

CASE 605753

SERVICES CONTRACT

-between-

(1) THE SCOTTISH MINISTERS (THE "PURCHASER")

-and-

(2) SERVICE PROVIDER NAME...»(THE "SERVICE PROVIDER")

-relating to the supply of-

SHIPYARD REVIEW OF PRODUCTIVITY AND POTENTIAL IMPROVEMENTS STUDY

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PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO On «F10: date contract notice published» the Purchaser's contract notice relating to the Services was published in [name of publication] with reference number «F11: reference number»;
- THREE On «F12: date SPD completed» the Service Provider completed its SPD;
- FOUR On «F13: date ITT issued» the Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;
- FIVE On «F14: date Tender submitted» the Service Provider submitted its Tender;
- SIX On the basis of the Tender, the Purchaser 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.
 - a Pricing Schedule setting out details of the pricing of the Services
 - details of Key Individuals involved in the provision of the Services;
 - details of approved sub-contractors as at Contract award;
 - details of the Service Provider's information which is deemed to be Service Provider Sensitive Information»;
 - Ordering Procedures prescribing the procedures for ordering particular Services; and
 - Management Arrangements for the strategic management of the relationship between the Parties.

SUBSTANTIVE PROVISIONS:

SECTION A: INTRODUCTORY PROVISIONS

1. Definitions and Interpretation

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

“Assignee” has the meaning given in clause 32.2 (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.

“Commencement Date” has the meaning given in clause 4.1 (Period).

“Contract” means this Contract between the Parties consisting of clauses and 11 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.

“Data Controller”, **“Data Processor”**, **“Data Subject”** and **“Data Subject Access Request”** have the meanings given in the Data Protection Laws.

“Data Protection Laws” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body 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 any thing to be delivered by the Service Provider to the Purchaser 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:

- claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and
- 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.

“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.

“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.

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Service Provider to the Purchaser or any Replacement Service Provider as set out in Clause 59 (Exit Management) and Schedule 10 (Exit Management).

“Exit Plan” means the exit management plan developed by the Service Provider and approved by the Purchaser in accordance with Clause 59 (Exit Management).

“Exit Management Date” means each of the following:

- (a) the date of a Termination Notice; and
- (b) 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.

“Information Commissioner” means the Commissioner as set out in Part 5 of the Data Protection Act 2018.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITT” means the Purchaser’s invitation to tender dated «F13: date ITT issued».

“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.

“Key Individuals” means the Service Provider Representatives identified as being key individuals for the provision of the Services as set out in Schedule 5.

“Law” means:

- (a) any applicable statute or proclamation or any delegate or subordinate legislation;
- (b) any enforceable right forming part of retained EU law within the meaning of the European Union (Withdrawal) Act 2018;
- (c) any applicable guidance, direction, determination, or regulations with which the Purchaser and/or the Service Provider is bound to comply;
- (d) any applicable judgment of a relevant court of law which is a binding precedent in Scotland; and
- (e) and requirements of any regulatory body;

in each case in force during the period of the Contract in Scotland.

“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 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.

“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 3.

“Party” means either of the Purchaser 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.

“Purchaser” means the Scottish Ministers

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

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

- carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
- 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).

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

“**Replacement Service Provider**” means any third party service provider appointed to perform the Services by the Purchaser from time to time.

“**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.

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

“**Service Levels**” means the Service Levels identified as such in the Specification.

“**Service Provider**” means «F26: Service Provider legal name and details».

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

- its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);
- its agents, Service Providers and carriers; and
- any sub-contractors of the Service Provider (whether approved under clause 34 (Sub-contracting) or otherwise) and any employees of and workers of any such sub-contractors wholly or mainly assigned to carrying out activities in provision of the Services under the Contract.

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

- is specified as Service Provider Sensitive Information in Schedule 7 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 Purchaser as set out in the Specification and as may be ordered in accordance with the Ordering Procedures.

“SPD” means the Single Procurement Document completed by the Service Provider and sent to the Purchaser on «F12: date SPD completed».

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

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

- ages;
- dates of commencement of employment or engagement;
- sex;
- job or role descriptions and objectives of role;
- details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- the identity of the employer or relevant contracting party;
- their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;
- their wages, salaries and profit sharing arrangements as applicable;
- 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;
- any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- 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
- any other Employee Liability Information.

“Tender” means the tender submitted by the Service Provider to the Purchaser in response to the ITT dated «F14: date Tender submitted».

“Third country” means a country or territory outside the United Kingdom.

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

“Transparency Reports” means a report in accordance with Schedule 7 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Purchaser in the interests of transparency

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“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.

- 1.2. The interpretation and construction of the Contract is subject to the following provisions:
- 1.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
 - 1.2.2. words importing the masculine include the feminine and neuter;
 - 1.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.4. 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;
 - 1.2.5. 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;
 - 1.2.6. reference to “expiry or termination” of the Contract includes the making of a Judicial Order;
 - 1.2.7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - 1.2.8. headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

2. Condition Precedent: Requirement for a Parent Company Guarantee

It shall be a condition of this Contract that, if required by the Purchaser, 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 Purchaser. 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 Purchaser 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 Purchaser shall have the right to terminate the Contract by notice in writing to the Service Provider.

3. Nature of the Contract

- 3.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 3.2. 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 Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

4. Period

- 4.1. The period of the Contract is from and including 18 July 2022 (the “**Commencement Date**”) to and including 31 October 2022, unless it is terminated earlier or extended under clause 4.2.
- 4.2. The Purchaser may, by giving notice to the Service Provider, extend the period of the Contract to a date falling no later than 31 December 2022. Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

5. Break

The Purchaser may terminate the Contract at any time by giving not less than 3 months’ notice to the Service Provider.

6. Specification

The Service Provider must comply with the Specification.

7. Pricing Schedule

- 7.1. The Pricing Schedule sets out details of the pricing of the Services
- 7.2. The prices in the Pricing Schedule are not to be increased for the period of the Contract.
- 7.3. Accordingly, the Service Provider may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents the Service Provider from improving on the prices in the Pricing Schedule for the purposes of a particular Order.

8. Ordering Procedures and Management Arrangements

- 8.1. The Ordering Procedures may be invoked by the Purchaser at any time during the period of the Contract.
- 8.2. The Parties must comply with the Ordering Procedures.
- 8.3. The Service Provider must maintain the capacity to supply the Services throughout the period of the Contract.
- 8.4. The Parties must comply with the Management Arrangements.

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

9. Service Provider's Status

At all times during the period 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 Purchaser 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.

10. Notices

10.1. Any notice or other communication which is to be given by a Party to the other under the Contract must be:

10.1.1. given in writing;

10.1.2. addressed in accordance with clause 10.3; and

10.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.

10.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

10.2.1. 2 Working Days after the day on which the letter was posted; or

10.2.2. 4 Working Hours after the communication was sent, in the case of fax or email.

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

10.3.1. For the Purchaser:

«F38: Purchaser address for notices»

For the attention of: «F39: Purchaser individual contact for notices»

Tel: «F40: Purchaser phone number»

Fax: «F41: Purchaser fax number for notices»

E-mail: «F42: Purchaser e-mail address for notices»

10.3.2. For the Service Provider:

«F43: Service Provider address for notices»

For the attention of: «F44: Service Provider individual contact for notices»

Tel: «F45: Service Provider phone number»

Fax: «F46: Service Provider fax number for notices»

E-mail: «F47: Service Provider e-mail address for notices»

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

10.5. Notices under clause 58.1 (Termination on Insolvency or Change of Control) may be sent to the Purchaser's trustee, receiver, liquidator or administrator, as appropriate.

11. Price

11.1. In consideration of the Service Provider's performance of its obligations relating to an Order, the Purchaser must pay:

11.1.1. the price due in accordance with the Pricing Schedule and the Ordering Procedures; and

11.1.2. a sum equal to the value added tax chargeable at the prevailing rate.

11.2. Not Used.

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

12. Payment and Invoicing

12.1. The Purchaser must pay all sums due to the Service Provider within 30 days of receipt of a valid invoice.

12.2. The Service Provider must render invoices on completion of milestones detailed in the specification of requirements.

12.3. 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 Purchaser to substantiate any invoice.

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

12.5. 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 Purchaser, the sums referred to in this clause must be properly invoiced by the Service Provider.

12.6. In this clause 12, '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.

13. Recovery of Sums Due

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

13.2. The Service Provider must make any payments due to the Purchaser 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 Purchaser to the Service Provider.

14. Data Protection

14.1. The Service Provider acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) 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 Data Processor and the Purchaser acts as the Data Controller.

14.2. 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 14 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.

14.3. The Service Provider will, in conjunction with the Purchaser 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.

- 14.4. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5. The Service Provider must:
- 14.5.1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data to a third country other than within the European Economic Area unless required to do so by European Union or domestic 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 Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;
 - 14.5.2. subject to clause 14.5.1 only process or otherwise transfer any Personal Data in or to any third country other than within the European Economic Area with the Purchaser's prior written consent;
 - 14.5.3. 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 Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - 14.5.4. 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.
- 14.6. 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 Purchaser. In the case of general written authorisation, the Service Provider must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 14.7. If the Service Provider engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, 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 Purchaser for the performance of the sub-contractor's performance of the obligations.

14.8. The Service Provider must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR.

14.9 The Service Provider must notify the Purchaser if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract; or
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

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

- (a) 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.
- (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
- (d) supporting the Purchaser with preparation of a data protection impact assessment;
- (e) supporting the Purchaser with regard to prior consultation of the Information Commissioner .

14.11 At the end of the provision of Services relating to processing the Service Provider must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless European Union or domestic law requires storage of the Personal Data.

14.12 The Service Provider must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Service Provider's compliance with this clause 14;
- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to

inspect the procedures, measures and records referred to in this clause 14 and contribute as is reasonable to those audits and inspections;

- (c) inform the Purchaser, if in its opinion, an instruction from the Purchaser infringes any obligation under Data Protection Laws.

14.13 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 Purchaser containing the information set out in Article 30(2) of the UK GDPR .

14.14 If requested, the Service Provider must make such records referred to clause 14.13 available to the Information Commissioner on request and co-operate with the Information Commissioner in the performance of its tasks.

14.15 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 14.14 with minimum disruption to the Service Provider's day to day business.

- 14.16 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Purchaser 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.

15. Transparency and Freedom of Information

15.1 The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations. The Service Provider shall:

- (a) provide all necessary assistance and cooperation as the Purchaser may reasonably request to enable the Purchaser to comply with its obligations under FOISA and Environmental Information Regulations;
- (b) transfer to the Purchaser 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;
- (c) provide the Purchaser with a copy of all information held on behalf of the Purchaser 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 Purchaser may reasonably specify) in the form that the Purchaser requires.
- (d) not respond directly to a Request For Information addressed to the Purchaser unless authorised in writing to do so by the Purchaser.

15.2 If the Request for Information appears to be directed to information held by the Purchaser, the Service Provider must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.

15.3 If the Purchaser receives a Request for Information concerning the Contract, the Purchaser 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.

15.4 The Service Provider acknowledges that the Purchaser may, acting in accordance with the Purchaser'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:

15.4.1 in certain circumstances without consulting the Service Provider, or

15.4.2 following consultation with the Service Provider and having taken its views into account.

15.5 Where 15.4.1 applies the Purchaser 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.

15.6 Where a Request for Information concerns Service Provider Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information.

15.7 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 Purchaser believes that publication of any element of the Transparency Information should be treated as Service Provider Sensitive Information the Purchaser may, in its discretion exclude such information from publication.

15.8 Notwithstanding any other provision of this Contract, the Service Provider hereby gives consent for the Purchaser to publish to the general public, the Transparency Information in its entirety. The Purchaser 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.

15.9 The Service Provider shall assist and co-operate with the Purchaser to enable the Purchaser to publish the Transparency Information including the preparation of Transparency Reports.

15.10 The Purchaser 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.

15.11 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 Purchaser upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Purchaser may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 17.3.3) publish such Information. The Service Provider shall provide to the Purchaser within 5 working days (or such other period as the Purchaser may reasonably specify) any such Information requested by the Purchaser.

16. Purchaser Protected Information

16.1. The Service Provider must:

16.1.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;

- 16.1.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;
 - 16.1.3. only disclose the Purchaser Protected Information to such Service Provider Representatives that are directly involved in the performance of the Contract and need to know the information; and
 - 16.1.4. not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.
- 16.2. The Service Provider must immediately notify the Purchaser of any breach of security concerning the Purchaser Protected Information. The Service Provider must fully cooperate with the Purchaser in any investigation that the Purchaser considers necessary to undertake as a result of any such breach of security.
- 16.3. Clause 16.1 does not apply to the extent that:
- 16.3.1. disclosure is required by law or by order of any competent court or tribunal;
 - 16.3.2. information is in the possession of the Service Provider without restriction as to its disclosure prior to its disclosure by the Purchaser;
 - 16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.3.5. information is independently developed without access to the Purchaser Protected Information.
- 16.4. 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 57.1.3 (Termination Rights).

17. Service Provider Sensitive Information

- 17.1. The Purchaser must:
- 17.1.1. treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2. not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- 17.2. Clause 17.1 does not apply to the extent that:
- 17.2.1. disclosure is required by law or by order of any competent court or tribunal;
 - 17.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;
 - 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 17.2.5. information is independently developed without access to the Service Provider Sensitive Information.

- 17.3. Nothing in this Contract prevents the Purchaser from disclosing any Service Provider Sensitive Information or any other information concerning the Service Provider or the Contract:
- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, Service Provider or other person engaged by the Purchaser, for example to conduct a gateway review;
 - 17.3.6. 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 Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament; or
 - 17.3.7. for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 17.4. The Service Provider consents to the publication of the Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser 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 Purchaser are final and conclusive.

18. Audit

- 18.1. 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.
- 18.2. The Service Provider must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser's representatives, such access to those records as may reasonably be requested by the Purchaser in connection with the Contract.

19. Publicity

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

SECTION C: PROVISION OF SERVICES

20. Provision of the Services

- 20.1. The Service Provider must provide the Services:
 - 20.1.1. in accordance with the Specification and the Ordering Procedures;
 - 20.1.2. in accordance with the particular requirements of each Order; and
 - 20.1.3. to the satisfaction of the Purchaser acting reasonably.
- 20.2. The Service Provider acknowledges that the Purchaser 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.
- 20.3. For each Order for the provision of services, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures, the provisions of this Section C apply.
- 20.4. The period for any Order agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' notice by the Purchaser.

21. Deliverables and Milestones

- 21.1. The Service Provider must provide the Services, including any Deliverables:
 - 21.1.1. at the date(s), time(s) and location(s) required by the Purchaser; and
 - 21.1.2. in good time to meet any Milestones required by the Purchaser.
- 21.2. When the Service Provider believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.
- 21.3. The Purchaser may thereafter by notice to the Service Provider:
 - 21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or
 - 21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.
- 21.4. Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, the Service Provider must at its expense immediately rectify or remedy any defects and/or delays.
- 21.5. Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.
- 21.6. Whether the defect or delay is due to the Purchaser or not, the Service Provider shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

- 22.1. The Service Provider acknowledges that the Key Individuals are essential to the proper provision of the Services to the Purchaser.
- 22.2. The Key Individuals must not be released from providing the Services without the approval of the Purchaser, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, 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 Purchaser.
- 22.3. The Service Provider may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:
 - 22.3.1. appropriate arrangements must be made to minimise any adverse impact on the Contract which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
 - 22.3.2. the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.
- 22.4. Any proposed replacement to a Key Individual is subject to the approval of the Purchaser. Subject to the Service Provider's compliance with this clause, the Purchaser must not unreasonably withhold such approval.

23. Offers of Employment

- 23.1. 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 Purchaser's employees who have been associated with the Contract and/or the contract management of the Contract without the Purchaser's prior approval.
- 23.2. 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 Purchaser's employees.

24. Staff transfer at commencement

- 24.1. The Parties agree that the commencement of the provision of the Services by the Service Provider does not involve a Relevant Transfer.

25. Information about employees

- 25.1. The Purchaser may at any time by notice require the Service Provider to disclose such information as the Purchaser may require to the Purchaser or at the direction of the Purchaser to any prospective Replacement 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 Purchaser about Assigned Employees may include Employee Liability Information and/or Staffing Information.
- 25.2. The Service Provider must disclose by notice all such information as is required by the Purchaser under clause 25.1, within such reasonable period specified by the Purchaser.

The Service Provider acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not Personal Data.

- 25.3. The Service Provider warrants for the benefit of the Purchaser and any Replacement Service Provider that all information provided pursuant to this clause shall be true and accurate in all material respects at the time of providing the information. The Purchaser may at any time require the Service Provider to confirm whether information provided under this clause remains true and accurate in all material respects or ask it to provide updated information.
- 25.4. The Purchaser 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 Replacement Service Provider.

26. Staff transfer on expiry or termination

- 26.1. The Parties agree that the ceasing of the provision of the Services by the Service Provider does not involve a Relevant Transfer.

27. Security

- 27.1. The Service Provider must comply with the Purchaser'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.
- 27.2. The Service Provider must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

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.

29. Specially Created Intellectual Property Rights

- 29.1. All Intellectual Property Rights 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 Purchaser for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract belong to the Purchaser.
- 29.2. The Service Provider assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1. This assignment takes effect on the Commencement Date or as an assignment 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 assignment.

30. Licences of Intellectual Property Rights

- 30.1. The Service Provider grants to the Purchaser 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 Purchaser reasonably requires in order to enjoy the benefit of the Services.

31. Claims relating to Intellectual Property Rights

- 31.1. 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.
- 31.2. The Service Provider must promptly notify the Purchaser 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.
- 31.3. Where a claim to which this clause applies is made, the Service Provider must, at its expense, use its best endeavours to:
 - 31.3.1. 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
 - 31.3.2. procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Purchaser, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 31.4. The Service Provider must not without the consent of the Purchaser make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

32. Assignment

- 32.1. The Service Provider may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.
- 32.2. Notwithstanding clause 32.1, 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:
 - 32.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and
 - 32.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.
- 32.3. The Service Provider must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 32.4. Subject to clause 32.6, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - (a) any Contracting Authority; or

- (b) 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 Purchaser; or
- (c) any private sector body which substantially performs the functions of the Purchaser,

provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.

- 32.5 Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Purchaser.
- 32.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Purchaser such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Purchaser in clauses 57 (Termination Rights) and 58 (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
 - (b) 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.
- 32.7 The Purchaser 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 Purchaser 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.

33. Change of Control

The Service Provider must notify the Purchaser:

- 33.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and
- 33.2. immediately following a change of Control that has occurred.

34. Sub-Contracting

- 34.1. «F51: The Purchaser approves the appointment of the sub-contractors specified in Schedule 6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.»
- 34.2. The Service Provider may not sub-contract its obligations under the Contract «F52: to other sub-contractors» without the prior written consent of the Purchaser. 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.

34.3. Where the Service Provider enters into a sub-contract the Service Provider must ensure that a provision is included which:

34.3.1. 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 Purchaser 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;

34.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser;

34.3.3. 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

34.3.4. is in the same terms as that set out in this clause 34.3 (including for the avoidance of doubt this clause 34.3.4) 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.

34.4. The Service Provider shall also include in every sub-contract:

34.4.1 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 or contract award despite the existence of exclusion grounds) specified in clause 57.3 (Termination Rights) occur; and

34.4.2 a requirement that the sub-contractor includes a provision having the same effect as 34.4.1 in any sub-contract which it awards.

In this clause 34.4, 'sub-contract' means a contract between two or more service providers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

34.5. Where requested by the Purchaser, copies of any sub-contract must be sent by the Service Provider to the Purchaser as soon as reasonably practicable.

34.6. Where the Service Provider proposes to enter into a sub-contract it must:

34.6.1 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

34.6.2 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.

34A. Supply Chain Transparency and Protections

Knowledge of the supply chain

34A.1. In performing its role as a reseller, 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.

- child labour,
- forced labour,
- working hours,
- wages,
- discrimination,
- health and safety,
- freedom of association,
- collective bargaining,
- disciplinary practices,
- humane treatment of workers,
- training,
- engagement with NGOs, and
- worker grievance procedures .

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

34A.2. 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”).

34A.3. The Service Provider will, within 20 Working Days of the Contract Commencement Date, provide the Purchaser 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 Purchaser of any changes as soon as reasonably practicable.

34A.4. **Not used.**

Supply chain working conditions

34A.5. The Service Provider will submit an annual written report to the Purchaser 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.

34A.6. 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.

34A.7. In respect of the Service Provider Supply Chain and the Service Provider’s Suppliers, the Service Provider must ensure the following:

34A.7.1. forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;

34A.7.2. child labour is not used in any stage of manufacturing or in the

provision of services or supplies;

34A.7.3. 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;

34A.7.4. 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;

34A.7.5. 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;

34A.7.6. 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;

34A.7.7. workers must not be subject to harassment or unlawful discrimination; and

34A.7.8. workers must be provided with safe and healthy working conditions.

34A.8. 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:

34A.8.1. compliance with all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;

34A.8.2. 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.

Managing risks in the supply

34A.9. 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 Purchaser on request with a copy of any such reports in so far as they relate to the Service Provider Supply Chain.

34A.10. 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

Purchaser 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.

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

34A.11. 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 Purchaser 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 .

34A.12. 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 .

34A.13. 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 .

Measures to control the supply chain

34A.14. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers' sourcing policies address labour and human rights impacts during the extraction phase of production and include the use of conflict free smelters in accordance with the [Responsible Minerals Initiative](#). The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Service Provider Supply Chain and provide the Purchaser on request with details.

34A.15. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers implement and adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as the same may be updated from time to time) and produce a publicly viewable annual summary of their due diligence and risk management measures consistent with this guidance.

34A.16. The Service Provider will use its reasonable endeavours to provide the Purchaser 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.

Supply chain contract termination

34A.17. The Service Provider will use its reasonable endeavours to ensure that all contracts in the Service Provider Supply Chain give the Purchaser 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.

35. Amendment

35.1. The Contract may be amended only by the written agreement of both Parties. Accordingly, the Service Provider may not unilaterally amend the Contract.

35.2. Not Used.

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

36. Compliance with the Law etc.

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

- 36.1. all applicable law;
- 36.2. any applicable requirements of regulatory bodies;
- 36.3. Good Industry Practice; and
- 36.4. Schedule 11 (Cyber Security Requirements).

37. Official Secrets Acts

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.

38. Service Provider's responsibility for staff etc.

- 38.1. 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.
- 38.2. The Service Provider must ensure that all Service Provider Representatives:
 - 38.2.1. are appropriately experienced, skilled, qualified and trained;
 - 38.2.2. carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and
 - 38.2.3. obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

39. Access to the Purchaser's premises

- 39.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser 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 Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 39.2. The Service Provider must comply with the Purchaser'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.
- 39.3. At the Purchaser's written request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Purchaser'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 Purchaser may reasonably request.
- 39.4. The Service Provider must ensure that any individual Service Provider Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Service Provider acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.

- 39.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser'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.
- 39.6. The Purchaser may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 39.7. The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.
- 39.8. All decisions of the Purchaser under this clause are final and conclusive.

40. Service Provider's Equipment

- 40.1. The Service Provider must provide all Equipment necessary to perform any required activities on the Purchaser's premises or otherwise necessary for the provision of Services.
- 40.2. But the Service Provider must not, without the Purchaser's approval:
 - 40.2.1. bring Equipment onto the Purchaser's premises; or
 - 40.2.2. leave Equipment on the premises.
- 40.3. Any Equipment brought onto the Purchaser's premises:
 - 40.3.1. remains the property of the Service Provider; and
 - 40.3.2. is at the Service Provider's own risk and the Purchaser 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 Purchaser's Default.
- 40.4. The Service Provider must keep all Equipment brought onto the Purchaser's premises in a safe, serviceable and clean condition. The Purchaser may at any time require the Service Provider to remove from the Purchaser's premises any Equipment which in the opinion of the Purchaser 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.
- 40.5. On completion of any required activities on the Purchaser's premises or at the end of a Working Day (as appropriate), the Service Provider must at its own expense:
 - 40.5.1. remove all Equipment; and
 - 40.5.2. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Service Provider's activities.
- 40.6. The Service Provider is solely responsible for making good any damage to the Purchaser's premises or any objects contained therein, other than wear and tear, which is caused by the Service Provider.

41. Purchaser Property

- 41.1. Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.
- 41.2. The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:
 - 41.2.1. keep the Purchaser Property in good order and condition (excluding wear and tear);
 - 41.2.2. comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
 - 41.2.3. use any Purchaser Property solely in connection with the Contract and for no other purpose; and
 - 41.2.4. store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.
- 41.3. The Purchaser Property is deemed for the purposes of clause 41.2.1 to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Purchaser otherwise within 5 Working Days of receipt.
- 41.4. The Service Provider must not:
 - 41.4.1. modify or replace the Purchaser Property;
 - 41.4.2. use the Purchaser Property as security for a loan or other obligation;
 - 41.4.3. sell, or attempt to sell or part with possession of the Purchaser Property; or
 - 41.4.4. allow anyone to obtain a lien over, or right to retain, the Purchaser Property.
- 41.5. The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.
- 41.6. The Service Provider undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Service Provider must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

42. Health and Safety etc.

- 42.1. While on the Purchaser's premises, the Service Provider must comply with the Purchaser'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.
- 42.2. The Service Provider must immediately inform the Purchaser in the event of any incident occurring in the performance of its obligations under the Contract on the Purchaser's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The Service Provider must then promptly notify the Purchaser of that fact.
- 42.3. The Purchaser must promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Purchaser's premises and which may affect the Service Provider in the performance of its obligations under the Contract.

42.4. The Service Provider must promptly make available its statutory health and safety policy statement to the Purchaser on request.

43. Offences

43.1. The Service Provider must not commit or attempt to commit any offence:

43.1.1. under the Bribery Act 2010;

43.1.2. of fraud, uttering, or embezzlement at common law; or

43.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

43.2. Breach of clause 43.1 is a material breach for the purposes of clause 57.1.3 (Termination Rights).

43A. Compliance with Anti-Slavery and Human Trafficking Laws

43A.1. In performing its obligations under this Contract, the Service Provider shall:

43A.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;

43A.1.2. not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;

43A.1.3. include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause;

43A.1.4. notify the Purchaser as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract;

43A.1.5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser; and

43A.1.6. provide the Purchaser and its third party representatives access to such records.

43A.2 The Service Provider represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

43A.3. 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.

43A.4. The Purchaser 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.

44. Tax Arrangements

- 44.1 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.
- 44.2 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.
- 44.3 The Purchaser 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 44.1 and 44.2 above or why those clauses do not apply to it.
- 44.4 A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 44.5 The Purchaser may supply any information which it receives under clause 44 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.
- 44.6 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.
- 44.7 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 44 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

45. Discrimination

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 Purchaser.

46. Blacklisting

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

47. Sustainability etc.

The Service Provider shall perform its obligations under this Contract in a manner so as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment. The Service Provider shall make all reasonable efforts to minimise its use of packaging and avoid the use of packaging which consumes a disproportionate amount of energy during manufacture, use, or disposal or which contains materials derived from threatened species or threatened environments. If requested by the Purchaser, the Service Provider shall provide the Purchaser with a copy of its environmental policy.

48. Conflicts of interest

- 48.1. The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under the Contract.
- 48.2. The Service Provider must disclose by notice to the Purchaser 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.
- 48.3. Breach of this clause by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

SECTION G FINAL PROVISIONS

49. Warranties and Representations

The Service Provider warrants and represents that:

- 49.1. 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;
- 49.2. 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;
- 49.3. 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;
- 49.4. as at the Commencement Date, all information contained in the SPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract;
- 49.5. 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;
- 49.6. 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;
- 49.7. 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;
- 49.8. 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;
- 49.9. in the 3 years prior to the Commencement Date:

- 49.9.1. 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;
- 49.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 49.10. 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;
- 49.11. it has made appropriate inquiries (for example as regards the Purchaser's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;
- 49.12. it is familiar with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;
- 49.13. it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;
- 49.14. there are no actual or potential conflicts between the interests of the Service Provider and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and
- 49.15. it is deemed to have inspected 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.

50. Indemnity

50.1 The Service Provider shall indemnify the Purchaser 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.

50.2 The Purchaser 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 Purchaser's specific written instructions. This indemnity provision shall not apply if the Service Provider-

(a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with clause 14.12(c) of this Contract;

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

51. Limitation of Liability

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

51.1.1. loss of profits, business, revenue or goodwill; or

51.1.2. indirect or consequential loss or damage.

- 51.2. But clause 51.1 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.
- 51.3. The liability of either Party under the Contract for Defaults is limited to the Contract Value.
- 51.4. But neither Party excludes or limits liability to the other Party for:
 - 51.4.1. death or personal injury caused by its negligence;
 - 51.4.2. misrepresentation;
 - 51.4.3. 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
 - 51.4.4. any breach of any obligations under Data Protection Laws.

52. Insurances

- 52.1. The Service Provider must effect and maintain with a reputable insurance company:
 - 52.1.1. public liability insurance in the sum of not less than £1,000,000
 - 52.1.2. professional indemnity insurance in the sum of not less than £1,000,000
 - 52.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.
- 52.2. 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.
- 52.3. The Service Provider must give the Purchaser, 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.

53. Force Majeure

- 53.1. 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 1 months, either Party may terminate the Contract with immediate effect by notice.
- 53.2. 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.
- 53.3. 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 53.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 53.4. The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

54. Dispute Resolution

- 54.1. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 54.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 54.3. Any arbitration under clause 54.2 is subject to the Arbitration (Scotland) Act 2010.

55. Severability

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.

56. Waiver and Cumulative Remedies

- 56.1. 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.
- 56.2. 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 10 (notices).
- 56.3. A waiver of any Default is not a waiver of any subsequent Default.
- 56.4. 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.

57. Termination Rights

- 57.1. The Purchaser may terminate the Contract by notice to the Service Provider with immediate effect if the Service Provider commits a Default and:
 - 57.1.1. the Service Provider has not remedied the Default to the satisfaction of the Purchaser within 20 Working Days, or such other period as may be specified by the Purchaser, after issue of a notice specifying the Default and requesting it to be remedied;
 - 57.1.2. the Default is not in the opinion of the Purchaser, capable of remedy; or
 - 57.1.3. the Default is a material breach of the Contract.
- 57.2. Not Used.
- 57.3. The Purchaser may terminate the Contract in the event that:
 - (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9)

(modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or

- (b) 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.

57.4. The Purchaser 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.

57.5. The Purchaser 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.

58. Termination on Insolvency and Change of Control

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

58.1.1. 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;

58.1.2. 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);

58.1.3. 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;

58.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

58.1.5. 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;

58.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

58.1.7. 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;

58.1.8. a debt relief order is entered into; or

58.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.

58.2. The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:

- 58.2.1. being notified that a change of Control has occurred in accordance with clause 33.2 (Change of Control); or
 - 58.2.2. where no such notification has been given, the date that the Purchaser becomes aware of the change of control.
- 58.3. But the Purchaser may not terminate the Contract under clause 58.2 where approval of the change of control has been granted by notice by the Purchaser.

59. Exit Management

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.

- 59.1 The Service Provider agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Service Provider agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 54 (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.
- 59.2 A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within one (1) months after the Commencement Date and shall include or address the matters specified in Clause 59.3. The Purchaser shall provide to the Service Provider the Purchaser's comments on the plan within two (2) week's of the Purchaser's receipt of the plan. The Service Provider shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Purchaser's comments.
- 59.3 The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
 - 59.3.1 the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;
 - 59.3.2 the activities necessary to support any Replacement Service Provider or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;
 - 59.3.3 details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;
 - 59.3.4 support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;
 - 59.3.5 the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and
 - 59.3.6 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 Replacement Service Provider or the Purchaser.

59.4 No amendment of the Exit Plan shall be made without prior written consent of the Purchaser.

60. Consequences of Expiry or Termination

60.1. Where the Purchaser terminates the Contract under clause 57 (Termination Rights) and makes other arrangements for the provision of services, the Service Provider indemnifies the Purchaser against all costs incurred in making those arrangements.

60.2. Where the Purchaser terminates the Contract under clause 5 (Break), the Purchaser indemnifies the Service Provider against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).

60.3. Any indemnity given by the Purchaser under clause 60.2 is subject to the Service Provider:

60.3.1. taking all reasonable steps to mitigate its loss;

60.3.2. taking all reasonable steps to recover its losses under any insurance policies held by it; and

60.3.3. submitting a fully itemised and costed list of losses which it seeks to recover from the Purchaser together with supporting evidence.

60.4. Except as provided for in clauses 50 (General Indemnity), 60.1 and 60.2, 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.

60.5. On expiry or termination of the Contract the Service Provider must:

60.5.1. immediately return to the Purchaser all Purchaser Property and Purchaser Protected Information in its possession; and

60.5.2. destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.

60.6. The following provisions survive the expiry or termination of the Contract:

60.6.1. clause 1 (Definitions and Interpretation);

60.6.2. clause 13 (Recovery of Sums Due);

60.6.3. clause 0 (Data Protection);

60.6.4. clause 15 (Transparency and Freedom of Information);

60.6.5. clause 16 (Purchaser Protected Information);

60.6.6. clause 17 (Service Provider Sensitive Information);

60.6.7. clause 18 (Audit);

60.6.8. clause 19 (Publicity);

60.6.9. clause 23 (Offers of Employment);

60.6.10. clause 25 (Information about Service Provider Employees);

60.6.11. clause 26 (Staff transfer on expiry or termination);

60.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);

60.6.13. clause 29 (Specially Created Intellectual Property Rights);

60.6.14. clause 30 (Licences of Intellectual Property Rights);

60.6.15. clause 31 (Claims relating to Intellectual Property Rights);

60.6.16. clause 37 (Official Secrets Acts);

60.6.17. clause 40 (Service Provider's Equipment);

60.6.18. clause 41 (Purchaser Property);

60.6.19. clause 44 (Tax arrangements);

60.6.20. clause 47 (Sustainability);

60.6.21. clause 49 (Warranties and Representations);

60.6.22. clause 50 (Indemnity);

- 60.6.23. clause 51 (Limitation of Liability);
- 60.6.24. clause 52 (Insurances);
- 60.6.25. clause 54 (Dispute Resolution);
- 60.6.26. clause 56 (Waiver and Cumulative Remedies);
- 60.6.27. this clause 60;
- 60.6.28. clause 62 (Governing Law and Jurisdiction); and
- 60.6.29. paragraph 2 (Service Provider's Warranty) of Schedule 11 (Cyber Security Requirements).

60.7. Immediately upon termination of the Contract for any reason whatsoever the Service Provider shall render such reasonable assistance to the Purchaser or third party nominated by the Purchaser, if requested, as may be necessary to effect an orderly assumption by a Replacement 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 The Service Provider shall be entitled to charge for in accordance with the day rates contained within Schedule 2, where appropriate, or at a cost deemed reasonable by both parties where there is a demonstratable charge for such services.

61. Entire Agreement

61.1. 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 SPD or Tender or otherwise).

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

61.2.1. the clauses of the Contract;

61.2.2. the Schedules; and

61.2.3. any other document referred to in the Contract.

62. Governing Law and Jurisdiction

The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 54 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the 41 preceding pages together with the 11 Schedules annexed are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of «F3: Service Provider name...»

At.....
On.....
Signature.....
Full name
Position
Address.....

At.....
On.....
Signature.....
Full name.....
Position.....
Address.....

In the presence of

Signature.....
Full name
Address.....

In the presence of

Signature.....
Full name.....
Address.....

This and the following 4 pages comprise Schedule 1 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 1 – SPECIFICATION

SHIPYARD REVIEW OF PRODUCTIVITY AND POTENTIAL IMPROVEMENTS STUDY CASE REF: 605753

1. INTRODUCTION

1.1 Background

Ferguson Marine (Port Glasgow) Limited (FMPG) is a shipyard based on the lower River Clyde in Scotland. The yard is owned by the Scottish Government. The Scottish Government wishes to commission a report to identify potential ways to improve the competitiveness and productivity of the shipyard in support of its sustainable future. The report should focus on a time horizon of three years to perform the assessment, have any upgrades approved and carried out, and the first vessel constructed benefiting from those potential upgrades.

The specification for the production and content of the report is presented below.

1.2 Objectives

The overall objective is to identify the measures that could be implemented to improve the competitiveness and productivity of the yard in relation to its comparators. To provide a detailed estimate the timeline and the potential cost of the various phases of improvements. The work should also identify any measures that can be implemented in early course to gain near-term benefit.

1.3 Scope of work

The scope of work for this initial phase of generating the development plan will be:

- i. Clarification of the target productivity, target product mix and planned shipbuilding strategy of the yard;
- ii. Development of a shipyard concept layout that supports steady-state shipyard operations at the target levels of throughput and productivity for the target product mix;
- iii. Identification of measures that, if executed, will improve efficiency and competitiveness in relation to comparator shipyards; Detail the priority of phases that should be actioned and the anticipated costs of each.
- iv. High-level estimation of the timeline and capital investment required to implement the measures identified.

2. DELIVERABLES

2.1 The key deliverable will be an independent report outlining the potential improvement projects, concept shipyard layout, corresponding cost estimates, and potential benefit analysis. The report should provide evidence that will support investment decisions by Scottish Government ministers.

The report will:

- provide an assessment of the yard's current productivity relative to comparator shipyards;
- provide an assessment of any productivity improvement measures currently in development and the likely impact of these;

- reflecting the yard's business strategy and target markets, summarise the target productivity requirement, associated product mix and throughput;
- identify potential projects and improvement measures that will achieve the target productivity, suggesting any appropriate prioritisation or grouping together of measures;
- provide a concept shipyard layout to support the target productivity;
- estimate the capital expenditure required to deliver the improvement measures identified;
- identify any improvement measures that may require planning approval;
- quantify the estimated potential benefits of implementing the development initiatives, in terms of the anticipated increase in productivity and any commensurate cost savings and increased profit margin for future projects;
- provide an assessment of confidence that the implementation of recommended measures would bring the yard to a level of efficiency to be competitive against comparator shipyards; and
- recommend next steps and opportunities for quick productivity wins.

2.2 The areas which the report should consider and make a productivity assessment should include, but not be limited to:

- Primary steelwork manufacturing
- Outfit manufacturing
- Pre-erection activities
- Painting
- Ship construction and outfitting
- Yard layout
- Design and engineering
- Organisation and planning
- Warehousing / stores / materials control
- Craneage / product movement
- Production engineering
- Information systems
- Enterprise management
- Automation and digitisation

3. REPORTING REQUIREMENTS

3.1 The work should commence as soon as possible and ideally last no more than 3 months, the expectation is a final report by 31 October 2022, with the following deliverables:

- i) An interim report and/or presentation, setting out emerging findings.
- ii) A draft final report, addressing the scope in full and setting out conclusions on potential productivity improvements to support Ferguson Marine's sustainable future.
- iii) A final report, informed by feedback from the Purchaser on the draft report.

3.2 The above documents must be presented in a clear, structured and comprehensive electronic format, with clear version numbers and notes, so that controls can be applied around which version is in use. Data visualisation should be used to clearly communicate evidence and conclusions, supported by written narrative.

3.3 The Supplier will return all source data to the Purchaser, unless the Supplier can demonstrate, for the Purchaser's verification, that this cannot be fully achieved.

3.4 The deliverables and outputs should include but not necessarily be limited to those included in this document. The final outputs, timetables and responsibilities will be detailed with the successful Supplier.

3.5 The Purchaser anticipates provision of an update report prior to holding fortnightly meetings with the Supplier during the contract period to ensure the project is developing according to our needs. Notwithstanding this timeframe, update meetings on Business critical matters should take place as soon as possible. may be held more frequently at the Purchasers discretion. There

should also be as a normal course of action be engagement with Ferguson Marine on a similar timescale to ensure parity in the progress being made for gaining access to required information and for the complete formulation of the reports required.

3.6 The Supplier will also be expected to engage with Ferguson Marine, through discussion facilitated by the Purchaser, to ensure that relevant information is provided in support of this work.

3.7 The ownership of the report, and any data produced as a result of the contract, lies with the Scottish Ministers.

4. DATA PROTECTION & CYBER SECURITY

The cyber security risk profile for this contract is LOW. Due to the risk profile for this contract, Tenderers are recommended to hold Cyber Essentials (or equivalent) certification covering the entire scope of the contract.

5. MILESTONES

5.1 Milestones and their indicative dates for completion are contained within the table below. These will be confirmed during project mobilisation.

5.2 Meetings may be face-to-face or virtual depending on availability of the Purchaser and Supplier. The Supplier may wish to propose their own approach for agreement with the Purchaser at the initial inception meeting.

Milestones	Milestone Weighting	Completion Date
Mobilisation		July 2022
Initial inception meeting/workshop with Purchaser and Supplier		July 2022
Interim report/presentation	35%	19 September 2022
Electronic delivery of draft final report		17 October 2022
Final meeting between Purchaser and Supplier to discuss findings and agree any changes or additions.		24 October 2022
Electronic delivery of final report, with any amendments as agreed with the Purchaser.	65%	31 October 2022

6. ESTIMATED CONTRACT VALUE

5.1 The estimated value of this Contract (ex VAT) is expected to be in the range of £130,000 to £180,000.

7. CONTRACT PERIOD

6.1 This Contract is intended to cover all work undertaken to fulfil this Specification of Requirements. To independently review the subsequent business case for any efficiency improvements that are suggested. We anticipate that the report will be submitted to Scottish Ministers by 31 October 2022. SG reserve the right to extend the contract until the 31st Dec 2022 to enable any subsequent review work to be completed.

8. CONTRACT MANAGEMENT

7.1 The Supplier is required to provide a dedicated Contract Manager who will be the main point of contact for Scottish Ministers. The Contract Manager will:

- Resolve any ongoing operational issues which have not been resolved
- Ensure that the costs involved in delivering the contract are as low as possible, whilst always meeting the required standards of service
- Provide cost estimates for set pieces of work as and when required

7.2 The Scottish Government will also nominate a Contract Manager to be the point of contact for the Supplier. The nominated contact will liaise with the Supplier on all operational and contractual issues, including complaints and dispute resolution. Details of a suitably qualified replacement will be provided in the absence of the nominated contact.

7.3 The Supplier's Contract Manager will be required to attend an initial meeting with the Scottish Government's Contract Manager following award of contract, liaise regularly by telephone and email and may be required to attend additional ad-hoc meetings at times and locations specified by the Purchaser.

9. FAIR WORK PRACTICES

9.1 The Scottish Government (SG) is persuaded by evidence which shows that the delivery of high quality public services is critically dependent on a workforce that is well-motivated, well led and has appropriate opportunities for training and skills development. These factors are also important for workforce recruitment and retention, and thus continuity of service. SG itself has adopted workforce policies to meet these requirements. These policies include:

- a pay policy that includes a commitment to supporting the living wage for the duration of this parliament;
- fair employment practices;
- clear managerial responsibility to nurture talent and help individuals fulfil their potential;
- a strong commitment to Modern Apprenticeships and to the development of Scotland's young workforce;
- support for learning and development;
- no inappropriate use of zero hours contracts;
- no inappropriate use of "umbrella" companies
- flexible working;
- flexi-time; and
- career breaks.

9.2 It is expected that the Service Provider, working alongside the Purchaser, will take a positive approach to workforce-related matters as part of a fair and equitable employment and reward package.

This and the following [] pages comprise Schedule 2 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 2 - PRICING SCHEDULE

TENDERERS RESPONSE WILL BE INCLUDED AT CONTRACT AWARD

This and the following 2 pages comprise Schedule 3 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 3 – ORDERING PROCEDURES

Purchase Order options and Invoicing Requirements

1. The Purchaser uses PECOS as the Purchase-to-Pay (P2P) system. Further information can be accessed through the following link:

<http://www.gov.scot/Topics/Government/Procurement/eCommerce>

2. PECOS supports the following options for transmitting approved Purchase Orders (POs) to suppliers:

- **cXML** - PECOS can issue a cXML PO directly to a supplier's back office system. This allows the PO to be automatically captured by the supplier's system, thereby removing the need to manually enter the PO and reducing potential errors. There is a one-off charge to configure cXML ordering from PECOS. The charge is £1415 + VAT per connection for cXML PO transmission. This is a one off cost for the supplier as once the connection is bought it can be used indefinitely with all PECOS customers. If an established live connection already exists then the one-off charge is not applicable.
- **PDF Email** – PECOS will send the supplier an emailed PO to a predetermined address with a PDF attachment.
- **Secure Email** – PO's be secure emails are used when sending personal information ie interim managers names, home addresses etc.. There is no cost for this set-up.

3. The Purchaser can accept invoices through the following options:

- Paper invoice to Accounts Payable, Victoria Quay, Edinburgh EH6 6QQ
- Email with a PDF attachment invoice

4. To ensure compliance with the EU invoicing Directive – effective from April 2019, the Purchaser is working with suppliers with a high volume of invoices annually to use an electronic format such as cXML or PDF for all invoices and credit notes. There are no costs to suppliers to issue and invoice or credit note via the Purchaser's invoicing solution.

5. All invoices submitted – regardless of format – must be HMRC compliant and include the following data:

- PO number
- Product or service item number if used (invoice should reflect any item number used on the PO)
- Line item detail – such as price, unit of measure and description
- Invoice period
- Supplier details include relevant tax information
- Buyers details
- Delivery details

- Payment instructions
- Allowance or charge information
- Invoice totals
- VAT breakdown (if applicable)

It is critical the invoice issued matches the information within the Purchasing System; the data must be correctly mapped to the invoice processing environment.

This and the following 2 pages comprise Schedule 4 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

1. Contract Managers

- 1.1. [NAME], based at [LOCATION], is the Purchaser Contract Manager and will be the point of contact for the Service Provider and liaise with the Service Provider on all operational and contractual issues, including complaints and dispute resolution.
- 1.2. The Service Provider will also appoint an individual (“Service Provider Contract Manager”) to be the main point of contact for the Purchaser on all operational and contractual issues, including complaints and dispute resolution.

2. Reporting Requirements

As per Specification (Schedule 1)

3. Dispute resolution

- 3.1. The Parties shall attempt to resolve any dispute between them arising out of, or in connection with, the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute as follows.
- 3.2. Any dispute will, in the first instance, be presented to the Service Provider Contract Manager and Purchaser Contract Manager for resolution.
- 3.3. If the Service Provider Contract Manager and Purchaser Contract Manager cannot agree on a resolution, then a separate meeting will be held between the senior management of the Service Provider and the Purchaser for resolution.
- 3.4. If the dispute cannot be resolved by the Parties pursuant to this paragraph, the Parties shall refer it to arbitration pursuant to the procedure in terms of clause 37 (Dispute Resolution) of the Contract.
- 3.5. The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to arbitration in terms of clause 37 (Dispute Resolution) of the Contract and the Service Providers shall comply fully with the requirements of the Contract at all times.

4. Data handling

- 4.1. All data and reports which are supplied electronically will be supplied in a format which is compatible with the software utilised by the Purchaser. The Service Provider must ensure all electronic files to be submitted to the Purchaser are free of viruses. The Service Provider must provide data and reports to the Purchaser in an editable electronic format, on request.

5. Meetings

As per Specification (Schedule 1)

6. Quality assurance

- 6.1. The Service Provider must comply with any relevant legislation, rules or regulations as in force at the time in the delivery of the Services.

7. Invoicing

- 7.1. The Service Provider must maintain records of all invoices submitted by any subcontractors and make these available on request to the Purchaser, or their representatives, for audit purposes.
- 7.2. The Service Provider must put in place arrangements for secure electronic transfer of invoices to the Purchaser (such as a secure web portal) in compliance with the reasonable requirements of the Purchaser.
- 7.3. The Service Provider must ensure that invoices are validated prior to submission to the Purchaser, meaning that the data fields on the invoices are compliant with reasonable requirements of the Purchaser. For example, that dates are expressed in a particular format.
- 7.4. The Service Provider must put in place arrangements for ensuring that invoices are compliant with the Contract prior to submission.

This and the following 1 pages comprise Schedule 5 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 5 – KEY INDIVIDUALS

1. e.g. Joe Bloggs, Contract Manager

2. e.g. Jane Doe, Software Specialist

This and the following 1 pages comprise Schedule 6 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 6 – APPROVED SUB-CONTRACTORS

approved Sub-Service Provider(s)	Relevant obligations
1. e.g. Subco Limited (SC123456)	e.g. high risk consultancy services
2.	

This and the following 1 pages comprise Schedule 7 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 7 – TRANSPARENCY REPORTS AND SERVICE PROVIDER SENSITIVE INFORMATION

Part 1- Transparency Reports

The Purchaser 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 Purchaser within 3 months of Contract Award)

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Contract Document)</i>			
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major subcontractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

Part 2

SERVICE PROVIDER SENSITIVE INFORMATION

Type of information specified as Service Provider Sensitive Information	Reason why information is sensitive	Duration of sensitivity

This and the following 3 pages comprise Schedule 8 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 8 – PARENT COMPANY GUARANTEE

1. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number []) and having our Registered Office at [] refer to the Contract dated [] and [] between the Scottish Ministers and [insert name of contractor], a company incorporated under the Companies Acts (Company number []) and having its Registered Office at [] (“the Company”) of which we are the ultimate holding company, for the provision [specify nature of the services] (“the Contract”) and in security of the Company's obligations thereunder guarantee the same in the following manner:-

1.1 We guarantee that the Company shall perform all its obligations contained in the Contract.

1.2 If the Company shall in any respect fail to perform its obligations under the Contract or shall commit any breach thereof, we undertake, forthwith on first 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 loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Company.

1.3 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:

1.3.1 any waiver or forbearance by the Scottish Ministers of or in respect of any of the Company's obligations 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 this instrument, or

1.3.2 any alteration to, addition to or deletion from the Contract or the scope of the work to be performed under the Contract, or

1.3.3 any change in the relationship between ourselves and the Company; or

1.3.4 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 shall continue in force until all the Company's obligations under the Contract and all our obligations hereunder have been duly performed.

2. This Guarantee shall be construed and take effect in accordance with Scots Law.

3. 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.

4. 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.

5. 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.

6. 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.
7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
8. All notices and other communications required or permitted to be given in terms of this Contract, or any proceedings relating to it, shall be in writing and will be sufficiently served:
 - 8.2 if delivered by hand; or
 - 8.2 if sent by fax; or
 - 8.3 if sent by prepaid recorded or special delivery post; or
 - 8.4 if sent by email

to the address specified below or to such other address as is from time to time notified to the other party in accordance with the provisions of this Clause 8:

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

9. Any such notice or communication shall be deemed to have been served,
 - 9.1 if delivered by hand, on the date of delivery;
 - 9.2 if sent by fax, 4 working hours after the time at which the fax was sent;
 - 9.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
 - 9.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,
 - 9.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

9.6 For the purposes of this Clause 9:

‘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; and

‘working hour’ means an hour between 0900 hours and 1700 hours on a working day.

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

SIGNED for and on behalf of [DN: insert name of the Company]

At.....

On.....

Signature.....

Full name

Position.....

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

This and the following 1 pages comprise Schedule 9 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 9 – DATA PROTECTION

Data Processing provision as required by Article 28(3) of the UK GDPR.

This Part includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are set out in the Contract.

The nature and purpose of the Processing of Personal Data

Data shall only be processed for the express purposes for the performance of this services contract.

The types of Personal Data to be Processed

It is likely that the names of some individuals will be processed during the execution of this work. Some identifying data such as name, telephone number and position in the organisation may also be included here.

The categories of Data Subject to whom Personal Data relates

Government Officials and Advisors.

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Clause 14 of the Contract.

This and the following 2 pages comprise Schedule 10 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 10 – EXIT MANAGEMENT

1. THE EXIT PERIOD

- 1.1. The Exit Period is the final month of the Contract term.
- 1.2. The Service Provider must guarantee that any sub-contractor engaged by the Service Provider to perform any part of the service complies with this requirement. If a sub-contractor fails to comply with this requirement, the Service Provider will as soon as possible arrange for the performance of the relevant service at the Service Provider's cost.

2. MAINTENANCE OF SERVICE DURING THE EXIT PERIOD

- 2.1. The Service Provider must provide sufficient resource to manage the Contract and fulfil all its duties without any deterioration in service during the Exit Period.
- 2.2. The Service Provider must, if so required, continue to provide management of the Contract, or any part of it to ensure all outstanding liabilities of the Service Provider are fulfilled.

3. CONTINUITY OF SERVICE TO NEW PROVIDER

- 3.1. Should the Contract continue either totally, partially or in an amended format and another service provider be appointed to continue the provision of the Services under the Contract, the Service Provider will take appropriate action to ensure an efficient transition from the Service Provider to a replacement service provider. The Service Provider will take appropriate action to ensure that there is minimum disruption both to the provision of services under the Contract and to the Purchaser.
- 3.2. The Service Provider shall, if so required by the Purchaser, make available to the Purchaser, or any organisation appointed by the Purchaser to provide the service following Contract expiry or termination, information and assistance relating to the Contract including information and assistance relating to TUPE required by the Purchaser in order to assist with securing a replacement service provider.

4. RE-TENDERING OF SERVICES

- 4.1. The Service Provider recognises that any re-tendering exercise commenced by the Purchaser in respect of all or part of the Services at any time during the Contract term must be fair and open; and in order to facilitate a smooth, timely and orderly re-tendering the Service Provider shall (promptly and in the timescale set out by the Purchaser):
 - provide all reasonable assistance that the Purchaser may require in connection with any re-tendering process;
 - comply with the Purchaser's requests in connection with any re-tendering process, which may include requests for such assistance and information as specified

- not knowingly do or omit to do anything which may adversely affect the ability of the Purchaser to ensure an orderly re-tendering process.

5. DATA TRANSFER

- 5.1. Without prejudice to clause 18 (Audit) of the Contract, during the period of up to 6 months after the date of such expiry or termination if so required by the Purchaser, the Service Provider must make available to the Purchaser, or any organisation appointed by the Purchaser to provide the services for the Contract or any part of them, information and assistance and all relevant data collected in the execution of the Contract, both electronically and in hard copy, as directed by the Purchaser.

This and the following [] pages comprise Schedule 11 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 11 – CYBER SECURITY REQUIREMENTS

CYBER SECURITY REQUIREMENTS

Definitions

The defined terms used in this Schedule 11 shall have the following meanings:

“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

in connection with the Services and/or the Contract;

- (a) **“Cyber Security Requirements”** means the Purchaser's requirements in connection with cyber security as set out in Section A (*Cyber Security Requirements* of the Annex to this Schedule 11, and the Specification;

1. SERVICE PROVIDER'S WARRANTY

The Service Provider warrants and undertakes that it shall meet and comply with the Cyber Security Requirements in connection with the provision of the Services and the Contract (including in respect of any certification or accreditation).

2. SERVICE PROVIDERS'S OBLIGATIONS

2.1 The Service Provider shall implement and maintain all security measures:

- (a) as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
- (b) to enable it to discharge its obligations under this Schedule 11; and
- (c) to ensure there are no Cyber Security Incidents

in all cases to the Purchaser's reasonable satisfaction and in accordance with Good Industry Practice.

- 2.2 The Service Provider shall notify the Purchaser promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.

3 CYBER SECURITY INCIDENTS

- 3.1 The Service Provider shall notify the Purchaser 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 Purchaser. Where such initial notification is not in writing, then the Service Provider shall provide the Purchaser with a written notification setting out the details required under this paragraph 3.1 promptly and in any case within [twelve (12)] hours from the initial notification.

- 3.2 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 Purchaser fully informed of the progress and findings of its investigation;
- (c) where required to do so, inform any applicable regulator of the Cyber Security Incident; and
- (d) take any action deemed necessary by the Purchaser in the circumstances, including complying with any additional security measures deemed appropriate by the Purchaser.

- 3.3 The Service Provider shall perform its obligations under this paragraph 3 at no additional charge to the Purchaser, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the Purchaser.

4 INFORMATION AND AUDIT

- 4.1 Promptly upon request, the Service Provider shall provide to the Purchaser such information and records in connection with the Service Provider's obligations under this Schedule 11 as the Purchaser may request.

- 4.2 The Service Provider agrees (and procures that its sub-contractors agree) that the Purchaser, its agents and its representatives may conduct such audits as are considered necessary by the Purchaser acting reasonably, including for the following purposes:

- (a) to ascertain the impact of any Cyber Security Incident;
- (b) to review and verify the integrity, confidentiality and security of any data relating to the Contract; or
- (c) to review the Service Providers and/or any sub-contractor's compliance with its obligations under this Schedule 11.

- 4.3 The Service Provider shall (and shall ensure that any sub-contractor shall) provide the Purchaser, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including:

- (a) all data and/or records requested by the Purchaser;
- (b) access to any relevant premises and to any equipment owned/controlled by the Service Provider, any associated or group company and any sub-contractor and, where such premises and/or equipment are outwith the control of the Service Provider, shall secure sufficient rights of access for the Purchaser, its agents and representatives as are necessary to allow audits to take place; and
- (c) access to any relevant individuals.

4.4 The Purchaser shall use its reasonable endeavours to:

- (a) provide at least [10 days'] notice of its intention to conduct an audit (but is not obliged to do so); and
- (b) ensure that the conduct of each audit does not unreasonably disrupt the Service Provider and/or sub-contractor or delay the performance of the Contract.

4.5 The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 4 [unless an audit identifies a breach of the terms of this Schedule 11 by the Service Provider and/or sub-contractor, in which case the Service Provider shall reimburse the Purchaser on demand for all the Purchaser's reasonable costs and expenses incurred in conducting the audit].

5 BREACH OF CYBER SECURITY REQUIREMENTS

5.1 A breach of this Schedule 11 by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

5.2 If the Service Provider fails to comply with the provisions of this Schedule 11, the Purchaser may take any action it considers appropriate or necessary (and the Service Provider shall comply with the Purchaser's requests in this respect), including:

- (a) suspending the whole or any part of the Service Provider's obligations under the Contract;
- (b) requiring that specific sub-contractors connected with such breach be removed from their involvement with the Services and the Contract and cease to have any access to the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Contract;
- (c) requesting the Service Provider return and/or arrange the evidenced secure and permanent destruction of the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Contract; and
- (d) implementing additional or alternative measures, both technical and organisational, to protect and secure the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Contract.

**ANNEX
CYBER SECURITY REQUIREMENTS**

The cyber security requirements applicable to the Contract are set out in this Annex. Section A (*Cyber Security Requirements*) includes the Purchaser's requirements in connection with cyber security

Section A: Cyber Security Requirements

Overview of requirements:

Cyber risk profile	<ul style="list-style-type: none">• Low
Certification requested for assurance purposes	<ul style="list-style-type: none">• Cyber Essentials or equivalent
Purchaser's risk management approach	<ul style="list-style-type: none">• Strict pass/fail

The Service Provider shall meet the following requirements: