by the Employer

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

Reports reviewing issues arising from procurement undertaken by the Employer.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer:

Table 22

FIELD	DESCRIPTION OF FIELD CONTENTS
Brief provided by the Employer	Copy of the Brief provided by the Employer.
Statement	Statement considering the points set out in the Brief and associated correspondence/ documentation as well as making recommendations based on procurement best practice and to guarantee compliance with Public Contracts (Scotland) Regulations

1.19.2 Report on Supplier Insurances

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

These reports review the provision of insurances by Suppliers as required by contracts to ensure contract compliance.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer.

The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 23

FIELD	DESCRIPTION OF FIELD CONTENTS
Works or scheme reference	Scheme or work reference if insurance refers to a works contract
List of insurances required by the contract	Insurances in contract under consideration.
Statement	Comment on the whether or not there are minimum legal requirements for each type of insurance and whether the insurance provided complies or exceeds industry standards and good practice

1.19.3 Report on the Preparation of New Contracts

This report format is an example for the guidance of Tenderers and the Employer may vary the content and format during the period of the contract. Proposals by the Service Provider which improve reports will be considered by the Employer.

Reports provide guidance and advice on the preparation of new contracts.

The layout and format of these reports will be agreed with the Employer and may be varied or supplemented from time to time to meet the requirements of the Employer. The reports will include the index fields shown in Table 1 and as a minimum the following information:

Table 24

FIELD	DESCRIPTION OF FIELD CONTENTS
Brief provided by the Employer	Copy of the Brief provided by the Employer.
Statement	Statement considering the points set out in the Brief and providing advice on options available to the Employer, guidance on the possible consequences of adopting options, and suggested wording for inclusion in contracts. In preparing advice and guidance the service provider will be expected to draw on information and experience gained from providing other services required by this contract and on the information and experience gained from other work carried out by their organisation.

	<p>Statements and reports should give reasons for adopting or rejecting options, strategies and wording referenced to the above information and experience.</p>
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SCHEDULE 4 - ORDERING AND MANAGEMENT ARRANGEMENTS

This and the following 3 pages comprise Schedule 9 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

1 Ordering Procedures

- 1.1 Notwithstanding the provisions of Clause 4 of the Conditions of Contract and Clause 1.2 of this Schedule 4, the nature of the Contract will be ordered Services when required by and instructed in writing to the Service Provider by the Employer in accordance with these Ordering Procedures.
- 1.2 No assurance of whatsoever description is given by the Employer to the Service Provider in relation to the amount of Services and resources to be performed or provided at any time by the Service Provider during the Services Period.
- 1.3 The Service Provider shall not be reimbursed for any resources including staff resources in the performance of the Services unless an Employer Instruction has been issued in writing and this Employer Instruction has been signed by an Employer Authorised Person.
- 1.4 For the avoidance of doubt the Service Provider will not be entitled to reimbursement for any particular member of the Service Delivery Team unless the Employer has authorised such employment of any particular member of the Contract Team in advance of the particular part of the Services having commenced.
- 1.5 The Services required will be communicated to the Service Provider Authorised Person by the issuing of Employer Instructions
- 1.6 Employer Instructions may be sub-divided into Tasks.
- 1.7 Employer Instructions may include a brief for the services required by the Employer and the Service Provider's proposals for delivering the Services, including the methodology, staff and other resources to be used, and the estimated cost of delivering the Services.
- 1.8 The Employer Instruction will state a maximum cost that may be charged against each Instruction or Task. If the Service Provider considers that additional resources or costs will be required to complete the work set out in an Employer Instruction, the Service Provider shall seek the approval of the Employer who will consider the request, and if approved, issue a revised Employer Instruction.
- 1.9 The Employer Authorised Persons who have been authorised by the Employer to sign Employer Instructions are listed below:

Name	Post
[REDACTED]	Head of Asset Management and Procurement
[REDACTED]	Head of Engineering and Commercial Services
[REDACTED]	
[REDACTED]	

- 1.10 The Employer may amend the list of Employer Authorised Persons by notifying the Service Provider in writing.
- 1.11 An example Employer Instruction is shown in Annex 1 to Schedule 4.

2 Management Arrangements

- 2.1 The management of the Services, including deliverables and communications between the Employer, the Employer's Suppliers and the Service Provider will be in accordance with the parts and Schedules contained in this Contract.
- 2.2 The Service Provider will consider the risks associated with delivery of the Supplier contracts identified by the Employer and will propose an audit and monitoring programme to provide the Employer with the most effective and highest levels of assurance regarding the performance and value for money provided by Supplier contracts. Audit and monitoring programmes will be agreed with the Employer.
- 2.3 Quarterly progress meetings will be held to discuss the delivery of the Services and the performance of the Service Provider. These meetings will be attended by the Employer's Authorised Representatives and the Service Provider's Authorised Representatives, who may be supported by other members of the Employer's and Service Provider's teams.
- 2.4 Additional progress meetings may be requested by the Employer or the Service Provider as required.
- 2.5 Reports and other deliverables will be provided using templates and formats approved by the Employer.
- 2.6 Reports will be delivered to the Employer by uploading them into the web accessed database provided by the Employer and sending an email to the relevant members of the Employer's staff informing them that the report is available on the database.
- 2.7 The Service Provider will maintain a list of the Employer's staff who will be informed by email of the availability of relevant reports. This list will be agreed with the Employer and reviewed as required.
- 2.8 Where appropriate, the Service Provider will issue reports to the Suppliers by email with the report attached.
- 2.9 The naming convention for reports will be agreed with the Employer to facilitate storage and easy retrieval of reports from the Employer's systems.
- 2.10 The Employer may vary the process for delivery of reports during the period of the contract.

2.11 At monthly intervals, or such other periods as are agreed in writing between the parties, the Service Provider will provide to the Employer estimates of the total payments he considers will become due under this Contract. Such estimates will include for rates and/or fees for the provision and performance of the Services set out within the Contract, taking account of any written instructions by the Employer. The Service Provider will not permit his rates and/or fees to exceed such estimates without the prior written consent of the Employer.

2.12 The Employer requires the link between the use of the Service Provider's resources and outputs to be demonstrated and as such the Employer will require information to be provided in accordance with Schedule 2 Clause [1.15](#)

3 Coordination of Services with the Employer's Suppliers

3.1 Delivery of the Services will require the Service Provider to coordinate with the Employer's Suppliers to arrange access to Supplier's premises, a availability of Supplier's staff, and access to the trunk roads network, including the setting up of traffic management by Suppliers.

3.2 The Service Provider will liaise directly with the Employer's Suppliers to make such arrangements as are necessary to allow them to deliver the Services required by the Employer.

3.3 The Service Provider will familiarise themselves with the Employer's contracts with Suppliers including the obligations within the contracts for the Suppliers to facilitate and assist in the inspection, audit and monitoring processes required by the Employer.

3.4 In the event that Suppliers do not fully cooperate with the Service Provider to allow them to provide the Services to the Employer, the Service Provider will write to the Supplier stating their requirements and any difficulties that have arisen and request the Supplier to comply with and facilitate their requirements.

3.5 If the Service Provider subsequently cannot resolve any issues with the Supplier, they will write to the Employer stating the issues and the steps that have been taken to resolve them. The Employer will then arrange a joint meeting with the Service Provider and the Supplier and subsequently instruct the Supplier and the Service Provider on the actions to be taken.

4 Annex 1 - Example Employer Instruction

NOTE: This is an example Employer Instruction. The format and content of the Employer Instruction may be varied during the period of the contract and this example has no contractual basis and should not be relied on for the purpose of preparing a tender submission or price.

FROM: TRANSPORT SCOTLAND Roads Directorate Buchanan House 58 Port Dundas Road Glasgow G4 0HF	
TO: Performance Audit Group Manager Performance Audit Group (Turner and Townsend Project Management Ltd)	
	Revision No:
	Revision Date:
PERFORMANCE AUDIT GROUP CONTRACT EMPLOYERS INSTRUCTION	
Employer Instruction Number:1	El date : 1 October 2021
REVISION 1: REVISION 2: REVISION 3:	
El Title: Core Monitoring, Auditing, and Reporting Services	
SIGNED:	
PRINT NAME:	
Required completion date:	31/03/2022
Maximum authorised cost of work to be carried out in accordance with this instruction	£
NOTE: All services shall be provided in accordance with the Performance Audit Group Contract	
DETAILS:	
Provide the Core Monitoring, Auditing, and Reporting Services authorised by the Employer in accordance with the Contract.	
NOTES:	
1.	
2.	
Tasks:	
1.	
2.	
3.	

SCHEDULE 5 - SERVICE LEVELS AND KEY PERFORMANCE INDICATORS

This and the following 7 pages comprise Schedule 5 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

1 General

- 1.1 Key Performance Indicators (KPI) will be used to assess the performance of the Service Provider.
- 1.2 The Employer will provide a database for recording the submission of Service Provider's reports and for calculation of KPIs.
- 1.3 The database will be set up to allow both the Employer and the Service Provider access for data entry and editing of relevant fields.
- 1.4 The Service Provider shall be required to enter data into the database in accordance with the example form shown below. The Employer may amend the layout of the form and the content of the form during the period of the contract.
- 1.5 The Service Provider will be allowed to export data entered by themselves from the database to their own systems.
- 1.6 The Service Provider will enter the data and create a record for all reports in the audit and monitoring programmes agreed with the Employer.
- 1.7 The Employer will enter the Employer Instruction Title (EI Title), Employer Instruction date (EI Date), Employer Instruction Number (EI Number), Employer Instruction Task Number (EI Task Number) and Due Date for Ad-Hoc reports instructed by the Employer through the issue of an Employer Instruction to create a database record for subsequent completion by the Service Provider.
- 1.8 The Employer will enter the KPI status for reports received from the Service Provider.

2 Key Performance Indicators

- 2.1 Examples of Key Performance Indicators are shown below taking account of the frequency of submission of typical reports.
- 2.2 Key Performance Indicators may be varied by the Employer to take account of audit and monitoring programmes and other services required by the Employer.
- 2.3 Key Performance Indicators and other performance assessment measures shall be at the sole discretion of the Employer.
- 2.4 Example Database Form for recording the submission of report and data for calculation of KPIs.



Home Page > Reports > Report Details

PAG Service Provider Report

Data entered by Transport Scotland Only

KPI status

Date due Date received by TS

Comments

Record unlocked

Data entered by PAG or Transport Scotland

EI title

EI date

EI no EI task no

Data entered by PAG only

Report	<input type="text" value="Draft.docx"/>	Date Uploaded	24/11/20 11:41:00
	<input type="button" value="Browse"/> <input type="button" value="Upload Report"/>		
Report title	<input type="text" value="Inspection Services"/>		
Report type	<input type="text" value="Inspection Service Reportx"/>		
Report stage	<input type="text" value="Draft"/>	Report version	<input type="text" value="1"/>
Report date	<input type="text" value="No date is selected"/>	Report ID	<input type="text" value="3 8"/>
Contract	<input type="text" value="4G Operating Company Contracts Unit"/>		
Inspection/review date	<input type="text" value="No date is selected"/>	Modified	24/11/20 11:31:00
Report by	<input type="text" value="anyone"/>	Route	<input type="text" value="A"/>
Start linkage	<input type="text"/>	End linkage	<input type="text"/>
Start section	<input type="text"/>	End section	<input type="text"/>
Start chainage	<input type="text"/>	End chainage	<input type="text"/>
Start easting	<input type="text"/>	End easting	<input type="text"/>
Start northing	<input type="text"/>	End northing	<input type="text"/>
Summary report text	<input type="text" value="Inspection of A
Summary of items noted for action
* Blocked drainage at location xxxx/yyyy"/>		

3 Annual submissions/reports

3.1 By 1 March each year, the Service Provider shall provide an assessment of the risks presented by Supplier contracts and a prioritised programme of auditing and monitoring optimising the effectiveness of PAG resources which can be provided within the budgets given by the Employer.

3.2 A first draft of the report will be submitted by the due date for consideration and comment by the Employer, followed by submission of a final report within 14 calendar days of receipt of the Employer's comments.

KPI 1 - Submission of assessment of risks and programme of auditing and monitoring by 1 March each year.

KPI 2 - The quality of the report assessing the risks presented by Supplier contracts and the prioritised programme of auditing and monitoring.

4 Monthly submissions/reports

4.1 Financial

- Summary Budget Report - Budget/expenditure report
- Financial systems reconciliation report

4.2 Statement and Invoices Report - Recommendations for payment of monthly statements report

4.3 A final report will be submitted by the due date set by the Employer.

KPI 3 - Submission of monthly reports by date required by the Employer

KPI 4 - The quality of monthly financial submissions/reports.

5 Inspections

5.1 Inspection Services Report

5.2 A first draft will be submitted for consideration and comment by the Employer, followed by submission a final report within 7 calendar days of receipt of the Employer's comments

KPI 5 - Submission of monthly inspection reports by date required by the Employer.

KPI 6 - The quality of monthly inspection submissions/reports.

6 Ad-hoc Payment Recommendation reports – within 5 calendar days of receiving invoice or request for payment.

6.1 Statement and Invoices Report - Recommendations for payment of invoiced sums A final report will be submitted by the due date set by the Employer

KPI 7 - Submission of ad-hoc payment recommendation reports by the fifth day following receipt of the invoice.

KPI 8 – The quality of Ad-hoc Payment Recommendation Reports and as amended or added to by the Employer during the period of the contract.

7 Programmed submissions/reports – submitted in accordance with the agreed programme

- Works Planning and Programming Report
- Technical Compliance Report

- Measurement Report
- Measurement - Payment Adjustment Report
- Data Integrity Review Report
- Process Compliance Review Report
- KPI Report
- Risk Mitigation Report
- Performance Improvement Summary Report

The programmes will allow for the submission of a first draft of reports for consideration and comment by the Employer, followed by submission a final report within 7 calendar days of receipt of the Employer's comments.

KPI 9 - Submission of programmed reports within timescales set out in programmes and agreed by the Employer.

KPI 10 - The quality of Programmed submissions/report.

8 Ad-hoc submissions/reports - submitted in accordance with the timescales required by the Employer's Brief

- Advice on Responding to Enquiries report
- Value for Money report - Proposals and Schemes
- Commercial Report - Prices and Rates
- Report on Claims Resulting from Variations
- Report on Claims for Extension of Time
- Report on Resolution of Issues - Interpretation of Contract Wording
- Report on Issues arising from Procurements carried out by Suppliers
- Report on Issues arising from Procurements undertaken by the Employer
- Report on Supplier Insurance
- Report on the Preparation of New Contracts

A first draft of reports for consideration and comment by the Employer will be submitted by the date set out in the Employer's Brief, followed by submission of a final report within 7 calendar days of receipt of the Employer's comments

KPI 11- Submission of ad-hoc reports within timescales set out in the Employer's Brief and agreed to by the Service Provider

KPI 12 - The quality of Ad-hoc submissions/reports.

9 Additional Performance Considerations

9.1 In addition to the KPIs, the Employer will consider the following elements of service delivery in assessing the effectiveness of the services delivered by the Service Provider.

- i) The number of issues identified by the Service Provider with respect to Supplier contracts and operations which lead to better value for money for the Employer.

- ii) The number of issues identified by the Service Provider with respect to Supplier contracts and operations which lead to improved Supplier performance.
- iii) The value of direct and indirect financial benefits attributable to issues identified by the Service Provider with respect to Supplier contracts. This is an indication of the financial benefits provided by employment of the Service Provider
- iv) The number of commercial or contractual issues raised by Suppliers which have not been previously identified by the Service Provider.
- v) The number of submissions/reports in each quality category
- vi) Service Provider staff turnover and availability of staff with the required qualifications, experience and knowledge in accordance with the Contract and the agreed staff structure.

10 Required Levels of Service

- 10.1 The Service Provider will commit sufficient resources with the necessary skills and experience to meet the timescales agreed with the Employer and set out in Schedule 5 for the delivery of the Services.
- 10.2 The Service Provider will commit sufficient resources with the necessary skills and experience to achieve the quality of reports agreed with the Employer as measured by the Key Performance Indicators given in this Schedule 5.
- 10.3 The Employer will assess the quality of each draft submission and final submission of reports and categorise them as:
- Unacceptable
 - Acceptable
 - Good
 - Very Good
- 10.4 Reports for sections 2.1 of Schedule 1 will inform the Employer of financial actions that need to be implemented without delay and consequently these reports must be entirely accurate and complete on first submission.

KPI	Minimum required level of Service
KPI 1 - Submission of assessment of risks and programme of auditing and monitoring by 1 March each year.	100% compliance
KPI 2 - The quality of the report assessing the risks presented by Supplier contracts and the prioritised programme of auditing and monitoring	100 % compliance at Acceptable level
KPI 3 - Submission of monthly financial reports by 1st of each month .	100% compliance

KPI 4 - The quality of monthly financial submissions/reports set out in Section 2.1.	100 % compliance at Acceptable level
KPI 5 - Submission of monthly inspection reports by 1st of each month	95 % compliance over a rolling 12 months period
KPI 6 - The quality of monthly inspection reports.	95 % compliance at Acceptable level over a rolling 12 months period.
KPI 7 - Submission of ad-hoc payment recommendation reports by the fifth day following receipt of the invoice.	100% compliance
KPI 8 – The quality of Ad-hoc Payment Recommendation Reports and as amended or added to by the Employer during the period of the contract.	100 % compliance at Acceptable level
KPI 9 - Submission of programmed reports within timescales set out in programmes and agreed by the Employer.	95 % compliance over a rolling 12 months period.
KPI 10 - The quality of Programmed submissions.	95 % compliance at Acceptable level over a rolling 12 months period
KPI 11 - Submission of ad-hoc reports within timescales set out in the Employer's Brief and agreed to by the Service Provider	95 % compliance over a rolling 12 months period.
KPI 12 - The quality of Ad-hoc submissions/reports.	95 % compliance at Acceptable level over a rolling 12 months period

11 Improving Performance

- 11.1 The Employer will consider the effectiveness of the services delivered by the Service Provider using the KPIs and the criteria given in Clause 10 of this Schedule 5 and will inform the Service Provider of areas of service delivery where improvements are required.
- 11.2 The Employer will score the performance of the Service Provider at regular intervals.
- 11.3 It is the current practice for the Performance Feedback Reports to be completed at six monthly intervals. The frequency of these reports may be varied at the discretion of the Employer.
- 11.4 The Service provider will monitor KPI 1 to 12 inclusive and where the Service Provider fails to achieve the minimum service level required by the Employer, the Service Provider will write to the Employer giving reasons why the services provided have not met the required service levels and shall state what steps they are taking to improve services.
- 11.5 Where the Employer has indicated on the Supplier Performance Feedback Report, or supplementary comments provided by the Employer, that the effectiveness of the services should be improved, the Service Provider will submit proposals for improvements for the consideration of the Employer.
- 11.6 Subject to discussion and agreement with the Employer, the Service Provider will implement improvements to the delivery of services without delay.

SCHEDULE 6 – TRANSPARENCY REPORTS AND SERVICE PROVIDER SENSITIVE INFORMATION

This page comprises Schedule 6 to the foregoing Contract between the Scottish Ministers and Turner and Townsend Project Management Ltd.

Part 1- Transparency Reports

The Employer will routinely publish information in relation to the Contract. This information will be released in Transparency Reports. An example of the type and frequency of the information is as follows:

TRANSPARENCY REPORTS (to be completed by the Employer within 3 months of Contract Award)

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Contract Document)</i>	(Excluding Sensitive Provider Sensitive Information)	Pdf	Annually (or when amended)
<i>(Annual Spend)</i>	Annual Spend Figure		Annually

Part 2

SERVICE PROVIDER SENSITIVE INFORMATION

Type of information specified as Service Provider Sensitive	Reason why information is sensitive	Duration of sensitivity
CVs	Personal Information	Indefinite
Rates	Commercially sensitive	Extent of the Commission

SCHEDULE 7- DATA

This page comprises Schedule 7 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

- 1 Data Processing provision as required by Article 28(3) UK GDPR.

This Part includes certain details of the Processing of Personal Data in connection with the Services:
- 1.2 Subject matter and duration of the Processing of Personal Data
- 1.2.1 The subject matter and duration of the Processing of Personal Data are set out in the Contract.
- 1.3 The nature and purpose of the Processing of Personal Data
- 1.3.1 Personal Data is Processed by the Service Provider on behalf of the Scottish Ministers In relation to auditing, monitoring and reporting on the activities and performance of Suppliers including:
 - i) In relation to third party claims where the claim details are provided by the Suppliers.
 - ii) Information relating to Damage to Crown Property.
 - iii) In relation to general correspondence with stakeholders (including the public) where Suppliers will process this information for the purposes of producing or contributing to relevant responses in accordance with the Contracts.
 - iv) Performance of the Service Provider's obligations under the Agreement.
- 1.4 The types of Personal Data to be Processed
- 1.4.1 This includes the following: Names, organisation details, addresses, e-mail addresses, telephone numbers, car registration/licence plate numbers and details of insurers (where these include personal data), grade.
- 1.5 The categories of Data Subject to whom Personal Data relates
- 1.5.1 This includes the following: Members of the public, local councillors, Scottish Ministers and any other stakeholders who choose to contact the Scottish Ministers or the Suppliers, individuals whose details are held in the AMPS.
- 1.6 The obligations and rights of the Employer
- 1.6.1 The obligations and rights of the Employer as the Controller are set out in Clause 15 of the Contract.

SCHEDULE 8 - ADJUDICATION

This and the following 2 pages comprise Schedule 8 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

1 Adjudication procedure

- 1.1 Either party may give notice to the other party to refer a dispute to adjudication at any time.
- 1.2 The Adjudicator shall have power to open up, review and revise any decision, opinion, instruction, direction, notice (with the exception of statutory notices), objection or certificate of any person given or made pursuant to this Contract, relating in any way to the dispute save as otherwise expressly provided within this Contract.
- 1.3 The Adjudicator shall have power to appoint suitably qualified and experienced independent professional advisors as he may reasonably require (and any necessary secretarial assistance as is necessary) to advise him on any issues and the Adjudicator shall have proper regard to such advice in reaching his decision.
- 1.4 Where after consideration of the written submissions of the parties the Adjudicator is of the opinion that
 - a) such written submissions are insufficient for him to reach a decision; or
 - b) clarification of the precise question which is being addressed to him is required; then he shall so advise the parties within 7 days of his receipt of such written submissions or if late, and in that event he shall be entitled to determine the further procedures which he considers necessary to enable him to resolve the dispute.
- 1.5 1.5 The Adjudicator shall have power
 - a) to hold a hearing or otherwise or to take oral evidence from the parties;
 - b) fix the date time and place of any meetings, hearings or inspections which he deems appropriate giving the parties reasonable notice thereof and declaring that any party may appoint representatives to appear on its behalf at any hearing;
 - c) to examine any witness or conduct an inspection of any property or thing relevant to the dispute in the absence of any or any other representative of the parties or any other person;
 - d) at any time to permit any party to amend any submission;
 - e) to continue with the reference to the adjudication in default of appearance or of any act by any party in like manner as a Judge of the Court of Session may continue with proceedings in that Court when a party fails to comply with an order of that Court or requirement of rules of Court, including power to strike out any claim, defence, counter claim or other submission and to make any decision consequent upon any such striking out, in the event a party fails within the time scale specified in this procedure or in order to do any act required by this procedure or to comply with any order of the Adjudicator.

- f) to order either party to produce to the other party and to the Adjudicator for inspection, and to supply copies of any documents in that party's possession, custody or power which in the event of a dispute, the Adjudicator determines to be relevant. Subject to the rules of privilege, and in the event of privilege being claimed the Adjudicator shall have power hereunder to decide this question;
 - g) to order either party to answer interrogations on the application to the other party;
 - h) to order the inspection, preservation, storage, or interim custody of any property or thing relevant to the dispute under the control of any of the parties;
 - i) to order the authorisation of any sample to be taken, or any observation to be made, or experiment to be tried which may, in the Adjudicator's discretion, be necessary or expedient for the purpose of obtaining full information or evidence;
 - j) to award simple interest to the successful party on any sums held to be due from one party to the other from any date after the date of reference to adjudication. The rate of interest shall be at the discretion of the Adjudicator.
- 1.6 Notwithstanding any of the foregoing, nothing in this procedure shall be taken as conferring power upon the Adjudicator to order any party or a representative of any party to give evidence (whether in person or by way of documentary or similar evidence) which could not be ordered if the proceedings were before the Court of Session.
- 1.7 The Adjudicator's appointment shall be rapidly secured by the parties either by agreement, or failing agreement, the Adjudicator shall be nominated by the Institution of Civil Engineers.
- 1.8 The dispute shall be referred to the Adjudicator within 7 days of the notice referred to in paragraph 1 of this Appendix.
- 1.9 The Adjudicator shall issue his decision in writing to both parties within 28 days of referral of the dispute to him or such longer period after referral as is agreed by the parties.
- 1.10 With the consent of the party referring the dispute, the Adjudicator may extend the period of 28 days referred to in paragraph 8 of this Appendix by up to 14 days.
- 1.11 The Adjudicator's decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (Contract Clause 62) or by written agreement.
- 1.12 The Adjudicator shall act impartially and ascertain the facts and the law.
- 1.13 The Adjudicator, his employees or agents, shall not be liable for anything done or omitted in the discharge of his functions as Adjudicator unless the act of omission is in bad faith.
- 1.14 The costs of and incidental to retaining the Adjudicator, and any referral in terms of this procedure and the appointment of the Adjudicator shall be within his award and failing which shall be borne equally between the parties but each party shall bear the costs of providing all data, information and submissions given by him and the costs and expenses of witnesses and persons retained by him.

- 1.15 Unless both parties otherwise agree in writing, any representations or concessions made by either party in, or in connection with the proceedings before the Adjudicator shall be without prejudice to such party's rights and shall not be raised by either party in any subsequent reference to arbitration pursuant to Clause 62 of the Contract or other legal proceedings.

SCHEDULE 9 - CYBER SECURITY REQUIREMENTS

This page comprises Schedule 9 to the foregoing Contract between the Scottish Ministers and [Turner and Townsend Project Management Ltd.](#)

1 Requirements

- 1.1 As part of good cyber security practices, the Service Provider shall obtain prior to the Contract Commencement Date and maintain a minimum accreditation of Cyber Essentials Plus until the Service End Date.
- 1.2 The Service Provider shall ensure all sub-contractors and suppliers who perform Operations under this contract obtain prior to the Contract Commencement Date and maintain a minimum accreditation of Cyber Essentials Plus until the Service End Date.
- 1.3 In the event the Service Provider and or any sub-contractor and supplier do not have a minimum accreditation of Cyber Essentials Plus on the Contract Commencement Date the Employer shall require the Service Provider (and or any sub-contractor and supplier) to implement the Cyber Implementation Plan submitted as part of the Tender to achieve satisfactory compliance within 6 months of the Contract Commencement Date. The parties shall review the successful supplier's progress on the Cyber Implementation Plan regularly every 4 weeks following contract award.
- 1.4 The Service Provider shall not procure any sub-contractor and or supplier to perform any Operations under the Contract unless they have obtained Cyber Essentials Plus.
- 1.5 The Service Provider shall notify the Employer immediately as soon as it knows or believes that a Cyber Security Incident has or may have taken place and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by the Employer. Where such initial notification is not in writing, then the Service Provider shall provide the Employer with a written notification setting out the details required under this paragraph 1.5 promptly and in any case within 12 hours from the initial notification.
- 1.6 Following a Cyber Security Incident, the Service Provider shall:
 - (a) use its best endeavours to mitigate the impact of the Cyber Security Incident;
 - (b) investigate the Cyber Security Incident completely and promptly, and shall keep the Employer fully informed of the progress and findings of its investigation;
 - (c) provide the Employer as soon as it is practicable and no later than a month after the incident a project plan demonstrating mitigation measures already taken and those planned to remedy the effects of the incident. In addition, on an ongoing basis, at no less than a monthly period, the Service Provider shall provide the Employer of a report on the progress of the plan
 - (d) where required to do so, inform any applicable regulator of the Cyber Security Incident; and
 - (e) take any action deemed necessary by the Employer in the circumstances, including complying with any additional security measures deemed appropriate by the Employer.
- 1.7 The Service Provider shall perform its obligations under paragraphs 1.5 and 1.6 of this Schedule at no additional charge to the Employer, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the Employer.

SCHEDULE 10 - FORM OF TENDER AND PARENT COMPANY GUARANTEES

This and the following 19 pages comprise Schedule 10 to the foregoing Contract between the Scottish Ministers and Turner and Townsend Project Management Ltd.

PERFORMANCE AUDIT GROUP 2021 CONTRACT

TS/ROADS/SER/2020/04

PACKAGE A - FORM OF TENDER

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APPENDIX A - FORM OF TENDER

APPENDIX A - FORM OF TENDER**Tender for Performance Audit Group Contract 2021 incorporating Tenderer Quality Submission, Annex A Anti-Collusion Certificate, Annex B Prompt Payment Certificate, Annex C Schedule of Tender Prices, Annex D Parent Company Guarantee, Annex E Undertaking of Insurances Certificate and Annex F Certificate of Non-Canvassing**

(Note – Annexes A, B, C, D, E and F form part of the Tender Submission)

To: Transport Scotland, Roads
Directorate
Buchanan House
58 Port Dundas Road
Glasgow G4 0HF

Sirs

Having examined the Invitation Documents and the Conditions of Contract for undertaking the **Performance Audit Group Contract** (and the matters set out in our Quality Submission and Annexes A, B, C, D, E, and F hereto), we offer to undertake the services therein in conformity with the said Invitation Documents, our Quality Submission and Annexes for such sums as may be determined in accordance with the said Invitation Documents and the Conditions of Contract.

Unless and until a Contract is prepared and executed, this Tender Submission together with your written acceptance thereof shall constitute a binding contract between us.

We understand that you are not bound to accept the most economically advantageous or any Tender Submission you may receive.

In WITNESS WHEREOF these presents this page is duly signed:

Dated this 26th day of May 2021

Signature  in the capacity of Director

Name: 

Duly authorised to sign Tender Submissions for and on behalf of Tenderer:

Turner & Townsend Project Management Limited

Postal address: Atria One, Level 2, 144 Morrison Street, Edinburgh EH3 8EX

Telephone No:  Email Address: @turntown.co.uk

**ANNEX A TO APPENDIX A FORM OF TENDER:
ANTI-COLLUSION CERTIFICATE**

ANNEX A TO APPENDIX A FORM OF TENDER: ANTI-COLLUSION CERTIFICATE

Page 1 of 2

This is Annex A to the Form of Tender from Turner & Townsend Project Management Limited to the Employer in respect of the Performance Audit Group Contract 2021 dated 26th May 2021.

1. We certify that this Tender Submission is made in good faith, and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not and we undertake that we will not before the award of the Contract for the work:
 - (i)
 - (a) communicate to any person other than the Employer or a person duly authorised by them the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the Tender Submission;
 - (b) enter into any agreement or arrangement with any person [outside this organisation/consortium]¹ that they shall refrain from tendering, withdraw any Tender Submission once offered, qualify any Tender Submission or vary the amount of any tender to be submitted;
 - (ii) pay, give or offer to pay or give any sum of money or other consideration directly or indirectly to any person outside this organisation/consortium for doing or having done or causing or having caused to be done in relation to any other Tender Submission or proposed Tender Submission for the work, any act or thing of the sort described at (i) (a) and (b) above.

Signed 

2. We further certify that the principles described in paragraphs 1 (i) and (ii) above have been, or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing services or materials connected with the Tender Submission and any contract entered into with such sub-contractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.
3. In this Certificate, the word 'person' includes any persons and any body or association, corporate or unincorporated and 'any agreement or arrangement' includes any transaction, agreement, concerted practice or understanding, formal or informal, written or unwritten and whether legally binding or not; and 'the work' means the work in relation to which this Tender is made.
4. In this Certificate, references to the tender shall include the Comparative Cost of Tender and all rates and prices used within the Tender Submission.

In WITNESS WHEREOF these presents consisting of this Page 2 of 2 and the preceding Page 1 of 2 are duly signed:

Dated this 26th day of May 2021

Signature  in the capacity of Director

Name 

Duly authorised to sign Tender Submissions and acknowledge the contents of Annex A to Form of Tender (Anti-Collusion Certificate) for and on behalf of:

Tenderer: Turner & Townsend Project Management Limited

Postal Address: Atria One, Level 2, 144 Morrison Street, Edinburgh EH3 8EX

Telephone No:  Email Address: @tumtown.co.uk

**ANNEX B TO APPENDIX A FORM OF TENDER:
PROMPT PAYMENT CERTIFICATE**

ANNEX B TO APPENDIX A FORM OF TENDER: PROMPT PAYMENT CERTIFICATE

Page 1 of 2

This is Annex B to the Form of Tender from Turner & Townsend Project Management Limited to the Employer in respect of the Performance Audit Group Contract 2021 dated 26th May 2021.

PROMPT PAYMENT CERTIFICATE

Having examined the provisions of the Agreement and relevant legislation designed to ensure the prompt payment of sub-contractors, sub-consultants, delegates or transferees we certify that:

- (i) any sub-contract, sub-consultancy or other document effecting the transfer or delegation, shall include a provision for the timely payment of the sub-contractor confirming that all payments to be made to the sub-contractor, sub-consultant, delegate or transferee shall be paid within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract, sub-consultancy or document requirements.

We understand that failure by us to comply with the provisions of this certificate shall be a breach of the provisions of the Agreement.

Signature  in the capacity of Director

In WITNESS WHEREOF these presents consisting of this Page 2 of 2 and the preceding Page 1 of 2 are duly signed by the undersigned:

Dated this 26th day of May 2021

Signature  in the capacity of Director

Name: 

A person authorised to sign Tenders and certify acceptance of the provisions of Annex B to Form of Tender (Prompt Payment Certificate) for and on behalf of the Tenderer:

Turner & Townsend Project Management Limited

Postal Address: Atria One, Level 2, 144 Morrison Street, Edinburgh EH3 8EX

Telephone No: 

Company Registered No: 02165592

**ANNEX D TO APPENDIX A FORM OF TENDER:
PARENT COMPANY GUARANTEE**

ANNEX D TO APPENDIX A FORM OF TENDER: PARENT COMPANY GUARANTEE



25 May 2021.

To: Scottish Ministers,
Roads Directorate
Buchanan House
58 Port Dundas Road
Glasgow
G4 0JF

One New Change
London
EC4M 9AF

www.turnerandtowntsend.com

Dear Sirs,

Performance Audit Group Contract 2021 - Parent Company Guarantee from Turner & Townsend UK Limited

We refer to the Tender Submission for the above submitted on 26th May 2021 by Turner and Townsend Project Management Limited with company number 02165592 (hereinafter referred to as "the Company").

Whereas we are the holding company of "the Company", in the event of the Scottish Ministers accepting the said Tender Submission submitted by the Company and thereby entering into a contract with the Company (which contract is hereinafter referred to as "the Contract") we hereby undertake to the Scottish Ministers as follows:

1. We guarantee that the Company shall duly and punctually perform each and all of its obligations, warranties and undertakings (whether actual or contingent, present or future) contained in the Contract1.
2. If the Company shall in any respect fail to perform any such obligations, warranties or undertakings under the Contract or shall commit any breach thereof, or fails to make payment of any amount due to the Scottish Ministers under, arising out of or pursuant to the Contract, or in the event of the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction ("Insolvency") (together, the "Obligations"), we undertake, on written demand by the Scottish Ministers, to perform or to take whatever steps may be necessary to achieve performance of said Obligations under the Contract and shall indemnify and keep indemnified the Scottish Ministers against any losses, damages, claims, costs and expenses which may be incurred by them by reason of any such Insolvency or failure or breach on the part of the Company, to the extent that such losses, damages, claims, costs and expenses are or would otherwise be recoverable by the Scottish Ministers from the Company in terms of or in respect of the said Contract.
3. Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and, without prejudice to the foregoing generality, we shall not be released or discharged from our liability hereunder by:

COMMISSION

- (a) any waiver or forbearance by the Scottish Ministers of, or in respect of, any of the obligations of the Company under the Contract whether as to payment, time, performance or otherwise howsoever, or by any failure by the Scottish Ministers to enforce the Contract or these presents, or
- (b) any alteration to, addition to, or deletion from the Contract or the scope of the work to be performed under the Contract, or
- (c) any change in the relationship between ourselves and the Company, or
- (d) the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,

and our guarantee and undertakings hereunder shall continue in force until all the obligations of the Company under the Contract and all our obligations hereunder have been duly performed.

4. Notwithstanding any other provision of this guarantee, our obligations and the liabilities under or arising out of this guarantee shall be no greater than the obligations and liabilities of the Company under the Contract and in the event that the Scottish Ministers seek to enforce the terms of this guarantee against us, the Scottish Ministers shall be entitled to recover no more in relation to a claim under this guarantee than the Scottish Ministers would be entitled to recover from the Company in respect of the same matter under the Contract. We shall have available to us any defence, right or remedy that the Company may have against the Scottish Ministers pursuant to the Contract and shall be entitled to rely on all limitations and exclusions of liability in the Contract.
5. We shall not (so long as the Company has any actual or contingent obligations pursuant to the Contract) by reason of the provision of, or the performance by it of any of its obligations under this guarantee:
 - (a) in respect of any payment by us under this guarantee claim, accept, prove as creditor or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Company or claim any set-off, right of contribution or indemnity payment or counterclaim against the Company; or
 - (b) in respect of any payment by us under this guarantee take the benefit (in whole or in part and whether by way of subrogation or otherwise) of, succeed to or share in, any rights, securities or moneys of the Scottish Ministers whether under the Contract or otherwise; or
 - (c) prove in competition with the Scottish Ministers in respect of any payment by us under this guarantee or otherwise be entitled in competition with the Scottish Ministers to claim or have the benefit of any set-off, counterclaim or proof against or dividend, composition or payment by the Company or of any security which the Scottish Ministers holds or may hold for any money or liabilities due or incurred by the Company to the Scottish Ministers and in case we receive any sums from the Company in respect of any payment of us under this guarantee we shall hold such monies on trust for the Scottish Ministers so long as any sums are payable (contingently or otherwise) under this guarantee.
6. We undertake to the Scottish Ministers that we have not taken and will not take any security from the Company in respect of our obligations under this guarantee, and any security taken and all monies received by us in breach of this provision will be held in trust for the Scottish Ministers as security for our obligations.

Contract)

7. The Scottish Ministers will not be obliged, before enforcing any of their rights or remedies conferred upon it by this guarantee or by law, to take any step or action, including (without limitation):
 - (a) the granting of any time or indulgence to the Company;
 - (b) the taking of any legal proceedings or action or the obtaining of any judgment against the Company in any court or adjudication;
 - (c) the making or filing of any claim in bankruptcy, liquidation, winding up or dissolution of the Company;
 - (d) the pursuance or exhaustion of any other right or remedy against the Company;and our liabilities may be enforced irrespective of whether any legal proceedings are being or have been taken against the Company.
8. Our obligations under this guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.
9. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this guarantee.
10. If at any time any provision of this guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this guarantee shall not be affected or impaired.
11. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
12. The rights, powers and remedies provided in this guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
13. We shall not to assign, novate, pledge security over, or otherwise transfer this Guarantee.
14. With prior notification to, but without the consent of, the Guarantor, the Scottish Ministers shall be entitled to assign, novate or transfer this Guarantee to any person to which the Contract has been assigned in accordance with its terms. No other assignation, novation, or transfer by the Scottish Ministers shall be permitted without the prior written consent of the Guarantor, which the Guarantor shall be entitled to withhold at its discretion.
15. This guarantee shall expire and cease to have effect upon the expiry of the Non-Conformance Liability Period under the Contract, other than in relation to matters which are the subject of legal proceedings raised against the guarantor relative to this guarantee prior to date.

Continuation

- 16. This guarantee shall be construed and take effect in accordance with Scots Law and any dispute in connection with this guarantee shall be determined by the Scottish Courts.

In WITNESS WHEREOF these presents consisting of this the preceding [three] pages are subscribed as follows:

They are subscribed for and on behalf of the Guarantor - Turner & Townsend UK Limited

At One New Change, London, EC4M9AF

On 25th May 2021

By 
Signature 

In the presence of this witness:

Name 
Signature 

Address One New Change, London, EC4M9AF

**ANNEX E TO APPENDIX A FORM OF TENDER:
CERTIFICATE OF UNDERTAKING OF INSURANCES**

ANNEX E TO APPENDIX A FORM OF TENDER: CERTIFICATE OF UNDERTAKING OF INSURANCES

Each Tenderer shall submit as part of the Tender Submission a Certificate to demonstrate that he has fully understood the insurance requirements of the Invitation Documents and that the terms of the insurance policies put in place by the Contractor for the Contract shall all be in accordance with the provisions of the Invitation Documents. The Certificate shall be in the format given in this Annex E to of Tender.

This is Annex E to the Form of Tender from Turner & Townsend Project Management Limited to the Employer in respect of the Performance Audit Group Contract 2021 dated 26th May 2021.

CERTIFICATE OF UNDERTAKING OF INSURANCES

1. Having examined the provisions of Clause 59 of the Conditions of Contract of the Invitation Documents we hereby certify that we have understood these provisions and hereby undertake to comply in full with them in the event that our Tender Submission for the Performance Audit Group Contract 2021 is successful.
2. We also certify that we accept in the event of our failure to comply with Clause 59 of the Conditions of Contract of the Invitation Documents we shall be in Default under the Contract and that this may result in action by the Employer in accordance with the provisions of Clause 61 of the Conditions of Contract.

In WITNESS WHEREOF these presents consisting of this Page 1 of 1 is duly signed:

Dated this 26th day of May 2021

Signatur  in the capacity of Director

Name: 

Duly authorised to sign Tender Submissions and acknowledge the contents of Annex E to Form of Tender (Certificate of Undertaking of Insurances) for and on behalf of:

Tenderer: Turner & Townsend Project Management Limited

Address: Atria One, Level 2, 144 Morrison Street, Edinburgh EH3 8EX

Telephone No: 

**ANNEX F TO APPENDIX A FORM OF TENDER:
CERTIFICATE OF NON-CANCASSING**

ANNEX F TO FORM OF TENDER CERTIFICATE OF NON-CANVASSING

This is Annex F to Form of Tender – Certificate of Non-Canvassing from Turner & Townsend Project Management Limited to the Employer in respect of the Performance Audit Group Contract 2021 dated 26^h May 2021.

CERTIFICATE OF NON-CANVASSING

We Turner & Townsend Project Management Limited hereby undertake that in respect of the Tender Submission for the Performance Audit Group Contract 2021 that we have not canvassed or solicited nor will in the future canvass or solicit the Employer or any office or employee thereof in connection with the award of the Contract and that the persons employed by us acting on our behalf have not nor will not do any such act.

In this certificate the word "person" includes any person and any body or association, corporate or unincorporated and "agreement" or "arrangement" include any such transactions, whether formal or informal, legally binding or not.

Dated this 26th day of May 2021

Signature  in the capacity of Director

Name: 

Duly authorised to sign Tender Submissions and acknowledge the contents of Annex F to Form of Tender – Certificate of Non-Canvassing for and on behalf of the Tenderer:

Turner & Townsend Project Management Limited

Postal Address: Atria One, Level 2, 144 Morrison Street, Edinburgh EH3 8EX

Telephone No: 

Company Registered No: 02165592

**ANNEX F TO APPENDIX A FORM OF TENDER:
CERTIFICATE OF NON-CANCASSING**

ANNEX F TO FORM OF TENDER CERTIFICATE OF NON-CANVASSING

This is Annex F to Form of Tender – Certificate of Non-Canvassing from Turner & Townsend Project Management Limited to the Employer in respect of the Performance Audit Group Contract 2021 dated 26^h May 2021.

CERTIFICATE OF NON-CANVASSING

We Turner & Townsend Project Management Limited hereby undertake that in respect of the Tender Submission for the Performance Audit Group Contract 2021 that we have not canvassed or solicited nor will in the future canvass or solicit the Employer or any office or employee thereof in connection with the award of the Contract and that the persons employed by us acting on our behalf have not nor will not do any such act.

In this certificate the word "person" includes any person and any body or association, corporate or unincorporated and "agreement" or "arrangement" include any such transactions, whether formal or informal, legally binding or not.

Dated this 26th day of May 2021

Signature  n the capacity of Director

Name: 

Duly authorised to sign Tender Submissions and acknowledge the contents of Annex F to Form of Tender – Certificate of Non-Canvassing for and on behalf of the Tenderer:

Turner & Townsend Project Management Limited

Postal Address: Atria One, Level 2, 144 Morrison Street, Edinburgh EH3 8EX

Telephone No: 

Company Registered No: 02165592

SCHEDULE 11 - CLARIFICATIONS TO THE CONTRACT

This and the following 2 pages comprise Schedule 11 to the foregoing Contract between the Scottish Ministers and Turner and Townsend Project Management Ltd.

DATE – 14 April 2021

PERFORMANCE AUDIT GROUP 2021 CONTRACT

Tender Bulletin No. TB002

A RESPONSES TO TENDER QUERIES WHICH WILL FORM PART OF THE CONTRACT

Tender Query TQ019

PAG2021 Contract document - Clause 23 Services Delivery Team, Clause 23.3 - Clause 23.3 requires the submission of individuals for approval for core roles in the Services Delivery Team, as defined in Schedule 2, to include details of their contract of employment with the Service Provider. Can Transport Scotland confirm whether this is required as part of the tender submission and if so where this information should be included?

Response

We believe this query is in relation to clause 24.3 of the Contract. The Employer confirms that this requirement relates to the Contract once live i.e. proposed changes to those individuals already submitted (and approved) within the Tender Submission. As such these details are not required as part of the Tender Submission.

Tender Query TQ020

Clause 57.3 states that the Service Provider must give the Employer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place. We cannot provide our insurance policies as these are confidential. Can Transport Scotland please confirm a broker's verification will be acceptable for all the insurances required?

Response

The Employer confirms that a broker's verification will be acceptable.

DATE – 16 April 2021

PERFORMANCE AUDIT GROUP 2021 CONTRACT

Tender Bulletin No. TB003

A RESPONSES TO TENDER QUERIES WHICH WILL FORM PART OF THE CONTRACT

Tender Query TQ023

Where a chartered professional is required for the role can it be agreed that the chartered professional can be either that stated or equivalent suitable to the role for all roles at this level?

Response

The majority of roles requiring a chartered professional have coverage “Chartered professional relevant to role” or “equivalent Chartered professional” which allows a certain degree of flexibility (albeit individual must still be Chartered). However there are some roles that do not allow such flexibility (e.g. Financial Manager, Procurement Advisor, Insurance Advisor).

DATE – 7 May 2021**PERFORMANCE AUDIT GROUP 2021 CONTRACT**Tender Bulletin No. TB006

A RESPONSES TO TENDER QUERIES WHICH WILL FORM PART OF THE CONTRACT

Tender Query TQ037

The role of the ‘Technical Advisor-IT’ is stated as providing advice on the technical and operational issues which may arise as a result of the Employer’s contracts with Suppliers involving information technology. We anticipate the IT advice requirements for this role could range from computer-based asset management systems and software to traffic management systems, including traffic control centres and roadside systems. As this range encompasses highly specialised areas of knowledge and experience, please clarify the nature of advice to be sought in relation to the Employer’s contracts with Suppliers to ensure appropriate staff are proposed.

Response

The Technical Advisor – IT role covers the TSIOS and TSSC contracts. For your information an additional role, Technical Advisor – IT – Systems & Data, has been added. The new role profile has been added to the revised version of the contract, see section C below. As a result the ITT has been updated to reflect this role, see section E below. Please note that minor amendments have been made to the Technical Advisor – ITS role as well (again see section C).

DATE – 19 May 2021**PERFORMANCE AUDIT GROUP 2021 CONTRACT**Tender Bulletin No. TB008

A RESPONSES TO TENDER QUERIES WHICH WILL FORM PART OF THE CONTRACT

Tender Query TQ089

Given it's likely that the appointed provider will need to use a supply chain, can TS confirm that any liability will be with the Service Provider directly and not against the supply chain. As the supply chain would not be directly contracted with Transport

Scotland then any claim brought by Transport Scotland directly against them would not allow the supply chain members to rely on the limit of liability etc. in the main terms. We'd like to request confirmation that any such claims brought by Transport Scotland will be brought against the Service Provider only. We'd suggest the following additional wording is included in the head contract to confirm this: "Transport Scotland agrees not to bring any claim (including one in negligence) against the Service Providers contractors or sub-contractors, or any individual in connection with the agreement. Transport Scotland will ensure that no group member, including your subsidiaries, associated companies and any holding company (unless a party to the agreement), both while they are a group member and thereafter, brings any claim against any of our sub-contractors, contractors, or any individual, in connection with the agreement."

Response

The contract will not be amended, however the Employer confirms that no claims will be brought against any other party other than the Service Provider. Note, this response by virtue of being responded to within Section A of this Bulletin will become contractual.

Tender Query TQ112

The Contract includes Service Provider Sensitive Information, therefore, Clause 18.3 conflicts with Clause 18.1. Please can you delete clause 18.3 accordingly.

Response

The contract will not be amended. We do not believe there to be a conflict. If we decide to publish the Contract we would redact any Service Provider Sensitive Information.

Tender Query TQ129

It is not clear whether Clause 57.3 refers to the indemnity under 57.1, or 57.2 or both. Please can you clarify?

Response

Clause 57.3 refers to the indemnity under clause 57.2.

Tender Query TQ169

Clause 22.2 – The Service Provider must comply with an oral order but this may cease to have effect if not confirmed by the Employer in writing within two working days. How will payment for the services undertaken in the two day interim period be dealt with if they are not confirmed in writing? Additionally, there is no provision to refuse an order or variation to the Services which we would normally expect to have.

Response

All due costs for services performed will be paid even if the oral order ends up not being confirmed in writing.

SCHEDULE 12 - TENDER DOCUMENTATION INCLUDED IN THE CONTRACT

This and the following 195 pages comprise Schedule 12 to the foregoing Contract between the Scottish Ministers and Turner and Townsend Project Management Ltd.



26 May 2021

Package B – Quality Submission

Transport Scotland

Performance Audit Group
Contract 2021

Rev

Originator

Approved

Date

0



26 May 2021

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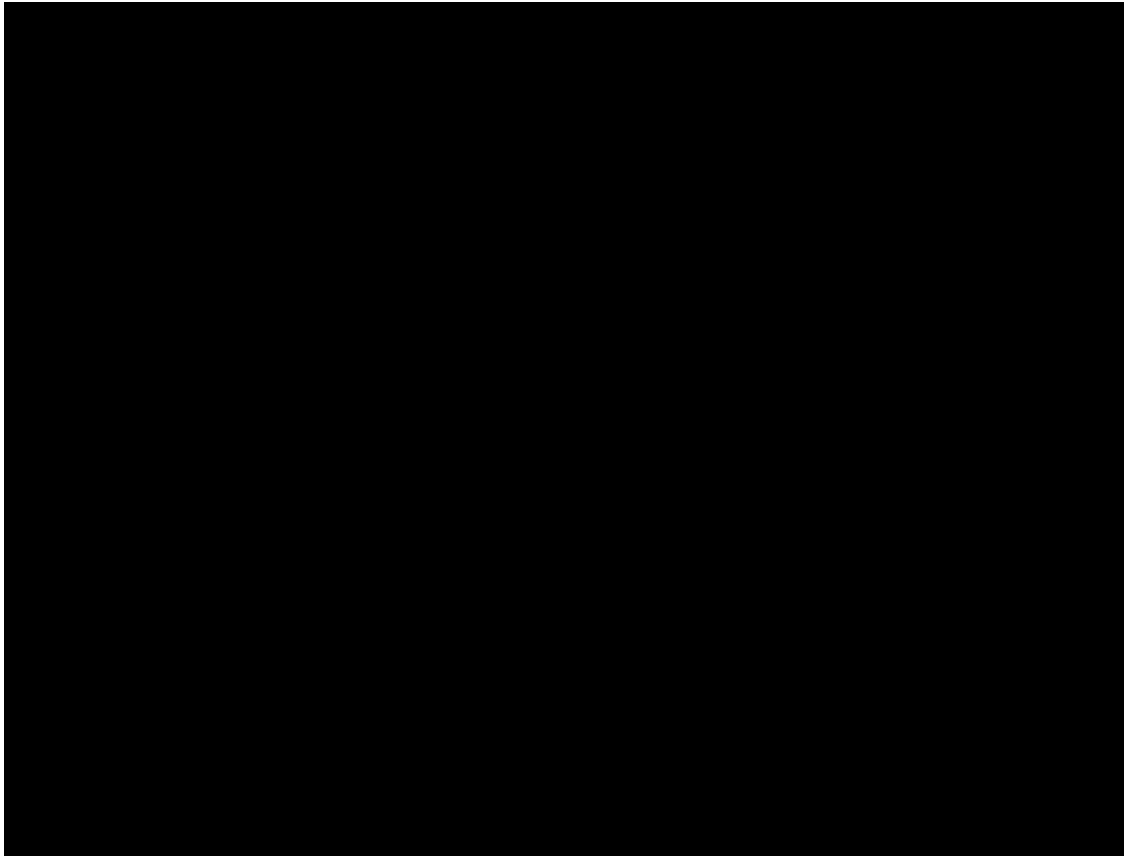
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Transport Scotland Performance Audit Group Contract 2021

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Introduction

Transport Scotland
Performance Audit Group Contract 2021



Q2a

Transport Scotland
Performance Audit Group Contract 2021

Each Tenderer shall submit Curricula vitae for role nominations in accordance with the Table provided in Appendix C of the Invitation to Tender.

[REDACTED]

[REDACTED]

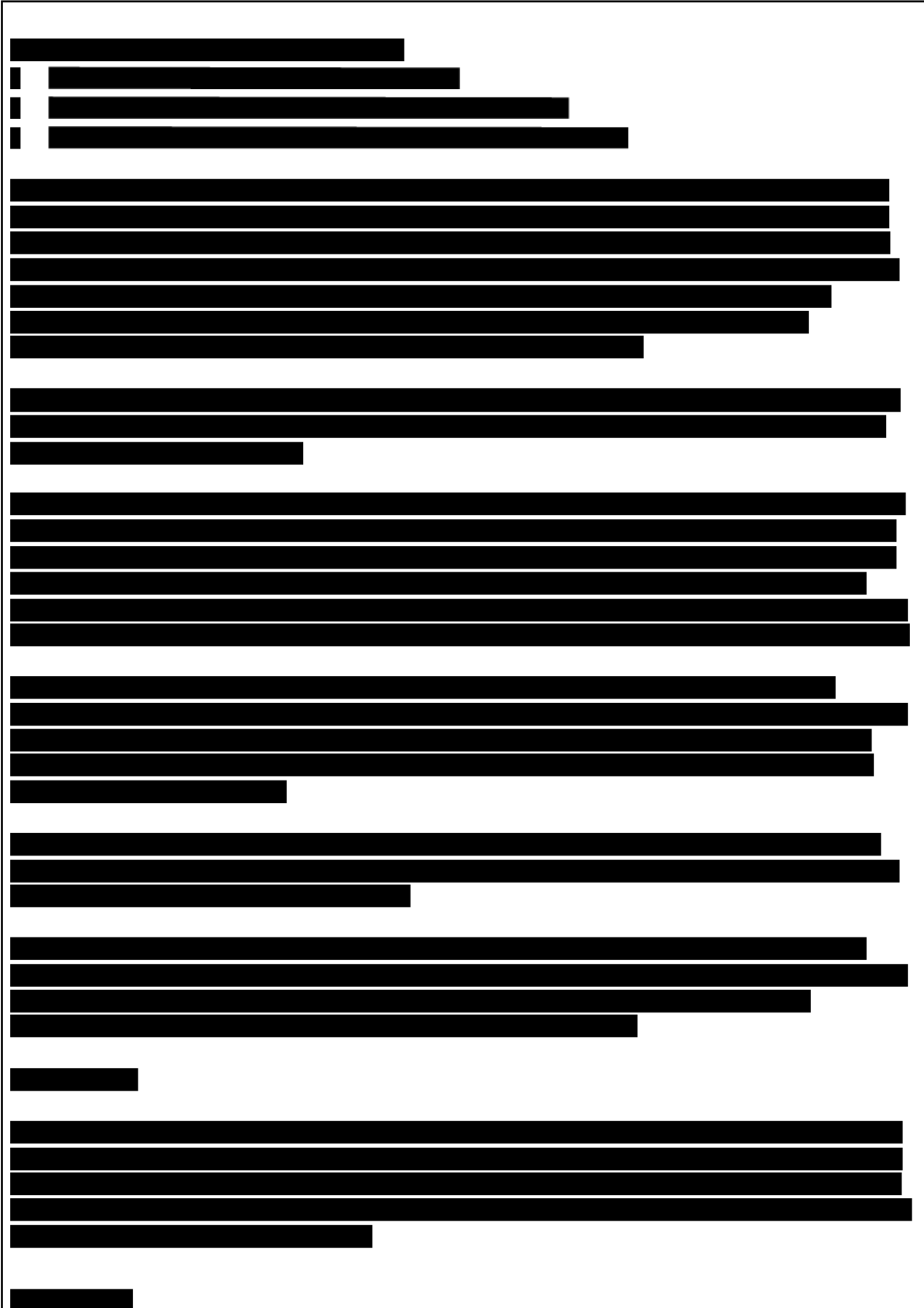
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[REDACTED]

[REDACTED]

[Redacted text block]



[Redacted text block containing multiple lines of blacked-out content]

Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Financial Manager
Employment History (Limited to 150 words maximum)	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports / Works	None
Work Activity Details	
[REDACTED]	

[Redacted text block containing multiple paragraphs of obscured content]

Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Structures Advisor
Employment History	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports / Works	[REDACTED]
Work Activity Details	
[REDACTED]	

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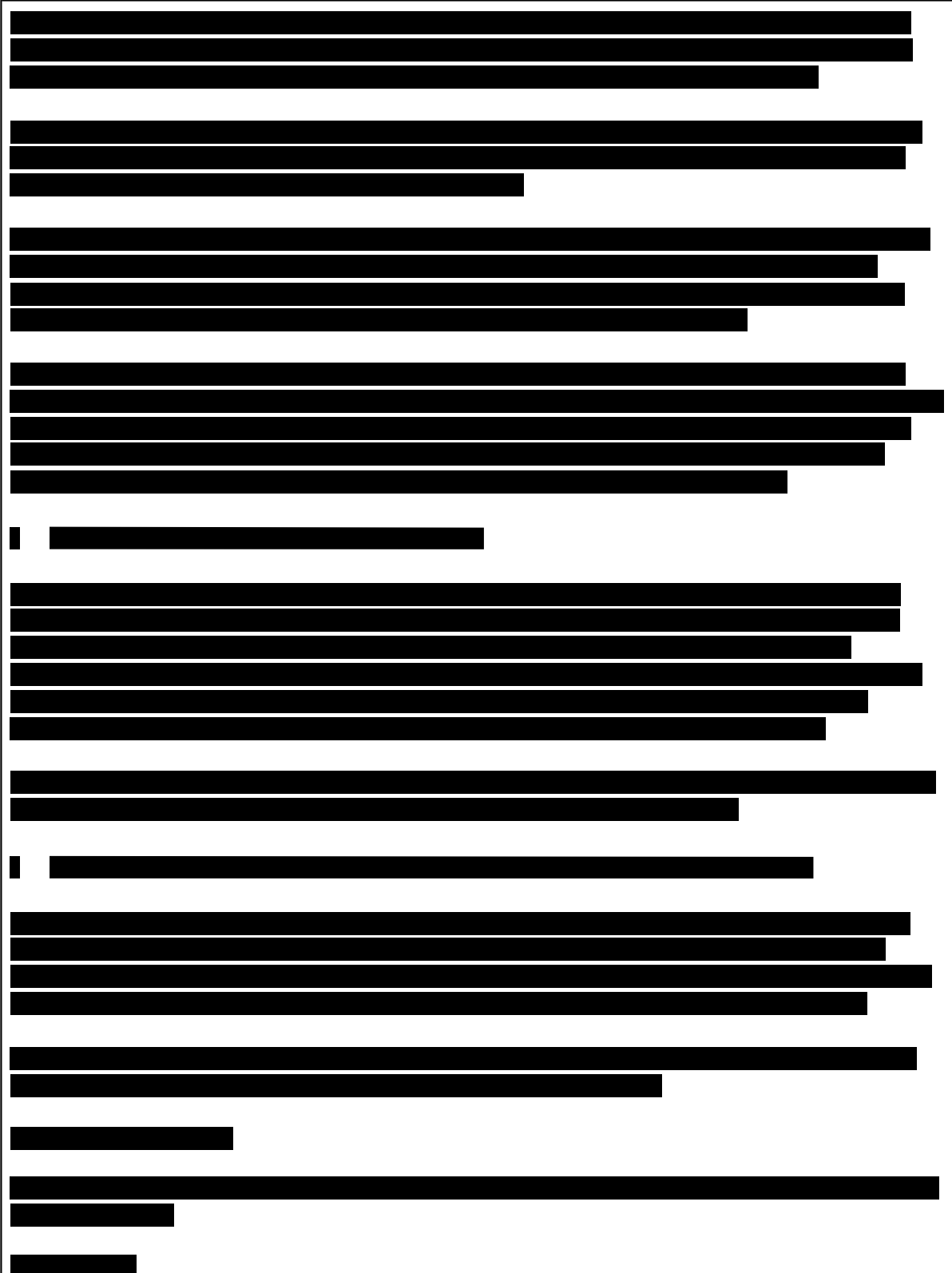
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Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Structures Advisor
Employment History	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports / Works	None
Work Activity Details	

[Redacted text block containing multiple paragraphs of blacked-out content]

[Redacted text block containing multiple paragraphs of obscured content]

[Redacted text block containing multiple paragraphs of blacked-out content]

Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Operations Engineer
Employment History	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports/ Works	None
Work Activity Details	
[REDACTED]	

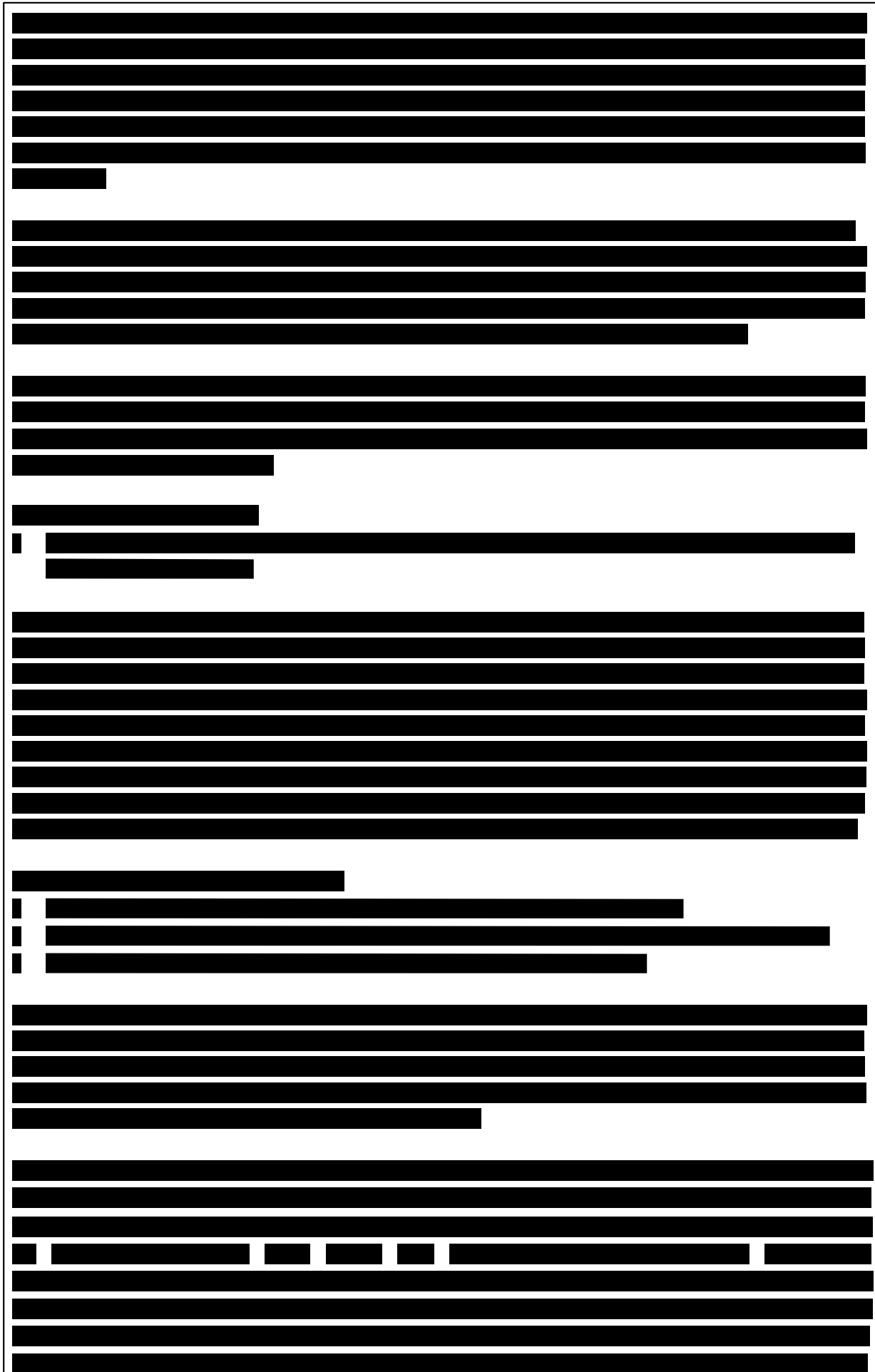
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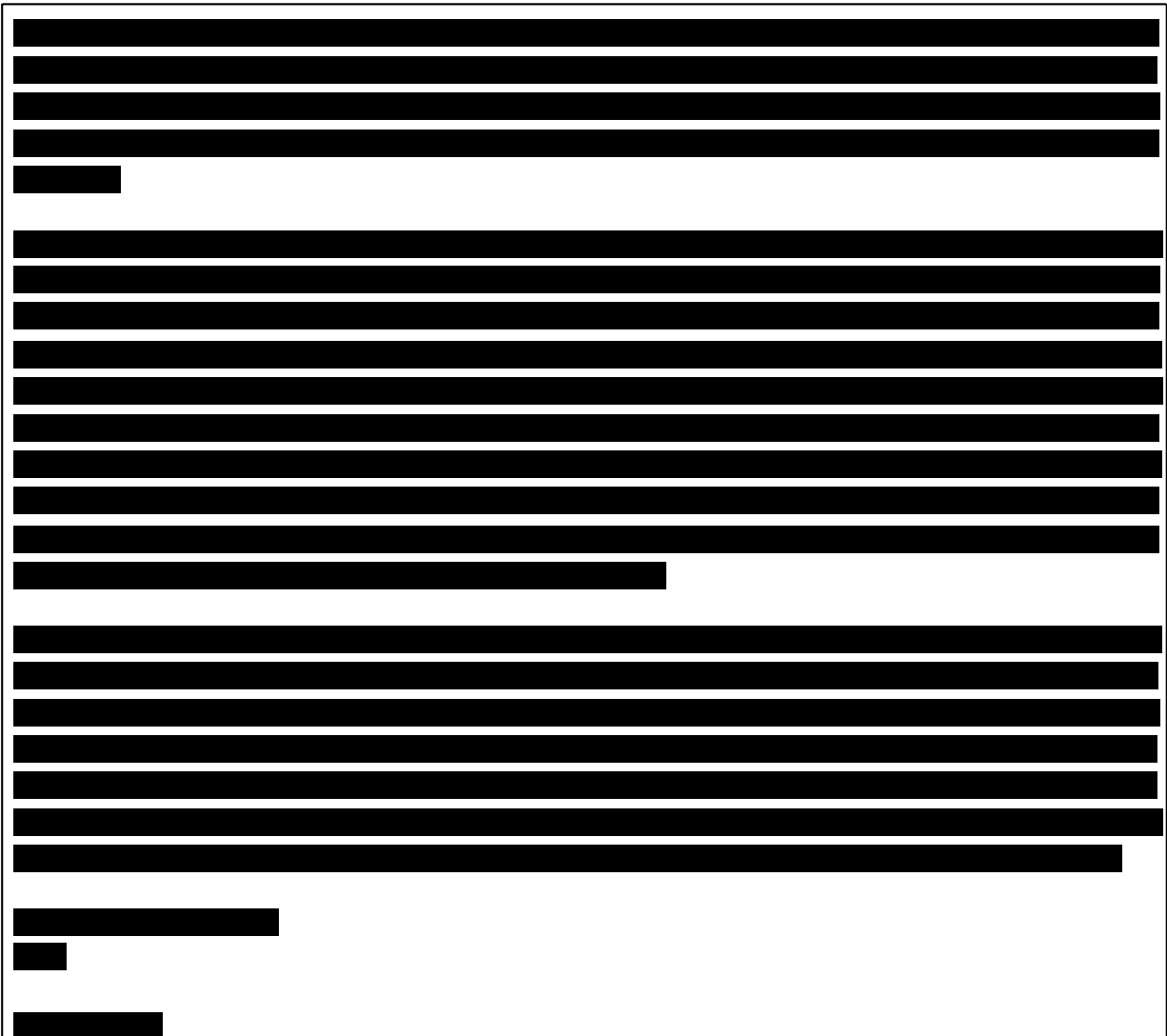
[Redacted text block containing multiple paragraphs and bulleted points]

[Redacted text block]

Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Operations Engineer (DBFO)
Employment History	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Relevant Qualifications & Accreditations	[REDACTED] [REDACTED] [REDACTED]
Published Reports/ Works	[REDACTED] [REDACTED] [REDACTED]
Work Activity Details	
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	

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Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Financial Officer
Employment History	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports/ Works	[REDACTED]
Work Activity Details	
[REDACTED]	

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Name	[Redacted]
Position Held	[Redacted]
Proposed Role	Measurement and Technical Compliance Engineer
Employment History	[Redacted]
Relevant Qualifications & Accreditations	[Redacted]
Published Reports/ Works	[Redacted]
Work Activity Details	
[Redacted]	

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Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Measurement and Technical Compliance Engineer
Employment History	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports / Works	None
Work Activity Details	[REDACTED]

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Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Measurement and Technical Compliance Engineer
Employment History	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports/ Works	None
Work Activity Details	
[REDACTED]	

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Name	[REDACTED]
Position Held	[REDACTED]
Proposed Role	Measurement and Technical Compliance Engineer
Employment History	[REDACTED]
Relevant Qualifications & Accreditations	[REDACTED]
Published Reports/ Works	None
Work Activity Details	
[REDACTED]	

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