

Template 19c - CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES – (other than Works Consultancies)

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

1. DEFINITIONS

In these Conditions:

'Client' means **Social Care and Social Work Improvement Scotland, hereafter, referred to as the Care Inspectorate/ Scottish Social Services Council (SSSC)** (delete as applicable);

'Consultant' means the person, firm or company to whom the Contract is issued;

'Contract' means the contract between the Client and the Consultant consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Purchase Order;

'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 1998 and any statutory modification or re-enactment thereof and the UK GDPR.

'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 understanding as the Consultant 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 all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed in connection with this Contract by or on behalf of the Consultant;

'Personal Data' has the meaning given in the Data Protection Laws;

'Premises' means the location where the Project is to be performed, as specified in the Purchase Order;

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

'Project' means the services to be provided as specified in the Purchase Order;

'Purchase Order' means the document setting out the Client's requirements for the Contract.

'Schedule' means a schedule annexed to and forming part of these conditions; and

'Third country' means a country or territory outside the United Kingdom.

'UK GDP' 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.

2. THE PROJECT

2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.

2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.

2.3 The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement, the matter shall be determined by arbitration in accordance with the provisions of Condition 21 (Dispute Resolution).

3. CONSULTANT'S PERSONNEL

3.1 The Consultant shall make available for the purposes of the Project any individuals named on the Purchase Order as key personnel. The Consultant shall provide the Client with a list of the names and addresses, of all others regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this paragraph.

3.2 The Consultant shall take the steps reasonably required by the Client, to prevent unauthorised persons being admitted to the Premises. If the Client gives the Consultant notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice.

3.3 The decision of the Client shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of the Consultant by this Condition.

3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

4. SECURITY AND ACCESS TO THE CLIENT'S PREMISES

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

4.2 The Consultant must comply with the Client's policies concerning Baseline Personnel Security Standard checks and such modifications to those policies or replacement policies as are notified to the Consultant from time to time.

4.3 The Consultant must notify the Client of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

4.4 At the Client's written request, the Consultant must provide a list of the names and addresses of all persons who may require admission to the Client'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 Client may reasonably request.

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

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

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

4.8 The Client must provide advice and assistance acting reasonably to the Consultant to facilitate the Consultant's compliance with this Condition.

4.9 All decisions of the Client under this Condition are final and conclusive.

4.10 Breach of this Condition by the Consultant is a material breach for the purposes of Condition 14.2 (Termination).

4.11 If cyber security requirements apply to this Contract:

4.11.1 then these are set out in Schedule Part 2 (Cyber Security Requirements) to this Contract; and

4.11.2 in that case the Consultant shall comply with the provisions of Schedule Part 2 (Cyber Security Requirements)

4.11.3 and this Condition 4.11 shall not apply where the Contract does not include a Schedule Part 2 (Cyber Security Requirements)

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

‘Consultant Representatives’ means all persons engaged by the Consultant 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 Consultant);
- its agents, Consultants and carriers; and
- any sub-contractors of the Consultant (whether approved under Condition 17 (Assignment and sub-contracting) or otherwise).’

5. CHANGE TO CONTRACT REQUIREMENTS

5.1 The Client may order any variation to any part of the Contract that for any other reason shall in the Client’s opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Project and changes in quality, form, character, kind, timing, method or sequence of the Project.

5.2 Save as otherwise provided herein, no variation of the Project as provided for in Condition 5.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

5.3 Where any such variation of the Project made in accordance with Conditions 5.1 and 5.2 has affected or may affect the costs incurred by the Consultant in providing the Services, the Consultant will notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account, (including such information as may be provided by the Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in providing the service) and may authorise such alteration to the sums to be paid to the Consultant, in accordance with the provisions of the Contract as are, in the Client’s opinion, appropriate and reasonable in the circumstances.

6. FEES AND EXPENSES

6.1 The Client shall pay to the Consultant fees and expenses at the rate specified In the Purchase Order.

6.2 The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.

6.3.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.

6.3.2 In this Condition 6, "invoice" includes an electronic invoice meeting all the requirements set out in Regulation 70A of the Public Contracts (Scotland) Regulations 2016 or Regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

6.4 Value Added Tax, where applicable, shall be shown separately on all invoices As a strictly net extra charge.

6.5 Notwithstanding Condition 17 (Assignment and sub-contracting) of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 16 (Recovery of sums due) of this Contract and (ii) all the related rights of the Client under this Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary the Client's arrangements for payment of the fees or expenses or for handling invoices.

7. AUDIT

7.1 The Consultant shall keep and maintain until 5 years after the Contract has been completed, records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

8. CORRUPT GIFTS OR PAYMENTS

8.1 The Consultant shall not offer or give or agree to give, to any member, employee or representative of the Client any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Client, or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Consultant is drawn to the criminal offences created by the Bribery Act 2010.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by

the Consultant on behalf of the Client for use, or intended use, in relation to the performance by the Consultant of its obligations under the Contract are hereby assigned to and shall vest in the Crown absolutely.

9.2 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.

9.3 The Consultant must not infringe any Intellectual Property Rights of any third party in carrying out the Project or otherwise performing its obligations under the Contract. The Consultant shall indemnify the Client against all actions, claims, demands, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition 9.3.

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

10. INDEMNITY AND INSURANCE

10.1 The Consultant shall indemnify and keep indemnified the Client, against all actions, claims, demands, costs and expenses incurred by or made against the Client, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents.

10.2 The Client shall indemnify the Supplier 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 Consultant acting in accordance with the Client's written instructions. This indemnity provision shall not apply if the Consultant-

- (a) acts on the Client's specific written instructions but fails to notify the Client in accordance with Condition 24.11(c) (Data Protection) of this contract;
- (b) fails to comply with any other obligation under the Contract.

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

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

10.5 If requested, by the Client the Consultant shall produce to the Client the

relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

11. DISCRIMINATION

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

12. BLACKLISTING

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

13. CONFIDENTIALITY

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

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

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

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

13.4 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOISA, the content of the Contract is not confidential information and the Consultant hereby gives its consent for the Client to publish the Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOISA redacted) including any changes to the Contract agreed from time to time.

14. TERMINATION

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

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

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

(c) where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

14.2 On the occurrence of any of the events described in paragraph 14.1, or if the Consultant shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Client in writing to do so, or, where the Consultant is an individual, if the Consultant shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

14.3 The Client may terminate the Contract in the event that:

(a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

(b) the Consultant has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure.

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

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

14.6 Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 7(Audit), 9 (Intellectual Property Rights) and 13 (Confidentiality) and 24 (Data Protection).

15. RETURN OF DOCUMENTS

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

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

16. RECOVERY OF SUMS DUE

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

17. ASSIGNATION AND SUB-CONTRACTING

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

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

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

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

17.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Client 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 Client; and

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

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

17.4.1 a right for the Consultant to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 14.3 occur; and

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

In this Condition 17.4, 'sub-contract' means a contract between two or more contractors, at any stage of remoteness from the Client in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

18. NOTICES

18.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, teletext, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

19. STATUS OF CONTRACT

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

20. COMPLIANCE WITH THE LAW ETC.

In carrying out the Project and otherwise when performing the Contract, the Consultant must comply in all respects with:

20.1 all applicable law;

20.2 any applicable requirements of regulatory bodies; and

20.3 Good Industry Practice.

21. DISPUTE RESOLUTION

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

21.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single

arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

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

22. HEADINGS

22.1 The headings to Conditions shall not affect their interpretation.

23. GOVERNING LAW

23.1 These Conditions shall be governed by and construed in accordance with Scottish law and the Consultant hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Client to take proceedings against the Consultant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

24. DATA PROTECTION

24.1 The Consultant acknowledges that Personal Data described in the scope of the Schedule Part 1 (Data Protection) may be Processed in connection with the Project under this Contract. For the purposes of any such Processing, Parties agree that the terms of this Condition 24 will apply where the Consultant acts as the Data Processor and the Client acts as the Data Controller.

24.2 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 Condition 24 are without prejudice to any obligations and duties imposed directly on the Consultant under Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.

24.3 The Consultant will, in conjunction with the Client and in its own right and in respect of the Project, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

24.4 The Consultant will provide the Client with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

24.5 The Consultant must:

24.5.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Client (which may be specific or of a general nature), including with regard to transfers of Personal Data 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 Consultant is subject; in which case the Consultant must, unless

prohibited by that law, inform the Client 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 Consultant's obligations under this Contract or as is required by the law;

24.5.2 subject to Condition 24.5.1 only process or otherwise transfer any Personal Data in or to any third country within the European Economic Area with the Client's prior written consent;

24.5.3 take all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that the Consultant Personnel:

- (a) are aware of and comply with the Consultant's duties under this Condition;
- (b) are subject to appropriate confidentiality undertakings with the Consultant 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 Client or as otherwise permitted by this Contract; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

24.5.4 implement appropriate technical and organisational measures 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.

24.6 The Consultant shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Client. In the case of general written authorisation, the Consultant must inform the Client of any intended changes concerning the addition or replacement of any other sub-contractor and give the Client an opportunity to object to such changes.

24.7 If the Consultant engages a sub-contractor for carrying out Processing activities on behalf of the Client, the Consultant 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 consultant shall remain fully liable to the Client for the performance of the sub-contractor's performance of the obligations.

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

24.9 The Consultant must notify the Client 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 the 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 Client from time to time.

24.10 Taking into account the nature of the Processing and the information available, the Consultant must assist the Client in complying with the Client's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. 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 Client without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Client with communication of a personal data breach to a Data Subject;
- (d) supporting the Client with preparation of a data protection impact assessment;
- (e) supporting the Client with regard to prior consultation of the Information Commissioner.

24.11 At the end of the Contract in relation to any processing carried out by the Consultant in respect of the Project, the Consultant must, on written instruction of the Client, delete existing copies unless European Union or domestic law requires storage of the Personal Data.

24.12 The Consultant must:

(a) provide such information as is necessary to enable the Client to satisfy itself of the Consultant's compliance with this Condition 24;

(b) allow the Client, 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 Condition 24 and contribute as is reasonable to those audits and inspections;

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

24.13 The Consultant must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Client containing the information set out in Article 30(2) of the UK GDPR.

24.14 If requested, the Consultant must make such records referred to in Condition 24.12 available to the Information Commissioner on request and co-operate with the Information Commissioner in the performance of its tasks.

24.15 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 24.14 with minimum disruption to the Consultant's day to day business.

SUPPLEMENTARY NOTICE

LATE PAYMENT OF INVOICES

Suppliers are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Transactions Manager, Compass House, 11Riverside Drive, Dundee, DD1 4NY. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved and is not intended to interfere with Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT

This is the Schedule referred to in the foregoing Conditions of Contract for the Purchase of Goods between [CLIENT NAME] and [CONSULTANT NAME]

**SCHEDULE
PART 1
DATA PROTECTION**

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

This Schedule Part 1 includes certain details of the Processing of Personal Data in connection with the supply of Consultancy Services under this Contract:

Subject matter and duration of the Processing of Personal Data

- The subject matter and duration of the Processing of Personal Data are *[insert description here]*.
- The nature and purpose of the Processing of Personal Data is *[Include description here]*
- The type of Personal Data to be Processed is *[Include list of data types here]*
- The categories of Data Subject to whom Personal Data relates to *[Include categories of data subjects here]*

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Condition 24 of the Contract.

This is the Schedule referred to in the foregoing Conditions of Contract for the Purchase of Consultancy Services between [CLIENT NAME] and [CONSULTANT NAME]

**PART 2
CYBER SECURITY REQUIREMENTS**

Drafting notes:

- **Please note that this Schedule Part 2 including the Annex are optional.** The Purchaser may choose to incorporate these in the Contract at its discretion.
- Text in red requires to be amended/updated by the Purchaser to reflect the specific circumstances of the Contract.

1. DEFINITIONS

1.1. The defined terms used in this Schedule Part 2 shall have the following meanings:

["Cyber Implementation Plan" means the cyber implementation plan set out in Section B (*Cyber Implementation Plan*)] of the Annex to Schedule Part 2 (*Cyber Security Requirements*);]

Drafting note: where the Purchaser and the Supplier have agreed a Cyber Implementation Plan, the above definition should be included. Otherwise it may be removed.

"Cyber Security Incident" means anything, 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, but not limited to, 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 Data Protection Laws, 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 Consultancy Services and/or the Contract;

Drafting note: Please note that the Privacy and Electronic Communications (EC Directive) Regulations 2003 are planned to be replaced with new legislation in the future.

“Cyber Security Requirements” means the Purchaser’s requirements in connection with cyber security as set out in Section A (*Cyber Security Requirements* [and Section B (*Cyber Implementation Plan*)] of the Annex to this Schedule Part 2 (Cyber Security Requirements), [the Purchase Order, paragraph [] of the tender documentation and [] of the Contract];

Drafting note:

- The Purchaser should amend the above definition as appropriate.
 - Reference to Cyber Implementation Plan may not be required where a Cyber Implementation Plan will not be incorporated into the contract.
 - If the Purchase Order, the Contract or tender documentation include any additional requirements relevant to cyber security, the Purchaser may wish to reference these here. The Purchaser may wish to refer to specific paragraphs within the Purchase Order and/or the tender documentation and/or other part of the Contract.

2. CYBER SECURITY REQUIREMENTS

2.1 The Supplier shall comply with the Cyber Security Requirements and shall implement and maintain all security measures:

- (a) as may be required under applicable laws (including but not limited to the Network and Information Systems Regulations 2018);
- (b) to enable it to discharge its obligations under this Schedule Part 2 (Cyber Security Requirements); 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 Supplier shall notify the Purchaser immediately 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.

2.3 If the Supplier fails to comply with the provisions of paragraphs 2.1 and/or 2.2, the Purchaser may take any action it considers appropriate or necessary (and the Supplier shall comply with the Purchaser’s requests in this respect).

ANNEX

Drafting note: This Annex is not required where Schedule Part 2 is not incorporated into the Contract, at the Purchaser's sole option.

The cyber security requirements applicable to the Contract are set out in this Annex to Schedule Part 2. Section A (*Cyber Security Requirements*) includes the Purchaser's requirements in connection with cyber security [and Section B (*Cyber Implementation Plan*) sets out further details on how the Supplier will meet such requirements].

Drafting note: The Purchaser should retain the reference to Section B above if:

- the Scottish Cyber Assessment Service (SCAS) tool has been used in connection with the contract; and
- the Supplier and the Purchaser have agreed a Cyber Implementation Plan in conjunction with the SAQ report generated by the SCAS tool

Section A: Cyber Security Requirements

Overview of requirements:

[Cyber risk profile]	<ul style="list-style-type: none"> • [Low]
[Additional questions for management of specific cyber risks covering:]	<ul style="list-style-type: none"> • [Cloud security] • [Personal data security] • [Governance] • [Etc.]
[Certification requested for assurance purposes]	<ul style="list-style-type: none"> • [Cyber Essentials or equivalent] • [Cyber Essentials Plus or equivalent] • [IASME Gold or equivalent] • [ISO27001 or equivalent]
[Supporting evidence required]	<ul style="list-style-type: none"> • [Insert details of any supporting evidence required]
[Purchaser's risk management approach]	<ul style="list-style-type: none"> • [Strict pass/fail] • [Cyber Implementation Plans accepted]

Drafting note: If the SCAS tool is used, insert information in the above table that summarises the Purchaser's cyber security requirements. Cyber security requirements set out in this Schedule Part 2 and the Annex should not deviate from the requirements set out in any part of the tender documentation. An example is provided above. The Purchaser should check and amend fields and entries to fit its contract.

The Supplier shall meet the following requirements:

Drafting note: If the SCAS tool is used, the Purchaser's requirements from SCAS require to be incorporated into the contract. Two options to achieve this include the following:

- **OPTION 1:** Either cut and paste or append the full "SAQ Responses" section of the Supplier's SAQ Report, which sets out all questions asked of bidding suppliers in the SCAS SAQ (i.e. the Purchaser's requirements), and the Supplier's responses. Please also include details of subsequent clarifications with the Supplier, if applicable.

- OPTION 2: provide the following information (as set out in the table below) from the SCAS tool.

The Purchaser should choose the option appropriate to the contract, Option 1 being preferable from the point of view of clarity. In case of Option 2, the Purchaser should retain records of its requirements and the Supplier's responses. The Purchaser should also retain all metadata / other information (such as e-mail alerts) generated by SCAS relating to completion of SAQs by it and the Supplier.

<p>The cyber security requirements for the Contract, and the Supplier's responses, are set out in the Scottish Cyber Assessment Service under the following reference number:</p>	<ul style="list-style-type: none"> • [Insert reference number for contract]
<p>Time that the Supplier submitted its responses to the above cyber security requirements via SCAS:</p>	<ul style="list-style-type: none"> • [Insert the time and date at which the Supplier submitted its response to the SAQ via SCAS]
<p>Details of any subsequent clarifications:</p>	<ul style="list-style-type: none"> • [Insert details of any subsequent clarifications]

Drafting note: If SCAS is NOT used, the Purchaser should insert applicable cyber security requirements here. This may include extracting / making reference to relevant parts of the Purchase Order and/or other parts of the Contract and/or the tender documentation. Cyber security requirements set out in this Schedule Part 2 and the Annex should not deviate from the requirements set out in any part of the tender documentation.

[Section B: Cyber Implementation Plan]

Drafting note: If SCAS is used, and a Cyber Implementation Plan has been submitted by the Supplier and agreed by the Purchaser, the Purchaser should include this section B and the text below (if not, this section B may be deleted). Ensure that the date or contract phase is amended to align with the requirements communicated in the Purchase Order and/or any other part of the Contract and/or the tender documentation and the SCAS tool.

The Purchaser should insert below the frequency of review of the Cyber Implementation Plan with the Supplier. This should match any frequency indicated in the Purchase Order and/or elsewhere in the Contract and/or the tender documentation.

The template Cyber Implementation Plan may be found from the following address: <https://www.gov.scot/publications/cyber-resilience-supply-chain-guidance>

The Supplier shall follow the agreed Cyber Implementation Plan to meet the requirements of Section A by no later than the date(s) set out in the Cyber Implementation Plan. The parties shall review the Supplier's progress on the Cyber Implementation Plan regularly every [4 weeks]. If the Supplier fails to meet the commitments set out in the Cyber Implementation Plan, this shall be considered to be a material breach of the Contract for the purposes of Condition 14.2 (Termination).

Drafting note: Insert or append the agreed Cyber Implementation Plan below. The template Cyber Implementation Plan may be found from the following address: <https://www.gov.scot/publications/cyber-resilience-supply-chain-guidance>