

SRUC and SRUC Innovation Limited Standard Terms and Conditions of Subcontracts

1 Definitions and Interpretation

1.1 Definitions:

Applicable Laws: means all applicable laws, statutes, regulations and codes from time to time in force including the Data Protection Laws.

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business.

Change Request: has the meaning given in clause 9.1.

Charges: the charges, as set out in the Commercial Terms, payable by the Client for the supply of the Services (including any Deliverables) in accordance with clause 8.

Commencement Date: has the meaning given in clause 2.2.

Commercial Terms: the commercial terms set out in Schedule 1 of the Contract.

Client: means either SRUC (a Scottish charity with charity number SC003712 and a company registered in Scotland with number SC103046) or SRUC Innovation Limited (a company registered in Scotland with number SC148684), whichever of them is specified as the Client in the Contract.

Client Data: any information that is provided by or on behalf of the Client to the Service Provider as part of the Client's use of the Services including Client Personal Data.

Client Materials: any materials, including hardware, software, tools, systems, documents or facilities, owned or used by the Client relevant to the provision of the Services by the Service Provider, as specified in the Commercial Terms but excluding any Service Provider Materials.

Client Personal Data: means any personal data which will be processed by the Service Provider on behalf of the Client in connection with the Services and pursuant to this Contract.

Confidential Information means any information relating to the business affairs or finances of either party, including without limitation any information relating to the products, services, technology, technical process, business processes, personal data, financial affairs, customers, suppliers or employees of a party or which is either expressed as confidential or is confidential by its nature.

Contract: the contract between the Service Provider and the Client for the supply of Services (including Deliverables), incorporating the Commercial Terms and these Standard Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Data Protection Laws: means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation (EU) 2016/679), 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; the Data Protection Act 2018 (and regulations made

thereunder), and the Privacy and Electronic Communications Regulations 2003 as amended.

Deliverables: any deliverables and results, provided by the Service Provider pursuant to the Services, as specified in the Commercial Terms.

Estimate: has the meaning given in clause 9.2.

Force Majeure Event: acts, events, omissions or accidents beyond a party's reasonable control, including strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, fire, flood or storm.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

New Supplier: another party chosen by the Client to take over the provision of all or part of the Services.

Potential Returning Employees: has the meaning given in clause 4.4.1.

Proposal: the Client's proposal to the Service Provider for the provision of the Services to the Client as set out overleaf.

Returning Employees: those persons listed in a schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Service Provider, or any sub-contractor of the Service Provider, wholly and/or mainly in the Services immediately before the Subsequent Transfer Date.

Services: the services supplied by the Service Provider to the Client in accordance with the Service Specification as set out in the Commercial Terms.

Service Provider: means the service provider who accepts the Proposal in writing.

Service Provider Materials: any materials, including any software, tools or systems provided by the Service Provider, its agents, subcontractors or Service Providers to the Client and used directly or indirectly in the supply of the Services, including any such items specified in the Service Specification but excluding any Client Materials.

Services Specification: the description or specification of the Services set out in the Commercial Terms, or as otherwise agreed in writing by the Client.

Standard Conditions: these standard terms and conditions as amended from time to time.

Subsequent Transfer Date: means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Service Provider and the Client and/or a New Supplier (as the case may be).

Substitute: means a substitute for the Service Provider (where the Service Provider is an individual) appointed under the terms of clause 6.3.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended).

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email.

2 **Basis of contract**

2.1 The Proposal constitutes an offer to the Service Provider for the provision of the Services to the Client in accordance with the Commercial Terms and these Standard Conditions.

2.2 The Proposal shall only be deemed to be accepted when the Service Provider accepts the Proposal in writing, at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 These Standard Conditions, together with the Commercial Terms apply to the Contract to the exclusion of any other terms that the Service Provider seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 In the event of a conflict between the Commercial Terms and the Standard Conditions, the Commercial Terms shall prevail.

3 **Duration of the Contract**

The Contract shall commence on the Commencement Date and shall continue in force, unless terminated in accordance with its terms, for the period stated in the Commercial Terms under "Duration of Services".

4 **TUPE on exit**

4.1 This Contract envisages that subsequent to the commencement of this Contract, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part thereof, or otherwise).

4.2 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Service Provider, and/or any sub-contractor of the Service Provider, for any reason and where all or part of the Services continue to be provided by the Client and/or a New Supplier, there may be a relevant transfer of the Returning Employees to the Client and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the Client and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.

- 4.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Client and/or the New Supplier.
- 4.4 To the extent lawfully permitted, the Service Provider shall, or shall procure that any sub-contractor of the Service Provider shall, not later than six months prior to the expiry of this Contract (or, if earlier, within 7 days of notice being given of termination of this Contract) provide the Client, or at the direction of the Client, any New Supplier, with the following details:
- 4.4.1 a list of all employees, staff, other workers, agents and consultants of the Service Provider and of any sub-contractor of the Service Provider who are engaged in the provision of the Services ("**Potential Returning Employees**");
 - 4.4.2 job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;
 - 4.4.3 terms and conditions of employment of the Potential Returning Employees, including any particulars that the Service Provider (or where relevant any sub-contractor of the Service Provider) is obliged to give under section 1 of the Employment Rights Act 1996;
 - 4.4.4 any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
 - 4.4.5 any claims, current or which the Service Provider (or where relevant any sub-contractor of the Service Provider) has reasonable grounds to believe will be brought by any of the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
 - 4.4.6 all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees; and
 - 4.4.7 information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.

The Service Provider shall, or shall provide that any sub-contractor of the Service Provider shall, provide updates of the details listed above at regular intervals to be specified by the Client.

- 4.5 From the date of the earliest event referred to in Clause 4.4 above, the Service Provider agrees that it shall not (and shall where relevant procure that any sub-contractor of the Service Provider shall not) without the prior written consent of the Client assign any person to the provision of the Services (or the relevant part) which is the subject of a relevant who is not listed as a Potential Returning Employee and shall not (and shall where relevant procure that any sub-contractor of the Service Provider shall not) without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed):
- 4.5.1 increase the total number of employees listed as Potential Returning Employees save for fulfilling assignments and projects previously scheduled and agreed with the Client;

- 4.5.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed as Potential Returning Employees;
 - 4.5.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Potential Returning Employees save for fulfilling assignments and projects previously scheduled and agreed with the Client;
 - 4.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed as Potential Returning Employees; and
 - 4.5.5 replace any of the personnel listed as Potential Returning Employees or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the list of Potential Returning Employees.
- 4.6 The Service Provider shall indemnify the Client (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Client and/or a New Supplier in connection with or as a result of:
- 4.6.1 any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, negligence, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Service Provider (or where relevant any sub-contractor of the Service Provider) or any other matter, event or circumstance occurring on or before the Subsequent Transfer Date;
 - 4.6.2 all and any claims in respect of all emoluments and outgoings in relation to the Returning Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Subsequent Transfer Date;
 - 4.6.3 any failure by the Service Provider (or where relevant any sub-contractor of the Service Provider) to comply with its obligations under regulations 11, 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the Client and/or New Supplier to comply with its or their duties under regulation 13 of TUPE; and
 - 4.6.4 any claim by any person who transfers or alleges that they have transferred to the Client or the New Supplier under TUPE in connection with this Contract and/or the Services but whose name is not included in the list of Returning Employees.
- 4.7 **[Optional:** If TUPE applies to transfer the employment of any person employed by the Service Provider (or where relevant any sub-contractor of the Service Provider) to the Client or any New Supplier then if the Client or such New Supplier shall serve a notice terminating the employment of such person within six months after the date of such transfer, the Service Provider shall indemnify the Client (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Client is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.]

5 Supply of Services

- 5.1 The Service Provider shall:
- 5.1.1 supply the Services and the Deliverables to the Client in accordance with Applicable Laws and the Contract in all material respects;
 - 5.1.2 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Service Provider's industry, profession or trade;
 - 5.1.3 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - 5.1.4 co-operate with the Client in all matters relating to the Services, and comply with the Client's instructions;
 - 5.1.5 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises from time to time (where the Service Provider is present on the Client's premises);
 - 5.1.6 before the date on which the Services are to start, obtain and at all times maintain during the term of this Contract, all necessary licences and consents required in respect to the Services and comply with all Applicable Laws;
 - 5.1.7 not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
 - 5.1.8 hold all Client Materials and Client Data in safe custody at its own risk and maintain the Client Materials in good condition until returned to the Client, and not dispose of or use the Client Materials or Client Data other than in accordance with the Client's written instructions or authorisations; and
 - 5.1.9 notify the Client in writing immediately upon the occurrence of a change of control of the Service Provider (where the Service Provider is a company).
- 5.2 Time is of the essence in relation to any performance dates for the Service Provider. If the Service Provider fails to meet the relevant deadlines, then (without prejudice to the Client's right to terminate this Contract and any other rights it may have), the Client may:
- 5.2.1 refuse to accept any subsequent performance of the Services which the Service Provider attempts to make;
 - 5.2.2 purchase substitute services from elsewhere and reclaim from the Service Provider any additional costs incurred as a result of procuring such services from a third party instead of the Service Provider;
 - 5.2.3 hold the Service Provider accountable for any loss and additional costs incurred; and
 - 5.2.4 have any sums previously paid by the Client to the Service Provider in respect of the affected Services refunded by the Service Provider.
- 5.3 In all matters arising under or in connection with this Contract, the Service Provider shall be fully responsible for the acts and omissions of any and all of its respective

employees, agents, representatives, contractors, including sub-contractors, and Substitutes as if they were the acts and omissions of the Service Provider itself.

5.4 Nothing in this Contract shall prevent the Service Provider from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of the Contract provided that:

5.4.1 such activity does not cause a breach of any of the Service Provider's obligations under this Contract; and

5.4.2 the Service Provider shall not engage in any such activity which is directly in contradiction to or conflicts with the Services without the prior written consent of the Client.

6 Individual Service Provider

6.1 This clause 6 applies where the Service Provider is an individual:

6.1.1 The relationship of the Service Provider to the Client will be that of independent contractor and nothing in this Contract shall render him or her an employee, worker, agent or partner of the Client and the Service Provider shall not hold himself or herself out as such.

6.1.2 The Client shall not be responsible for withholding taxes with respect to the Service Provider's compensation hereunder. The Service Provider shall have no claim against the Client or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

6.1.3 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Service Provider shall be fully responsible for and shall indemnify the Client for and in respect of:

6.1.3.1 any income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law. The Service Provider shall further indemnify the Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and/or

6.1.3.2 any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Service Provider or any Substitute against the Client arising out of or in connection with the provision of the Services.

6.2 The Client may at its option satisfy the indemnities set out above (in whole or in part) by way of deduction from any payments due to the Service Provider.

6.3 The Service Provider may, with the prior written approval of the Client and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services on his or her behalf, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality and Intellectual Property Rights. If the Client accepts the Substitute, the Service Provider shall continue to invoice the Client in accordance with clause 8 and shall be

responsible for the remuneration of the Substitute. The Substitute shall not be entitled to any fees or other remuneration from the Client. For the avoidance of doubt, the Service Provider will continue to be subject to all duties and obligations under this Contract for the duration of the appointment of the Substitute.

6.4 This clause 6 shall survive termination of the Contract.

7 Client obligations

7.1 The Client shall:

7.1.1 co-operate with the Service Provider in all matters relating to the Services; and

7.1.2 provide the Service Provider with such information and materials as the Service Provider may reasonably require in order to supply the Services.

8 Charges and payment

8.1 The Service Provider shall invoice the Client as set out in the Commercial Terms.

8.2 The Client shall pay each undisputed invoice submitted by the Service Provider:

8.2.1 within 28 days of receipt of the invoice; and

8.2.2 in full and in cleared funds to a bank account nominated in writing by the Service Provider.

8.3 Where the Charges are calculated on a time and materials basis the Service Provider shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Service Provider shall indicate the time spent per individual in its invoices.

8.4 If the Client fails to make a payment due to the Service Provider under the Contract by the due date, then, without limiting the Service Provider's remedies under clause 15, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.4 will accrue each day at 2% a year above the Bank of Scotland's base rate from time to time.

8.5 If the Client disputes a payment in good faith, then the interest payable under clause 8.4 is only payable after the dispute is resolved, on sums found or agreed to be due, from 7 days after the dispute is resolved until payment.

8.6 The Client may, at any time, without notice to the Service Provider, set off any liability of the Service Provider to the Client against any liability of the Client to the Service Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract. If the liabilities to be set off are expressed in different currencies, the Client may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Client of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

8.7 In the event of a payment in advance (an "advance payment") being made by the Client to the Service Provider, then, on termination of the Contract in terms of clause 15 below prior to the performance or the completion of performance of the Services or before expiry of the period of Contract to which such advance payment relates, the Service Provider shall reimburse to the Client on a pro rata basis that part of the advance payment which is equivalent to the unperformed Services or period of Contract not yet expired.

- 8.8 All payments by the Client shall be considered to be advance payments until such time as the Client has confirmed that the Contract has been performed satisfactorily.

9 Changes to Services

- 9.1 If the Client wishes to change the scope of the Services (including Client requests for additional services), it shall submit details of the requested change to the Service Provider in writing (a "**Change Request**").
- 9.2 Upon receipt of a Change Request, the Service Provider shall, within a reasonable time, provide a written estimate (an "**Estimate**") to the Client of:
- 9.2.1 the likely time required to implement the change;
 - 9.2.2 any variations to the Charges arising from the change;
 - 9.2.3 the time period for accepting the Estimate (being a period of no longer than 30 days); and
 - 9.2.4 any other impact of the change on the terms of the Contract.
- 9.3 If the Client wishes to proceed with an Estimate, the Client shall confirm this in writing to the Service Provider within 14 days of receipt of an Estimate, and such confirmed Estimate shall constitute an amendment to the Commercial Terms. The Client shall have no obligation in respect of an Estimate until such time as the Estimate has been agreed in writing by the Client.

10 Intellectual property rights

- 10.1 Nothing in these Standard Conditions affects either party's rights in pre-existing Intellectual Property Rights. The Client shall retain all right, title and interest in the Client Materials and all Intellectual Property Rights therein.
- 10.2 The Service Provider acknowledges and agrees that the Client owns or licenses the Client Data. The Service Provider shall have no rights to access, use or modify the Client Data unless it has the prior written consent of the Client.
- 10.3 The Client grants to the Service Provider a revocable, non-transferable, non-exclusive, royalty-free, worldwide limited licence for the duration of the Services to use the Client's Intellectual Property Rights solely to the extent necessary to enable the Service Provider to comply with its obligations under the Contract.
- 10.4 The Service Provider hereby assigns to the Client (including by way of present assignation of future rights) free from all third party rights, all Intellectual Property Rights in the Deliverables and all materials embodying these rights to the fullest extent permitted by law (excluding any Intellectual Property Rights in the Service Provider Materials). Insofar as they do not vest automatically by operation of law or under this Contract, the Service Provider holds legal title in these rights on trust for the Client.
- 10.5 Where the Service Provider is a company, other corporate body or institution, it shall procure that any Service Provider employee providing the Services waives absolutely their moral rights arising under the Copyright, Designs and Patents Act 1988 in relation to the Deliverables and, so far as is legally possible, any broadly equivalent rights he may have in any territory of the world.
- 10.6 Where the Service Provider is an individual, he or she waives any moral rights in the Deliverables to which he or she is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute,

support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Deliverables or other materials, infringes the Service Provider's moral rights.

- 10.7 The Service Provider shall, promptly at the Client's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Client may from time to time require for the purpose of securing for the Client all right, title and interest in and to the Intellectual Property Rights assigned to the Client in accordance with clause 10.4.
- 10.8 The Service Provider:
- 10.8.1 warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Client Materials) by the Client or its customers shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 10.8.2 shall indemnify the Client in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Client arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables (excluding the Client Materials).

11 Insurance

- 11.1 During the term of this Contract and for a period of 5 years after the expiry or termination of this Contract, the Service Provider shall maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £5,000,000 and public liability insurance at an amount not less than £5,000,000 to cover the liabilities that may arise under or in connection with this Contract and shall produce to the Client on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12 Data protection

- 12.1 For the purposes of this clause 12, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor and processing**, shall have the meaning given to them in the UK GDPR.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Laws in respect to the Client Personal Data. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
- 12.3 In relation to the Client Personal Data, paragraph **Error! Reference source not found.** of the Commercial Terms sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of personal data and categories of data subject.
- 12.4 This clause 12.4 applies where the parties have determined that, for the purposes of the Data Protection Laws, the Service Provider shall act as a processor with regard to processing Client Personal Data:
- 12.4.1 Without prejudice to clause 12.2, the Service Provider shall:
- 12.4.1.1 process all Client Personal Data only on the documented instructions of the Client and in accordance with paragraph 9 of the Commercial Terms, unless the

Service Provider is required by Applicable Laws to otherwise process that Client Personal Data. Where the Service Provider is relying on Applicable Laws as the basis for processing Client Personal Data, the Service Provider shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Service Provider from so notifying the Client on important grounds of public interest. The Service Provider shall immediately inform the Client if, in the opinion of the Service Provider, the instructions of the Client infringe the Data Protection Laws;

- 12.4.1.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against its accidental loss, damage or destruction including the ability to restore the availability and access to Client Personal Data in a timely manner in the event of a physical or technical incident;
- 12.4.1.3 ensure, and procure that that all personnel who have access to and/or process Client Personal Data are obliged to keep the Client Personal Data confidential;
- 12.4.1.4 promptly assist the Client, at the Client's expense, in responding to any request from a data subject and in ensuring compliance with the Client's obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Service Provider shall promptly notify the Client if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Client Personal Data;
- 12.4.1.5 notify the Client without undue delay (and no later than 24 hours) after becoming aware of a personal data breach;
- 12.4.1.6 at the written direction of the Client, delete or return to the Client all Client Personal Data on termination or expiry of the Contract, unless the Service Provider is required by Applicable Law to continue to process that Client Personal Data, in which case the Service Provider shall promptly notify the Client, in writing, of what that Applicable Law is and shall only be permitted to process that Client Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 12 shall continue to apply to such Client Personal Data notwithstanding the termination or expiry of this Contract for as long as such Client Personal Data is processed by the Service Provider. For the purposes of this clause 12.4.1.6 the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and

- 12.4.1.7 maintain adequate records, and, on the Client's request, make available such information as the Client may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Client or the Client's designated auditor, to demonstrate its compliance with the Data Protection Laws and this clause 12.
- 12.5 The Service Provider shall not, without the prior written consent of the Client (and in any event subject to the Service Provider providing the Client with reasonable evidence that such activity is being undertaken in full compliance with the Data Protection Laws):
 - 12.5.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to Client Personal Data or transfer any Client Personal Data to the same; or
 - 12.5.2 carry out, via itself or via any other processor, any processing of Client Personal Data, or transfer any Client Personal Data, outside of the UK, including processing Client Personal Data on equipment situated outside of the UK.
- 12.6 The Service Provider hereby indemnifies, and keeps indemnified, the Client (including but not limited to any employees, agents or contractors engaged by the Client, excluding the Service Provider) fully on demand against all losses and/or expenses reasonably incurred by the Client (or its employees, agents or contractors):
 - 12.6.1 arising from any breach of this Contract or any breach of the Data Protection Laws by the Service Provider, or any employees, agents, Substitutes or processors engaged by the Service Provider, and/or
 - 12.6.2 as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of the Service Provider's unauthorised processing, unlawful processing, destruction and/or damage to any Client Personal Data processed by the Service Provider and/or any employees, agents, Substitutes or sub-processors engaged by the Service Provider.
- 13 **Limitation of liability**
 - 13.1 Nothing in the Contract shall limit or exclude either party's liability for:
 - 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 13.1.2 fraud or fraudulent misrepresentation; or
 - 13.1.3 any other liability which cannot be limited or excluded by Applicable Law.
 - 13.2 Subject to clause 13.1, neither party shall have any liability to the other party, whether in contract, negligence, for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - 13.2.1 loss of profits;
 - 13.2.2 loss of sales or business;
 - 13.2.3 loss of agreements or contracts;
 - 13.2.4 loss of anticipated savings;

13.2.5 loss of or damage to goodwill; or

13.2.6 any indirect or consequential loss.

13.3 Subject to clause 13.1, the Client's total aggregate liability to the Service Provider, whether in contract, negligence, breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to an amount equal to the total Charges paid under the Contract.

13.4 This clause 13 shall survive termination of the Contract.

14 **Variation**

Except as set out in these Standard Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15 **Termination**

15.1 Without limiting or affecting any other right or remedy available to it, the Client may terminate the Contract:

15.1.1 with immediate effect by giving written notice to the Service Provider if:

15.1.1.1 where the Service Provider is a company, there is a change of control of the Service Provider;

15.1.1.2 where the Service Provider is an individual, the Service Provider is declared bankrupt or makes any arrangement with or for the benefit of his or her creditors;

15.1.1.3 where the Service Provider is an individual, he or she is convicted of any criminal offence (other than a road traffic offence for which a non-custodial penalty is imposed); or

15.1.1.4 the Service Provider commits a breach of clause 5.1.1,

15.1.2 for convenience by giving the Service Provider one Business Days' written notice.

15.2 Without limiting or affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;

15.2.2 the other party (where a company) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

16 Consequences of termination

16.1 On termination or expiry of the Contract the Service Provider shall immediately deliver to the Client all Deliverables whether or not then complete, and return all of the Client Materials. If the Service Provider fails to do so, then the Client may enter the Service Provider's premises and take possession of them. Until they have been delivered or returned, the Service Provider shall be solely responsible for the safe keeping of all Deliverables and Client Materials in its possession and will not use them for any purpose not connected with this Contract.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

17 General

17.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event, provided that:

17.1.1 the other party is notified of such an event and its expected duration; and

17.1.2 it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for three months or more, the party not affected may terminate the Contract by giving not less than 30 days' written notice to the other party.

17.2 **No Partnership or agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.3 **Assignment and other dealings.**

17.3.1 The Client may at any time assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.3.2 The Service Provider shall not assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Client.

17.4 **Confidentiality.**

17.4.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years, unless otherwise stated in the Commercial Terms, after termination of the Contract, disclose to any person any

Confidential Information concerning the business, affairs, company's or suppliers of the other party, except as permitted by clause 17.4.2.

- 17.4.2 Each party may disclose the other party's Confidential Information:
- 17.4.2.1 to its employees, officers, representatives, subcontractors, Substitutes or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors, Substitutes or advisers to whom it discloses the other party's confidential information comply with this clause 17.4; and
 - 17.4.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.4.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 17.4.4 The Client is subject to the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and associated legislation and guidance (**FOI Law**). This means that any person who makes a valid request for recorded information held by or on behalf of the Client will (subject to certain exceptions) be entitled to receive it. For the avoidance of doubt, nothing in the Contract shall prevent, restrict or prohibit the Client from complying with its obligations under FOI Law and the Client may disclose any information whatsoever relating or otherwise pertaining to the Contract where it considered this it is required to do so under FOI Law without liability to the Service Provider.

17.5 **Entire agreement.**

- 17.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 17.5.3 Nothing in this clause shall limit or exclude any liability for fraud.

17.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion

of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.8 Notices.

17.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

17.8.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

17.8.1.2 Sent by email to the email addresses stated in the Commercial Terms; or

17.8.1.3 as otherwise specified in the Commercial Terms.

17.8.2 Any notice or other communication shall be deemed to have been received:

17.8.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

17.8.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

17.8.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, at 09.00am on the next Business Day

17.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17.9 Counterparts

17.9.1 This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts, all as permitted by the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.

17.9.2 Transmission of an executed counterpart of this Contract (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Contract. If either method of delivery is adopted, without prejudice to the validity of the Contract thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

17.9.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

17.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Scotland.

17.11 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.