

## The Scottish Further and Higher Education Funding Council

### Standard Terms and Conditions of Contract for professional services.

**These standard terms and conditions may only be varied with the written agreement of the SFC. No terms or conditions put forward at any time by the Contractor or referred to in any tender or proposal prepared by the Contractor shall form any part of the Contract, unless specifically agreed in writing by the SFC.**

#### 1 DEFINITIONS

In these standard terms and conditions, the following terms shall have the following meanings:

- 1.1 **"Anti-Corruption Laws"** means (a) the United Kingdom Bribery Act 2010; and (b) any anti-bribery or anti-corruption related provisions in criminal and competition Laws and/or anti-bribery or anti-corruption Laws of the jurisdiction in which the Contractor provides the Services, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;
- 1.2 **"Anti-Discrimination Laws"** means (a) the United Kingdom Equality Act 2010; and (b) any equal opportunities related Laws, regulations, bye-laws, UK or EU or international standards from time to time applicable, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;
- 1.3 **"Business Day"** means a day on which SFC is open for business in Edinburgh;
- 1.4 **"Contract"** means the contract between the SFC and the Contractor consisting of (i) the contract award letter from the SFC to the Contractor; (ii) any

documents referred to in that contract award letter (including, for example, any service or project specification or tender documentation); and (iii) these standard terms and conditions; (iv) Particulars of Processing and (v) any Joint Controller Agreement;

- 1.5 **"Contractor"** means the person, firm, company or organisation entering into the Contract with the SFC;
- 1.6 **"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer"** take the meaning given in the Data Protection Legislation;
- 1.7 **"Data Loss Event"** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
- 1.8 **"Data Protection Impact Assessment"** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 1.9 **"Data Protection Legislation"** means the GDPR, the LED and any applicable national implementing Laws as amended from time to time (i) the DPA to the extent that it relates to processing of personal data and privacy; (ii) all applicable Law about the processing of personal data and privacy;
- 1.10 **"Data Subject Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 1.11 **"DPA"** means the Data Protection Act 2018;
- 1.12 **"Environmental Information Regulations"** means the Environmental Information (Scotland) Regulations 2004 together with any statutory codes of

practice, guidance and decisions issued by the Scottish Ministers, and the Scottish Information Commissioner, respectively in relation to such regulations;

1.13 **"FOISA"** means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act together with any statutory codes of practice, guidance and decisions issued by the Scottish ministers and the Scottish Information Commissioner respectively, in relation to the Act and any subordinate legislation;

1.14 **"GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679);

1.15 **"Joint Controller Agreement"** means the agreement in the form set out in Appendix 3;

1.1 **"Joint Controllers"** means where two or more Controllers jointly determine the purposes and means of processing;

1.2 **"Law"** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

1.3 **"LED"** means the Law Enforcement Directive (Directive (EU) 2016/680);

1.4 **"Particulars of Processing"** has the meaning given to it in Clause 17.1;

1.5 **"Processor Personnel"** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under the Contract;

- 1.6 **"Protective Measures"** means the appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in the Particulars of Processing;
- 1.7 **"Services"** means the services to be provided to the SFC by the Contractor in accordance with the Contract;
- 1.8 **"SFC"** means the Scottish Further and Higher Education Funding Council;
- 1.9 **"SFC Premises"** means any premises of the SFC at which the Services or any part of them are to be performed; and
- 1.10 **"Sub-processor"** means any third party appointed to process Personal Data on behalf of that Processor related to the Contract.;

## **2 CONTRACTOR'S DUTIES**

- 2.1 The Contractor will perform and complete the Services with all reasonable skill, care and diligence and in accordance with the Contract.
- 2.2 The Contractor will undertake no obligation to any other person or body which would be incompatible with the requirements of the SFC in terms of the Contract.
- 2.3 The Contractor will comply with any reasonable direction or instruction which the SFC may give in connection with the performance of the Services.

### **3 VARIATION TO THE CONTRACT**

- 3.1 The SFC reserves the right at any time to modify its requirements in relation to the Services by notice in writing to the Contractor. The Contractor and the SFC (each acting reasonably) will agree in writing any change to the pricing arrangements or to the timetable or schedule for the provision of the Services as may be necessary as a result of such modification.
- 3.2 If it appears to the Contractor that the Services are not likely to be completed in accordance with any timetable or schedule for the provision of the Services, or that the pricing arrangements under the Contract mean that the cost to the SFC of the completion of the provision of the Services may exceed (i) the estimate stated in the Contract, (ii) the estimate notified to the SFC by the Contractor, or (iii) the budget for the Contract as notified by the SFC to the Contractor, the Contractor will immediately notify the SFC in writing of that fact, together with the reasons for the delay or increase in cost, and give an estimate of the additional time and/or cost required to complete the Services.
- 3.3 If the Contractor notifies the SFC in accordance with Clause 3.2 the SFC may (but shall not be obliged to) take any one or more of the following steps:
  - 3.3.1 vary the Contract or any part of it so that the Contract may be completed without exceeding the amount or budget so estimated or notified;
  - 3.3.2 extend any timetable or schedule for the provision of the Services;
  - 3.3.3 vary the pricing arrangements or the estimate or budget to allow for the increase in cost (in whole or in part); or
  - 3.3.4 terminate the Contract by giving the Contractor not less than seven days notice to that effect.

- 3.4 The application of Clauses 3.2 and 3.3 to estimated or budgeted costs shall not extend to costs to the SFC which are fixed in accordance with the Contract. Any notification in accordance with Clause 3.2 shall be without prejudice to SFC's rights and remedies under the Contract, and shall not affect the obligation of the Contractor to provide the Services for the fees and expenses in accordance with the Contract.

#### **4 THE SERVICES**

- 4.1 Where the Contract provides for the Services to:

- 4.1.1 commence on a certain date;
- 4.1.2 be completed by a certain date; or
- 4.1.3 be provided for a certain period,

the Contractor will comply with such requirements.

- 4.2 If Services are to be provided in distinct elements, the Contractor will comply with any reasonable request of the SFC as to the order in which the Services will be provided.

#### **5 LIAISON AND SUPERVISION**

- 5.1 The Contractor will afford the SFC reasonable access to all works produced by it in connection with the Services including any work in progress and all documents (including, for example, documents recording methodology and results, field observations and analyses of data) produced. The Contractor will promptly provide the SFC with copies of any documents referred to in this Clause if requested to do so by the SFC.
- 5.2 The SFC may set up a project advisory group and/or appoint a member of its staff to consider the conduct and progress of the Services and to monitor the

performance of the Contract. Upon reasonable notice, the Contractor will attend meetings of the advisory group or with the SFC representative to discuss all matters connected with the Contract.

- 5.3 The Contractor will provide, at such intervals and in such form as the SFC may require, reports showing the progress of the Services in relation to any timetable or schedule for the provision of the Services, the costs to the SFC of the Services provided during the period covered by the report, and a review of any factors likely to affect the satisfactory completion of the Services in accordance with the Contract.

## **6 ACCESS TO SFC PREMISES**

- 6.1 Where any access to the SFC Premises is necessary in connection with the provision of the Services, the Contractor shall at all times comply with the reasonable requirements and instructions of the SFC. In particular, the Contractor will ensure that any persons concerned with the provision of the Services comply with the procedures notified to them by the SFC in relation to security and health and safety.
- 6.2 Any access to the SFC Premises shall not be exclusive to the Contractor. The Contractor shall co-operate with others at the SFC Premises as the SFC may reasonably require.
- 6.3 If the SFC gives the Contractor notice that any person intended for or concerned with the provision of the Services is not to be admitted to or is to be removed from the SFC Premises, the Contractor will take all reasonable steps to comply with such notice without delay and at the cost of the Contractor.

## **7 PRICING ARRANGEMENTS**

- 7.1 The SFC will pay to the Contractor the fees and expenses in accordance with the Contract.
- 7.2 The Contractor will be entitled to be reimbursed by the SFC for expenses only to the extent they are (i) approved in advance by the SFC, (ii) reasonably and properly incurred by the Contractor in the performance of the Contract, and (iii) evidenced as the SFC may reasonably require.
- 7.3 The Contractor will submit invoices promptly when payments become due in accordance with the Contract. All invoices shall be in such form and shall contain such information as the SFC may from time to time reasonably require.
- 7.4 All invoices shall be addressed to 'Scottish Further and Higher Education Funding Council, Finance Branch' unless otherwise stated in the Contract.
- 7.5 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 7.6 Payment of any sums due under the Contract shall be made to the Contractor within 30 days of receipt of a valid invoice raised in accordance with the Contract. The Contractor will not issue an invoice before the due date for its payment and will quote the purchase order number(s) allocated by SFC for the Contract on all invoices. If any payment to the Contractor is delayed then (a) the Contractor shall notify SFC in writing, providing a copy of the relevant invoice; and (b) if SFC fails to pay the undisputed invoice or part thereof within 30 Business Days of receiving the Contractor's written notice then the Contractor will be entitled to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act



1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## **8 CONFIDENTIALITY**

8.1 All information obtained by the Contractor in connection with the Contract or the performance of the Services, whether such information is given by the SFC or otherwise, will be treated by the Contractor in confidence, and will not be used or disclosed by the Contractor without the prior written consent of the SFC, save where the Contractor is obliged to disclose such information by Law.

8.2 The provisions of this Clause 8 shall apply during the continuance of the Contract and after its termination howsoever arising.

## **9 CONTRACTOR INFORMATION AND FOI**

9.1 The Contractor acknowledges that the SFC may disclose any information provided to it by the Contractor:

9.1.1 where obliged to do so by Law;

9.1.2 where it considers (in its absolute discretion) that it is obliged to do so under the FOISA or the Environmental Information Regulations;

9.1.3 through the SFC's publication scheme published from time to time in terms of the FOISA; and

9.1.4 to the Scottish Ministers, the Scottish Parliament and any statutory successor to the SFC.

9.2 Where appropriate, the SFC will use reasonable efforts to inform the Contractor prior to any disclosure or publication of information which, in the reasonable opinion of the SFC, the Contractor may regard as confidential to it.

- 9.3 For the purposes of Clauses 9.1.2, 9.1.3 and 9.2, the Contractor acknowledges that the SFC will be entitled to act in accordance with the Scottish Ministers' current guidance on the discharge of the functions by public bodies under the FOISA.
- 9.4 The Contractor acknowledges that the SFC is subject to the requirements of the FOISA and the Environmental Information Regulations and, where the SFC asks it to do so, shall assist and co-operate with the SFC (at the Contractor's cost and expense) to enable the SFC to comply with its information disclosure obligations.
- 9.5 The provisions of this Clause 9 shall apply during the continuance of the Contract and after its termination howsoever arising.

## **10 CONTRACTOR PERSONNEL**

- 10.1 If the SFC requests, the Contractor will provide the SFC with the names of all people whom the Contractor proposes will carry out the Services (other than those whose duties are purely clerical) together with a description of the part each person will play in carrying out the Services, and details of their qualifications, experience and previous employment.
- 10.2 The SFC may at any time by notice to the Contractor designate any person concerned with the provision of the Services as key personnel, and any person referred to in the Contract as to be concerned with the provision of the Services will be deemed so designated.
- 10.3 The Contractor will procure that the key personnel are made available to provide the Services, unless otherwise agreed with the SFC. The SFC reserves the right to interview any person proposed by the Contractor as a replacement for any person designated as key personnel, before agreeing to the relevant change.

10.4 If the SFC gives the Contractor notice that any person intended for or concerned with the provision of the Services is not to become or remain involved in the provision of the Services, the Contractor will take all reasonable steps to comply with such notice without delay and at the cost of the Contractor

## **11 ASSIGNATION AND SUB-CONTRACTING**

11.1 The Contractor will not assign or sub-contract the Contract in whole or in part without the prior written consent of the SFC. Sub-contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Contract.

11.2 Where the SFC has consented to the placing of any sub-contract in relation to the Contract, a copy of such sub-contract will be sent to the SFC by the Contractor without delay following its placement.

11.3 Where the Contractor places a sub-contract in relation to the Contract, the Contractor will cause a term to be included in such sub-contract which requires payment to be made by the Contractor to its sub-contractor within a specified period (not exceeding 30 days) from the receipt of a valid invoice as defined by the other requirements of the sub-contract.

## **12 INTELLECTUAL PROPERTY RIGHTS AND RIGHTS TO RESULTS OF WORK**

12.1 In this Clause 12, the term "Intellectual Property" means any patent, trademark, registered design, copyright or other similar right.

12.2 In performing its obligations under the Contract, the Contractor shall not breach any Intellectual Property rights of any third party.

12.3 Any Intellectual Property rights in any items or material produced as part of the provision of the Services are assigned to and shall be the property of the

SFC and the Contractor shall, at the request of the SFC, sign (whether before or after the termination of the Contract) any documentation required to effect or evidence the transfer of any Intellectual Property rights in such items to the SFC.

12.4 All material and works produced under the Contract including maps, plans, photographs, drawings, tapes, and physical and digital data shall vest in the SFC.

12.5 The Contractor acknowledges that it shall have no right to be identified as the author of any works referred to in Clauses 12.3 and 12.4, and hereby waives any such rights conferred by Law.

12.6 All Intellectual Property rights in any specification, instructions, plans, drawings, patterns, models, designs or other material provided or made available to the Contractor by the SFC shall remain vested solely in the SFC and the Contractor shall not (except to the extent necessary for the implementation of the Contract) without the prior written consent of the SFC use or disclose any such information to any party

12.7 The provisions of this Clause 12 shall apply during the continuance of the Contract and after its termination howsoever arising.

### **13 PUBLICATION OF RESEARCH FINDINGS**

13.1 This Clause 13 shall only apply if the Services relate to the carrying out of research by the Contractor.

13.2 Without prejudice to the provisions of Clause 8 (Confidentiality) and Clause 12 (Intellectual Property and Rights to Results of Work) the SFC, in principle, supports the publication and dissemination of research findings commissioned by it.

13.3 If the Contractor wishes to publish, disseminate, present or communicate publicly any findings made as a result of the carrying out of the Services, it may only do so with the prior written consent of the SFC.

13.4 Such consent must be sought by the Contractor at least six weeks in advance of the date of the intended publication or dissemination, and notification of consent or otherwise will be provided by the SFC within six weeks of permission being sought.

13.5 The SFC shall be provided with a reasonable opportunity to review the form and content of the intended publication or dissemination, and if consent is given to the publication or dissemination it may be given subject to conditions about such form and content (including the correction of factual inaccuracy).

13.6 The SFC reserves the right to publish a disclaimer as to the views or conclusions expressed in the publication or dissemination by the Contractor.

#### **14 NO DISCRIMINATION**

14.1 The Contractor shall, and shall procure that all staff, and/or sub-contractors shall comply with any applicable Anti-Discrimination Laws and with SFC's equality and diversity policy as may be amended from time to time, copies of which will be provided by SFC to the Contractor at the Contractor's written request.

14.2 The provisions of Appendix 1 to these standard terms and conditions will apply, and the Contractor will take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor, and all sub-contractors employed in the execution of the Contract.

## 15 INDEMNITIES

15.1 The Contractor will indemnify and keep indemnified the SFC and its members and its employees against all actions, claims, demands, costs and expenses incurred by or made against the SFC or its members or employees in respect of any loss, damage or personal injury (including death) which arises in connection with:

15.1.1 any advice given or anything done or omitted to be done in connection with the Contract, to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Contractor, the Contractor's employees or agents, the Contractor's sub-contractors, or their employees or agents; and/or

15.1.2 any breach by the Contractor of Clause 12 (Intellectual Property Rights **and rights to results of work**).

## 16 INSURANCE

16.1 The Contractor will effect insurance with a reputable insurance company or companies covering all the matters which are the subject of indemnities on the part of the Contractor in the Contract.

16.2 Unless otherwise specified in the Contract such insurance shall be in the sum of at least £1,000,000 in respect of any one incident, and at least £5,000,000 in total.

16.3 Upon demand by the SFC, the Contractor will produce a certificate evidencing to the satisfaction of the SFC that such insurance is in place, and that the premia have been paid by the Contractor.

## 17 DATA PROTECTION

- 17.1 Unless otherwise agreed, the parties acknowledge that for the purposes of the Data Protection Legislation, SFC is the Controller and the Contractor is the Processor. The parties shall document the data processing relation between them in the form set out in Appendix 2 (the "**Particulars of Processing**").
- 17.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 17.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 17.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 17.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 17.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
- 17.4.1 process that Personal Data only in accordance with the Particulars of Processing, unless the Processor is required to do otherwise by Law.

If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

17.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

17.4.2.1 nature of the data to be protected;

17.4.2.2 harm that might result from a Data Loss Event;

17.4.2.3 state of technological development; and

17.4.2.4 cost of implementing any measures;

17.4.3 ensure that:

17.4.3.1 the Processor Personnel do not process Personal Data except in accordance with the Contract (and in particular the Particulars of Processing);

17.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

17.4.3.2.1 are aware of and comply with the Processor's duties under this Clause;

17.4.3.2.2 are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;



- 17.4.3.2.3 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 Controller or as otherwise permitted by the Contract; and
- 17.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 17.4.3.2.5 it shall not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation as determined by the Controller;
  - ii. the Data Subject has enforceable rights and effective legal remedies;
  - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist

the Controller in meeting its obligations);  
and

- iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

17.4.4 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

17.5 Subject to Clause 17.6, the Processor shall notify the Controller immediately if it:

17.5.1 receives a Data Subject Request (or purported Data Subject Request);

17.5.2 receives a request to rectify, block or erase any Personal Data;

17.5.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;

17.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;

17.5.5 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

17.5.6 becomes aware of a Data Loss Event.

- 17.6 The Processor's obligation to notify under Clause 17.5 shall include the provision of further information to the Controller in phases, as details become available.
- 17.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 17.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 17.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 17.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 17.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 17.7.4 assistance as requested by the Controller following any Data Loss Event;
  - 17.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 17.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause.
- 17.9 The Processor shall allow for audits of its data processing activity by the Controller or the Controller's designated auditor.

- 17.10 Each party shall designate its own data protection officer if required by the Data Protection Legislation.
- 17.11 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Processor must:
- 17.11.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 17.11.2 obtain the written consent of the Controller;
  - 17.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 17 and the requirements of the Data Protection Legislation such that they apply to the Sub-processor; and
  - 17.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 17.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 17.13 The Controller may, at any time on not less than 30 Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 17.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Business Days' notice to the Processor amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 17.15 Where the parties include two or more Joint Controllers as identified in the Particulars of Processing in accordance with the Data Protection Legislation,

those parties shall enter into a Joint Controller Agreement based on the terms outlined in Appendix 3 in replacement of Clauses 17.1 to 17.14 for the Personal Data under joint control.

## **18 TERMINATION OF CONTRACT**

18.1 The Contractor will notify the SFC in writing immediately upon the occurrence of any of the following events:

18.1.1 where the Contractor is an individual: if a petition is presented for his or her bankruptcy or the sequestration of his or her estate, or a criminal bankruptcy order is made against him or her, or the Contractor makes any composition or arrangement with or for the benefit of his or her creditors, or makes any conveyance or assignation for the benefit of his or her creditors, or if an administrator is appointed to manage his or her affairs;

18.1.2 where the Contractor is a partnership or firm, or a number of persons acting together in any capacity: if any event in Clause 18.1.1 or 18.1.3 occurs in respect of any partner in the partnership or firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company;

18.1.3 where the Contractor is a company: if the company passes a resolution for winding-up or administration, or the court makes 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.

18.2 The SFC will be entitled to terminate the Contract by notice to the Contractor with immediate effect:

18.2.1 on the occurrence of any of the events described in Clause 18.1.1 to 18.1.3;

18.2.2 if the Contractor shall have committed a material breach of the Contract which (in the reasonable opinion of the SFC) is not capable of remedy;

18.2.3 if the Contractor shall have committed a material breach of the Contract which is capable of remedy, and the Contractor has failed to remedy such a breach within seven days of being required by the SFC in writing to do so; or

18.2.4 where the Contractor is an individual, if (1) he or she shall die, or (2) an order is made by a court having jurisdiction in matters concerning mental health for his or her detention, or for the appointment of a guardian or other person to exercise powers with respect to his property or affairs, or (3) he or she becomes incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000) in relation to the Contract.

18.3 The SFC will be entitled to terminate the Contract by giving to the Contractor not less than 30 days' notice to that effect.

## **19 CONSEQUENCES OF TERMINATION**

19.1 In the event of termination of the Contract for any reason before its expiry, the Contractor will furnish the SFC with a progress report or such other output as may be reasonably requested by the SFC in the circumstances.

- 19.2 On the termination of the Contract for any reason, including its expiry, the Contractor will promptly return to the SFC any documents, information or other materials obtained from the SFC by the Contractor as a result of the Contract, and will deliver to the SFC all materials extracted from such documents, information or materials.
- 19.3 In the event of any termination of the Contract other than by notice pursuant to Clause 18.3 (termination on notice) the Contractor will be entitled to be paid in accordance with and subject to the other terms of the Contract for the Services provided by the Contractor at the time of receipt of notice of termination, and will not be entitled to any additional payment by way of compensation or otherwise.
- 19.4 In the event of termination of the Contract by notice pursuant to Clause 18.3 (termination on notice) the Contractor will be entitled to be paid in accordance with and subject to the other terms of the Contract for the Services provided by the Contractor at the time of receipt of notice of termination, and for the costs of meeting commitments entered into by the Contractor to the extent evidenced to the SFC as not capable of cancellation and entered into solely and exclusively in order to perform the Contract, and will not be entitled to any further additional payment by way of compensation or otherwise.
- 19.5 Termination of the Contract will not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the SFC, and will not affect the continued operation of those Clauses which are stated to apply after its termination or any other of the provisions of the Contract which, having regard to their terms, are intended to apply on or to survive termination or expiry.

## **20 NOTICES**

20.1 Any notice given under or pursuant to the Contract may be delivered by hand, or sent by first class post, or transmitted by fax. If a notice is so delivered or sent or transmitted to the address (or fax number) of a party as specified in the Contract, or to such other address or fax number as that party may by notice to the other have substituted, the notice shall be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

## **21 STATUS OF CONTRACT AND CONTRACTOR**

21.1 Nothing in the Contract will have the effect of making the Contractor the agent or employee of the SFC.

21.2 The Contractor (or any permitted sub-contractor) will act as employer of all personnel required for the provision of the Services, and will accept all normal duties and responsibilities of employers including, without prejudice to the foregoing generality, those relating to pensions, national insurance, and income tax.

21.3 The SFC will not be liable for any costs or claims to which the Contractor (or any sub-contractor, as the case may be) may become liable as an employer.

21.4 The Contractor (if an individual) represents and warrants that he or she is regarded by the HM Revenue & Customs and the Department of Work and Pensions and other relevant authorities as self-employed. With the exception of any Value Added Tax payable by the SFC, the Contractor will indemnify the SFC and keep the SFC indemnified against any tax, national insurance contributions or similar impost for which the SFC may be liable in respect of the Contractor by reason of the Contract.



## **22 ARBITRATION**

22.1 Any dispute or difference between the parties arising out of the Contract will be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party.

## **23 AUDIT**

23.1 The Contractor will keep and maintain until two years after the Contract has been completed records to the satisfaction of the SFC of all expenditures which are reimbursable by the SFC, and of the hours worked and costs incurred by the Contractor in connection with any employees or sub-contractors of the Contractor paid for by the SFC on a time charge basis. The Contractor will on request afford the SFC or its representatives such access to those records as may be required by the SFC in connection with the Contract.

## **24 CONFLICT OF INTEREST**

24.1 The Contractor shall ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall immediately notify the SFC in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the SFC may reasonably require.

24.2 Where the SFC is of the opinion that the conflict of interest notified to it under Clause 25.1 is not capable of being avoided or removed the SFC may terminate the Contract.

24.3 Where the SFC is of the opinion that the conflict of interest notified to it under Clause 25.1 is capable of being avoided or removed the SFC may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and

24.3.1 if the Contractor fails to comply with SFC's requirements in this respect, or

24.3.2 if, in the opinion of the SFC, compliance does not avoid or remove the conflict, the SFC may terminate the Contract.

24.4 Where the SFC is of the reasonable opinion that the conflict of interest existed at the time of the award of the Contract and could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed in terms of the tender documents pertaining to the Contract, the SFC may terminate the Contract immediately and, notwithstanding Clause 19 (Consequences of Termination), no payment shall be due for any Services provided by the Contractor, and in addition the SFC may, without prejudice to any other rights, recover from the Contractor any payment made under the Contract, and the amount of any loss resulting from such termination.

## **25 ANTI-CORRUPTION**

25.1 The Contractor undertakes to SFC that it will comply with, and that the Services will be performed in accordance with, the Anti-Corruption Laws and that it shall not do, nor omit to do, any act that will lead to SFC being in breach of any of the Anti-Corruption Laws.

25.2 The Contractor shall have in place and comply with its own anti-bribery and corruption procedures adequate to ensure that the Contractor complies with the Anti-Corruption Laws ("**Adequate Procedures**"). If requested, the Contractor shall provide to SFC a copy of the Contractor's Adequate

Procedures. The Contractor shall promptly implement any amendments to the Contractor's Adequate Procedures which SFC, acting reasonably, considers necessary to ensure that SFC complies with the Anti-Corruption Laws. In any event, the Contractor will comply with any SFC anti-bribery and corruption policies and procedures, notified by SFC to the Contractor from time to time.

25.3 The Contractor shall review the Contractor's Adequate Procedures on a regular basis and shall promptly implement and notify SFC of any amendments to the Contractor's Adequate Procedures which it considers necessary for continued compliance with the Anti-Corruption Laws.

25.4 The Contractor shall co-operate with SFC and promptly provide SFC with any information or confirmation which SFC requires from time to time in connection with the obligations of the Contractor pursuant to this Clause 25. This may include enabling SFC, whether itself or through an agent, to conduct an audit of records and information held by the Contractor or its sub-contractors or any other relevant person. The Contractor acknowledges that SFC will place reliance upon the information provided. This obligation shall continue after the expiry or termination of the Contract.

25.5 The Contractor shall immediately notify SFC in writing of any suspected or known breach of the Contractor's Adequate Procedures or any of the Anti-Corruption Laws which occurred or may have occurred during the term of the Contract. This obligation to notify SFC shall continue for a period of 5 years after the expiry or termination of the Contract.

25.6 The Contractor shall ensure that any person employed by it or its sub-contractors or acting on the Contractor's behalf in the provision of the Services complies with the terms of this Clause 25. The Contractor shall be responsible for ensuring that terms equivalent to this Clause 25 are included

within any subcontract it uses in relation to the provision of the Services, such that these terms flow down to the subcontractor.

25.7 SFC shall have the right to suspend and/or terminate the Contract for material breach immediately, or on such other time specified by SFC, upon written notice to the Contractor if:

25.7.1 the Contractor, or any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) fails to comply with any of the Anti-Corruption Laws; or

25.7.2 SFC has a reasonable suspicion that an occurrence as specified in Clause 25.7.1 has occurred.

25.8 In the event of breach by the Contractor of this Clause 25 any exclusions or limitations of liability set out in the Contract which would otherwise be applicable to the Contractor shall not apply to any claim or loss arising from or connected with such breach and the parties agree that the following losses shall be recoverable from the Contractor by SFC:

25.8.1 any costs or expenses (including reasonable legal fees) incurred by SFC in investigating a breach or suspected breach of this Clause 25:

25.8.2 any fine or penalty paid or imposed on SFC arising from a breach of this Clause 25; and

25.8.3 any other costs or expenses incurred by SFC as a result of a breach of this Clause 25.

25.9 Regardless of any other provision in the Contract, SFC shall not be obliged to do, nor obliged to omit to do, any act which would, in its reasonable opinion, put it in breach of any Anti-Corruption Laws.

## **26 OTHER CONTRACTS**

26.1 On entering into the Contract, the Contractor shall notify the SFC of all other contracts in terms of which it is providing services to the SFC.

26.2 If, during the term of the Contract, the Contractor enters into any further contract to provide services to the SFC, it shall provide the SFC with an updated list of the other contracts in terms of which it is providing services to the SFC.

## **27 PUBLICITY**

27.1 The Contractor shall not refer to its contract with the SFC (or the subject matter of the contract in such a way as to imply that it relates to a contract with SFC) in any advertisement, promotional material, publicity release or tender without the prior written agreement of the SFC.

## **28 RECOVERY OF SUMS DUE**

28.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the SFC.

## **29 GENERAL**

29.1 If any provision of the Contract (including any provision of these standard terms and conditions) is held by any court or other competent authority to be void or unenforceable in whole or part, the Contract shall continue to be valid as to the other provisions thereof and any remainder of the affected provision.

29.2 Any waiver by either party of a breach of any provision of the Contract shall not be considered as a waiver of any subsequent breach of the same or any other provision of the Contract.

29.3 The incorporation of any tender, proposal or other document prepared by the Contractor as part of the Contract shall, unless otherwise expressly stated in the contract award letter, incorporate that tender, proposal or other document to the exclusion of any terms and conditions of contract contained within it.

### **30 GAELIC LANGUAGE**

30.1 In delivery of the Services to SFC, the Contractor will use its reasonable endeavours to support the Gaelic language in accordance with the SFC's obligations under the Gaelic Language (Scotland) Act 2005 and SFC's Gaelic Language Plan. If requested by the SFC as part of the Services, the Contractor will provide materials in Gaelic to the standards operated by SFC.

### **31 HEADINGS**

31.1 The headings to Clauses shall not affect their interpretation.

### **32 GOVERNING LAW**

32.1 These standard terms and conditions and the Contract shall be governed by and construed in accordance with the law of Scotland, and the Contractor 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 SFC to take proceedings against the Contractor 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.

## Appendix 1 – Equal Treatment

1. For the purposes of this Appendix 1, references to the "Act" are to the Equality Act 2010 (as amended from time to time).
2. In accordance with the Anti-Discrimination Laws, the Contractor shall not discriminate directly or indirectly, harass or victimise any person on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.
3. In relation to the Act, the Contractor shall comply with the provisions of section 41 of the Act in all dealings with any sub-contractors.
4. Where in connection with the Contract the Contractor, its agents or sub-contractors, or the Contractor's staff are required to carry out work at SFC Premises, or alongside the SFC's employees on any other premises, the Contractor shall, to the extent required to comply with the provisions of section 149 of the Act as if the Contractor were a body within the meaning of section 157 of the Act (or any European equivalent):
  - (a) comply with the SFC's own employment policy and codes of practice relating to racial discrimination and equal opportunities, as notified by the SFC to the Contractor;
  - (b) monitor its employees by reference to the racial groups to which they belong, in accordance with the SFC's procedures for monitoring its own employees; and
  - (c) shall notify the SFC forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Act.

5. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with matters referred to in the Contract being in contravention of the Act, the Contractor shall, free of charge:
  - (a) provide any information requested in the timescale allotted by the SFC;
  - (b) attend any meetings as required by the SFC, and permit SFC staff to attend relevant meetings at which the Contractor is in attendance;
  - (c) promptly allow access to and investigation of any documents or data deemed to be relevant by the SFC;
  - (d) allow itself and any of its staff to appear as witness in any ensuing proceedings; and
  - (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
6. Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub-contractors, or the Contractor's staff in connection with the subject matter of this Appendix, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the SFC with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the SFC may have been ordered or required to pay a third party.
7. In the event that the Contractor enters into any sub-contract in connection with the Contract, it shall impose terms on its sub-contractors substantially similar to those imposed on it pursuant to this Appendix.



8. To the extent that the Contractor's performance of the Services relates to the exercise of public functions by the Contractor, the Contractor shall, and shall procure that its agents and/or sub-contractors, comply with the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the "**Scottish Regulations**") as if the Contractor were a body within the meaning of the schedule to the Scottish Regulations.

## Appendix 2 – Particulars of Processing

This Part shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Appendix shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Appendix 2.

Description	Details
Identity of the Controller and Processor	<p>The parties acknowledge that for the purposes of the Data Protection Legislation, SFC is the Controller and the Contractor is the Processor in accordance with Clause 17.1.</p> <p>[Note: This may need to vary this section where (in the rare case) SFC and Contractor have a different relationship. For example where the parties are Joint Controller of some Personal Data:]</p> <p><i>"Notwithstanding Clause 17.1 the parties acknowledge that they are also Joint Controllers for the purposes of the Data</i></p>

	<p><i>Protection Legislation in respect of:</i></p> <p><b><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both parties]</i></b></p> <p>In respect of Personal Data under joint control, Clause 17.1 to 17.15 will not apply and the parties agree to put in place a Joint Controller Agreement as outlined in Appendix 3 instead."</p>
<p>Subject matter of the processing</p>	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</i></p>
<p>Nature and purposes of the processing</p>	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by</i></p>

	<p><i>transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
<p>Type of Personal Data being processed</p>	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i></p>

## Appendix 3 - Joint Controller Agreement

*[Note: Guidance: insert only where Joint Controller applies in Appendix 2]*

*In this Appendix 3 the parties must outline each party's responsibilities for:*

- providing information to data subjects under Article 13 and 14 of the GDPR.*
- responding to Data Subject Requests under Articles 15-22 of the GDPR*
- notifying the Information Commissioner (and data subjects) where necessary about data breaches*
- maintaining records of processing under Article 30 of the GDPR*
- carrying out any required Data Protection Impact Assessment*

*The agreement must include a statement as to who is the point of contact for data subjects.*

*The essence of this relationship shall be published.*

*You may wish to incorporate some clauses equivalent to those specified in Clauses 17.2-17.14.*

*You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.*

*Where there is a Joint Controller relationship, but no controller to processor relationship under the contract, this completed Appendix 3 should be used instead of Clauses 17.1-17.15.]*