

Glasgow Caledonian University Academy Ltd

Conditions of Purchase of Services and Goods

These General Terms and Conditions ("Terms and Conditions") apply in respect of an agreement between Purchaser and the Contractor, which may e.g. be in the form of a purchase order or work statement ("the Agreement"). These Terms and Conditions are binding between the Purchaser and the Contractor and supersede and replace any Contractor terms and conditions or previous agreements for the Goods and Services in scope. In the event of any special terms agreed between parties, those special terms shall take precedence over the terms contained in these Terms and Conditions. Where these Terms and Conditions are attached to or incorporated into a purchase order or work statement issued under and existing agreement, the terms and conditions of that existing agreement shall prevail.

1 Definitions & Interpretations

1.1 In these Terms and Conditions:

"Charges" means the charges or fees payable in relation to the Agreement, to be paid as detailed in the Order;

"Confidential Information" has the meaning given to it in Clause 27.

"Contract Worker" means an officer, servant, employee or agent of a Contractor Party, and any person on or at the Premises in connection with the Agreement, at the express of implied invitation of the Contractor or any other Contract Worker.

"Default" means non-compliance with or default against any obligation under the Agreement by the Contractor;

"Discrimination Legislation" means the Equal Pay Act 1970, the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, and all applicable European Directives and legislation to discrimination;

"Dispute" means any dispute or difference between the Purchaser and the Contractor arising from or in connection with an Agreement;

"DPA" means the Data Protection Act 1998;

"Force Majeure" shall have the meaning given in Clause

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

"Goods" means the goods to be supplied by the Contractor to the Purchaser as specified in the Order and includes materials, goods or equipment to be provided by the Contractor;

"Illegal Term" shall have the meaning given in Clause 34.

"Information Legislation" means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;

"Intellectual Property Rights" means patents, trademarks, service marks, design rights (whether registered or not in any country (including the United Kingdom));

"Issued Property" means anything issued or otherwise made available to the Contractor for any purpose by or on behalf of the Purchaser including working papers and other written materials;

"Law" means all applicable laws, consents and approvals, including legislative provisions, subordinate legislation, legally binding codes of practice and the common law;

"Order" means our order to Supply the Goods or Services, incorporating these conditions

"Premises" means any premises of the Purchaser being a locations where Goods are to be delivered or Services are to be provided;

"Services" means the services to be provided by the Contractor to the Purchaser as specified in the Order;

"Sub-Contract" means any contractor or proposed contract between the Contractor and any third party in respect of the performance of the Agreement (or any part thereof). The terms Sub-Contractor and Sub-Contracting shall be similarly construed.

1.2 Any reference to Purchaser shall mean Glasgow Caledonian University, Cowcaddens Road, Glasgow G4 0BA, (which is a company registered in Scotland under Registration Number SC383193) and any reference to Contractor, shall mean you the person, firm or company who accepts the Order.

1.3 In these Terms and Conditions, words denoting the singular include the plural and vice versa

2 Goods

2.1 To the extent that any Goods are to be supplied in accordance with the Agreement:

2.1.1 the Goods must be to the reasonable satisfaction of the Purchaser;

2.1.2 the Goods must conform in all respects with the requirement of the Agreement, and shall be of

sound materials, workmanship and design;

2.1.3 the Goods shall conform in all respects with all relevant Laws; and

2.1.4 the Goods shall be fit for purpose for which such

goods are ordinarily used, and shall be fit for

particular purpose made known to the Contractor.

3 Packaging

3.1 The Contractor must comply with all relevant Laws in relation to the packaging of the Goods.

3.2 The Contractor must use only the minimum adequate amount of packaging material to prevent contamination of or damage to the Goods.

3.3 The Contractor must use packaging material which is designed and produced in such a way as to facilitate its re-use or recycling.

3.4 The Contractor must avoid or minimise the use of any hazardous substance in the packaging material.

3.5 Unless expressly provided to the contrary in the Agreement, all pallets, containers, cases and other transit or packaging materials which are not removed by the Contractor immediately after delivery of the Goods will be considered non-refundable to the Contractor.

3.6 Without prejudice to Clause 3.5 of this section, within 5 days of a demand by the Purchaser, the Contractor will uplift all pallets, containers, cases and other transit or packaging materials used in relation to the Goods. If the contractor fails to so uplift such materials then, without prejudice to the Purchaser's other rights and remedies, the Purchaser may destroy, re-cycle, dispose of or re-use them.

4 Hazardous Goods

4.1 All containers of hazardous goods shall bear internationally recognised danger symbols and in addition; in English.

4.1.1 prominent and adequate warnings;

4.1.2 a full description of the Goods;

4.1.3 a full description of the hazardous nature of the Goods;

4.1.4 procedures to be followed in the event of an emergency,

5 Delivery

5.1 Delivery shall be made at such times and to such locations as the Agreement specifies,

5.2 The time and date of delivery is of the essence.

5.3 If the Contractor does not deliver the Goods at the time specified in the Agreement the Purchaser may, without prejudice to the Purchaser's other rights and remedies:

5.3.1 refuse any delivery and shall not be under any obligation to accept nor to pay for the Goods; or

5.3.2 terminate the Agreement either in whole or as regards those Goods only.

5.4 If for any reason the Purchaser is unable to take delivery of the Goods at the time specified in the Agreement, the Contractor shall store the Goods safely and securely on behalf of the Purchaser until instructed to make delivery. The Purchaser shall reimburse for any reasonable and proper storage costs actually incurred by the Contractor.

5.5 Unless the Agreement provides expressly to the contrary, delivery shall be free of charge to the Purchaser.

5.6 With each delivery of Goods, the Contractor will provide a delivery note, providing particulars of the quantities, weights (on a package by package basis), batch codes and descriptions of the Goods delivered, and such other information reasonably specified by the Purchaser in advance of delivery.

5.7 The signature or acceptance of a delivery note will not constitute evidence of acceptance of the Goods.

5.8 All Goods of a kind that customarily or in accordance with Good Industry Practice bear any mark, tabs, brands, labels or other device intact.

5.9 The batch codes disclosed on delivery notes must tally with information recorded by the Contractor about its manufacturing, purchasing or Sub-Contracting processes to allow rapid checks to be made by the Purchaser on its stocks of Goods on the event of a series of complaints about the Goods or a product recall.

6 Inspection and Rejection

6.1 The Purchaser may, by written notice to the Contractor at any time within 30 days of delivery, reject all or any of the Goods which fail to meet the requirements of the Agreement or Goods in a consignment which is deficient in weight, quantity or measure. If the Purchaser rejects any Goods pursuant to Clause 6.1 of this section, the Purchaser shall be entitled, at its option:

6.2.1 To have the rejected Goods repaired by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, so as to meet in all respect the requirements of the Agreement; or

6.2.2 To have the rejected Goods replaced by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, with Goods which comply in all respects with the requirements of the Agreement; or

6.2.3 To obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.

6.3 The rights of the Purchaser in Clause 6.2 of this section shall apply:

6.3.1 Without prejudice to its other rights and remedies; and

6.3.2 To Goods as originally delivered, and to Goods repaired or replaced pursuant to that Clause.

6.4 Unless the Purchaser elects for rejected Goods to be repaired, and agrees to that repair taking place at the Premises, any rejected Goods shall be removed by (and at the expense of) the Contractor within 7 days of the rejection notice. If the Contractor fails to remove rejected Goods with such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such item.

6.5 The Purchaser's rights and remedies as regards to Goods which fail to meet the requirements of the Agreement or Goods in a consignment which is deficient in weight, quantity or measure shall be unaffected if the loss or damage occurred in the transit of the Goods.

7 Guarantee

7.1 The Goods shall be guaranteed by the Contractor for the period of 12 months from the putting into service of the Goods, or 18 months from the delivery of the Goods, whichever shall be shorter (the "Guarantee Period").

7.2 If at any time before the date falling 60 days after the end of the Guarantee Period the Purchaser gives notice in writing to the Contractor of any defect in any of the Goods arising during the Guarantee Period under proper and normal use if the Goods, the Contractor shall, without delay, remedy such defects without cost to the Purchaser. The Purchaser may elect whether the defect should be remedied by repair or replacement.

7.3 The rights of the Purchaser under Clause 7.2 of this section shall be without prejudice to any other rights and remedies of the Purchaser.

7.4 For the purposes of Clause 7.1 of this section, Goods repaired or replaced pursuant to Clause 7.2 of this section shall be deemed to be delivered and put into service on the date of repair or replacement, and accordingly shall be guaranteed for a further Guaranteed Period.

8 Property and Risk

8.1 Property to and risk in the Goods shall pass to the Purchaser when the Goods have been delivered to the Purchaser in accordance with Clause 5.

8.2 The transfer of property to and risk in the Goods shall be without prejudice to any rights of the Purchaser in relation to the Goods, including its rights to reject Goods pursuant to this Agreement.

9 Unauthorised Supply of Goods

9.1 The Contractor must not issue, deliver or supply in any manner any Goods to the Purchaser on an unsolicited basis or otherwise than in accordance with the Agreement.

10 Services

10.1 The Contractor warrants and undertakes to the Purchaser that they have exercised and will exercise in and about the performance of Services all the skill, care and diligence reasonably to be expected of an appropriately qualified and competent consultant experienced in performing the same services which the Contractor is obliged to perform pursuant to the Agreement.

10.2 The Contractor shall devote such time as is required in order to fulfil their duties under the Agreement;

10.3 The Contractor warrants and undertakes when faced with a number of alternatives in performing the Services, shall select the alternative which is most beneficial to the Purchaser;

10.4 The Contractor will comply with all reasonable and lawful directions given by the Purchaser;

10.5 The Contractor shall complete the Services in accordance with the terms of the Agreement.

10.6 In carrying out the Services the Contractor shall take steps reasonably required to prevent unauthorised persons being admitted to the Premises. In the event the Purchaser provides notice to the Contractor that any person is not to be admitted or removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Services, the Contractor shall take reasonable steps to comply with such notice and if required by the Purchaser, the Contractor shall replace any person removed under the Clause 10.6 with another suitably qualified person and procure that any access permits issued to the person removed is surrendered.

10.7 If instructed the Contractor shall provide to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them specifying the capacities in which they are so concerned, and giving other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.

10.8 The Purchaser's decision 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 performance of the Agreement and as to whether you have furnished the information or taken the steps required of the Purchaser by this condition shall be final and conclusive.

10.9 The Contractor shall bear the cost of any notice, instruction or decision of the Purchaser under this Agreement.

10.10 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.

10.11 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable you to carry out the Services concurrently with the execution of work by others. The Contractors shall co-operate with such others as the Purchaser may reasonably require.

10.12 The Purchaser have the power at any time during the progress of the Services to order in writing:

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- 10.12.1 the removal from the Premises of any materials which is in the Purchaser's opinion either hazardous, noxious or not in accordance with the Agreement; and/or
- 10.12.2 the substitution of proper and suitable materials; and/or
- 10.12.3 the removal and proper re-execution of any work which, in respect of material or workmanship, is not in the opinion of the Purchaser in accordance with the Agreement.
- 10.13 On completion of the Services the Contractor shall remove all plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services.
- 11 Time for Performance**
- 11.1 The Contractor shall begin performing the Services on the date stated in the Order and shall complete them by the dates stated in the order or continue to perform them for the period stated in the Order.
- 11.2 Time is of the essence of this Agreement
- 11.3 The Purchaser may by written notice require the Contractor to execute the Services in such order as the Purchaser may decide. In absence of such notice you shall submit such detailed programmes of work and progress reports as we may from time to time require.
- 11.4 The Purchaser may instruct the Contractor to vary the Services or provide services additional to the Services listed in the Order and all such varied and/or additional services shall be performed in accordance with this Agreement.
- 11.5 If requested by the Purchaser, the Contractor shall supply a detailed statement estimating the effects of the varied and/or additional services in any agreed programme, the time implications on performance of the Services and impact on the Charges.
- 11.6 The parties shall attempt to agree a fair and reasonable adjustment to the Charges (upward or downwards) and in the absence of any such agreement any addition to the Charges shall be pre-agreed hourly rates set out in the Order
- 11.7 The Contractor shall not be entitled to any additional remuneration where to the extent such variation and/or additional services were necessitated, in whole or in part, by may negligence, omission or default by or on the Contractors behalf.
- 11.8 Notwithstanding any other provisions of this Clause 11, the Contractor shall not vary the Services or provide additional services without prior written instructions. In the event the Contractor varies the Services or provides additional services
- 12 Price**
- 12.1 The Charges for the Goods and/or Services shall be stated in the Order, unless stated otherwise.
- 12.2 No variation in the price or extra Charges shall be made without prior written consent.
- 13 Payment**
- 13.1 The Purchaser shall pay to the Contractor the Charges in consideration of the performance of the Contractor's obligations under the Agreement.
- 13.2 The Purchaser shall pay to the Contractor within 30 days of the date of receipt of a valid invoice from the Contractor.
- 13.3 All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable the Contractor will show this separately on its invoice.
- 13.4 All Charges are stated in Pounds Sterling, and all invoices must be presented and demanded in Pounds Sterling.
- 13.5 The Charges represent the entire amount payable by the Purchaser to the Contractor in respect of the performance of the Contractor's obligations under the Agreement, and except as otherwise expressly stated to the contrary in the Agreement, the Purchaser shall not be liable to the Contractor for any of its costs, expenses or liabilities.
- 13.6 The Contractor will comply with all reasonable requests of the Purchaser in respect of invoicing, including the formatting of invoices and consolidation or splitting of invoices to reflect different parts of the performance of the obligations of the Agreement (including delivery to different locations and/or performance for the ultimate benefit of different persons).
- 13.7 The Contractor shall include a provision in each Sub-Contract requiring the Contractor to pay the relevant Sub-Contract not more than 30 days after receipt of a valid and payable invoice.
- 13.8 If the Contractor assigns the right to receive payment of the Charges or any part thereof (whether pursuant to Clause 32 to any other person (a "Payee Assignee")):
- 13.8.1 The Purchaser will comply with any reasonable request of the Contractor in relation to the payment of the Charges or the handling of invoices, notified to the Purchaser at least 30 days in advance of the date for the relevant payment or the receipt of the relevant invoice;
- 13.8.2 Any payment by the Purchaser to a Payment Assignee will discharge the obligation of the Purchaser to make that payment, as if it had been paid to the Contractor; and
- 13.8.3 The Contractor will procure that the Payee Assignee complies with the reasonable requests of the Purchaser made pursuant to Clause 13.6.
- 13.9 Without prejudice to any other right or remedy, the Purchaser reserves the right to set off any amount owing at any time from the Contractor, against any amount payable to the Purchaser under the Agreement.
- 13.10 The Parties will pay interest on any amount payable under the Agreement not paid on the due date, for the period from that date to the date of payment at the rate equal to 3% above the base rate set from time to time by the Bank of England.
- 14 Indemnity**
- 14.1 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with anything done or omitted to be done in connection with the Agreement by the negligence or other wrongful act or omission of any Contractor Party.
- 15 Limitation of Liability**
- 15.1 Subject always to Clause 15.2, the liability of each party to the other party under the Agreement shall be subject to the following cumulative limits, each to the extent permitted by law:
- 15.1.1 The aggregate liability of a party in respect of loss or damage caused by its negligence to any tangible property to the other party shall not exceed [.....]; and
- 15.1.2 The aggregate liability of a party in respect of any claim made by the other party under the Agreement flowing from any one event or a series of connected events (other than in respect of claims for loss or damage caused by the party's negligence to a tangible property of the other party) shall not exceed [.....] however that liability arises including breach of contract, delict, misinterpretation (except fraudulent misinterpretation) or breach of duty; and
- 15.1.3 Neither party shall be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings or other indirect or consequential loss or damage (but such limitation shall not limit the Contractor's liability to the Purchaser for any additional operational and administrative costs and expenses and/or any expenditure or charges rendered necessary as a result of any Default by the Contractor).
- 15.2 The limitations in Clause 15.1 will not apply to:
- 15.2.1 The liability of a party resulting from any fraudulent act by it, or any liability for personal injury or death; or
- 15.2.2 The liability of the Contractor pursuant to the indemnities in Clause 17.2.
- 16 Insurance**
- 16.1 The Contractor shall maintain in force with reputable insurers employer's liability insurance and public liability insurance in the sum of not less than £5,000,000 in respect of any one incident and unlimited as to numbers of claims and adequate insurances covering all the Contractor's other liabilities in terms of the Agreement.
- 16.2 On request of the Purchaser, the Contractor shall exhibit satisfactory evidence of payment of the premia.
- 17 Intellectual Property Rights**
- 17.1 The Contractor must not infringe any Intellectual Property Right of any third party in the performance of the Agreement involves incorporation of designs furnished by the Purchaser which infringe any Intellectual Property Rights.
- 17.2 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with may breach by the Contractor of Clause 17.1.
- 17.3 All rights (including ownership and Intellectual Property Rights) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing, or on magnetic or other media or distributed electronically:
- 17.3.1 Forming Issued Property or otherwise made available to the Contractor by the Purchaser shall remain vested in the Purchaser; or
- 17.3.2 Prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement are hereby assigned to and shall vest in the Purchaser.
- 18 Corporate Social Responsibility Issues**
- 18.1 Health & Safety**
- 18.1.1 The Contractor shall be responsible for the observance by itself and all Contract Workers including all precautions necessary for the protection of all Contract Workers including all precautions relating to manual handling and all precautions required to be taken by or under Laws relating to health and safety.
- 18.1.2 The Contractor shall promptly notify the Purchaser of any health and safety hazards which may arise in connection with the performance of the Agreement.
- 18.1.3 The Purchaser shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor or any Contract Worker. The Contractor shall draw these hazards to the attention of all Contract Workers and shall instruct such persons in connection with any necessary associated safety measures.
- 19 Non Discrimination**
- 19.1 The Contractor shall comply with the Discrimination Legislation and shall not unlawfully discriminate within the meaning and scope of the Discrimination Legislation.
- 19.2 The Contractor shall notify the Purchaser immediately of any investigation of or proceedings against the Contractor under the Discrimination Legislation and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 19.3 The Contractor must at all times comply with any relevant codes of practice relating to the subject matter of the Discrimination Legislation.
- 20 Environmental Considerations**
- 20.1 The Contractor will ensure that:
- 20.1.1 No Goods or Services are supplied which will endanger the health and safety of the end users of the Goods or Services (in each case assuming that such persons act reasonably);
- 20.1.2 No Goods are supplied which will cause significant damage to the environment during the manufacture, use, or disposal, which consume a disproportionate amount of energy during manufacture, use, or disposal, which may cause unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contain materials derived from threatened species or threatened environments.
- 20.1.3 The Contractor will comply in all material respects with applicable Laws relating to environmental matters which are relevant to the Agreement. Where the provisions of any such Laws are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such voluntary agreements or codes of practice.
- 21 Compliance with General Law**
- 21.1 The Contractor shall comply with all Laws which are relevant to the Agreement.
- 22 Default**
- 22.1 If the Contractor is in Default then without prejudice to any of its other rights and remedies the Purchaser may require the Contractor within 14 days (or such other period as the Purchaser may specify, acting reasonably) to produce a draft remedial plan to remedy the Default for the approval of the Purchaser, such approval not to be unreasonably withheld or delayed.
- 22.2 The Contractor will implement the remedial plan approved by the Purchaser pursuant to Clause 22.1.
- 22.3 At any time while the Contractor is in Default the Purchaser may without prejudice to any of its other rights and remedies seek to remedy the effects of the Default by carrying out the activities necessary to perform the Services, obtain goods similar to the Goods or otherwise meet the objectives of the Agreement, or contract with a third party to do any of the same; and:
- 22.3.1 The Contractor will use all reasonable endeavours to co-operate with the Purchaser and any third party to mitigate the effects of the Default; and
- 22.3.2 The Contractor will indemnify the Purchaser in respect of the reasonable costs and expenses incurred by the Purchaser in remedying or seeking to remedy the effects of the Default.
- 23 Withholding of Sums Payable**
- 23.1 If the Contractor is in Default the Purchaser may withhold a proportion of any sum which is payable by the Purchaser to the Contractor until the Default has been remedied, such proportion to be reasonable and commensurate with regard to:
- 23.1.1 The extent to which the Default has caused or will cause a diminution in the extent or quality, including delay, of the Contractor's performance of the Contract; and
- 23.1.2 The amount of any loss or any additional costs which the Purchaser has incurred or may incur in consequence of the Default.
- 23.2 If any sum of money shall be due from the Contractor to the Purchaser, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other contract or Contract with the Purchaser.
- 24 Termination**
- 24.1 The Purchaser may at any time by notice in writing terminate the Agreement if:
- 24.1.1 There is an Insolvency Event; or
- 24.1.2 There is an Unremedied Default.
- 24.2 The Purchaser shall be entitled to terminate the Agreement by giving not less than 30 days' notice to the Contractor.
- 24.3 The Contract shall expire and terminate automatically at the end of the Agreement Period.
- 25 Termination Definitions**
- 25.1 Where the Contractor is an individual, "Insolvency Event" means that:
- 25.1.1 A petition is presented for the Contractor's bankruptcy or or the sequestration of the Contractor's estate;
- 25.1.2 A criminal bankruptcy order or made against the Contractor;
- 25.1.3 The Contractor makes any composition or arrangement with or for the benefit of the Contractor's creditors, or makes any conveyance or assignment for the benefit of the Contractor's creditors, or an administrator is appointed to the Contractor's affairs;
- 25.1.4 The Contractor becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
- 25.1.5 Any similar events occurs under the law of any other jurisdiction.

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- 25.2 "Unremedied Default" means that the Contractor is in Default and:
- 25.2.1 The Default is capable of remedy and the Contractor has failed to remedy such Default within 30 days of receipt of written notice to the Contractor specifying the Default and requiring its remedy (unless a remedial plan produced in respect of that Default and approved by the Purchaser pursuant to the Clause 22.1 is not being implemented by the Contractor to the reasonable satisfaction of the Purchaser); or
- 25.2.2 A remedial plan produced in respect of the Default and approved by the Purchaser pursuant to Clause 22.1 is not being implemented by the Contractor to the reasonable satisfaction of the Purchaser; or
- 25.2.3 The Default is not capable of remedy.
- 26 Consequences of Termination**
- 26.1 The termination or expiry of the Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 26.2 Terminate of the Agreement will not affect the continued operation of those Clauses which are stated to apply after its terminate or any other of the provisions of the Agreement which, having regard to their terms, are intended to apply on or to service termination of expiry.
- 26.3 If on termination or expiry of the Agreement any Intellectual Property Rights in connection with the Agreement owned by a Contractor Party are required by the Purchaser for the efficient conduct of its business or the orderly and efficient transition with a minimum disruption to the Purchaser, of the Performance of the Contractor's obligations under the Agreement to the Purchaser or a third party, the Purchaser may acquire from the Contractor at the then fair market rate a non-exclusive licence to use such Intellectual Property Rights which licence shall:
- 26.3.1 Be subject to a single, one-off payment;
- 26.3.2 Be perpetual and irrevocable;
- 26.3.3 Afford the Purchaser the right to make such modifications, adaptations and enhancements as it see fit to products in relation to which the Intellectual Property Rights arise;
- 26.3.4 Permit the Purchaser to engage a third party to use, ,modify, adapt or enhance any such products, provided that such third party shall have entered into a confidentiality agreement with the Purchaser in a form to the reasonable satisfaction of the Contractor; and
- 26.3.5 Carry the right to grant sub-licences.
- And the Contractor will procure that such a licence is granted by any Contractor Party.
- 26.4 If fair market value cannot be agreed pursuant to Clause 26.3, the matter will be referred to the Dispute Resolution Procedure.
- 26.5 On the termination of the Agreement pursuant to Clause 24.1, Clause 6.1, or Clause 30.2, the Contractor will indemnify the Purchaser in respect of:
- 26.5.1 Any additional operational and administrative costs and expenses suffered or incurred by the Purchaser as a result of such termination;
- 26.5.2 The costs and expenses suffered or incurred by the Purchaser in providing (or procuring that another party provides) goods or services similar to the Goods or Services on a temporary basis until a reappointment process is carried out by the Purchaser to find a successor to the Contractor, but only to the extent that such costs and expenses exceed the Charges that would have been payable (or a reasonable estimate of such charges, to the extent uncertain) had the Agreement not been terminated; and
- 26.5.3 The costs and expenses suffered or incurred by the Purchaser in carrying out the reappointment process referred to in Clause 26.5.2.
- 26.6 The costs and expenses of the Purchaser referred to in Clause 26.5 shall include reasonable charges to reflect the application of the Purchaser's internal resources, evidenced by records of time spent and other resources applied.
- 27 Confidentiality**
- 27.1 Subject to Clause 27.3 all information of a confidential nature obtained by the Contractor under or in connection with the Agreement from the Purchaser ("Confidential Information") will be treated by the Contractor in confidence, and will not:
- 27.1.1 Be used by the Contractor other than for the purposes of the Agreement; or
- 27.1.2 Be disclosed by the Contractor, other than to those Contract Workers who need or have access to that information for the purposes of the Agreement and in accordance with Clause 27.5,
- Without prior written consent of the Purchaser.
- 27.2 Information will not be treated as "Confidential Information" for the purposes of Clause 27.1 if it was generally available to the public when it was received by the Contractor from the Purchaser and information will cease to be "Confidential Information" for the purposes of Clause 27.1 if it subsequently becomes generally available to the public other than as a result of a breach by the Contractor of this Clause
- 27.3 Clause 27.1 does not prohibit the disclosure by the Contractor of any Confidential Information which:
- 27.3.1 Was known to the Contractor prior to its disclosure to the Contractors by the Purchaser or which subsequently comes into the Contractors possession from a third party which does not owe a duty of confidence to the Purchaser in respect of that information;
- 27.3.2 The Contractor is obliged by law to disclose; or
- 27.3.3 The Contractor requires provide to its insurers or professional advisers to allow the Contractor to properly conduct its business.
- 27.4 The Contractor will take all technical and organisational measures and other precautions necessary to ensure that the Confidential Information is not used or disclosed other than permitted by Clauses 27.1 and 27.3.
- 27.5 Without affecting the generality of Clause 27.4 of this Section, the Contractor will put in place a written agreement with any Contract Worker to whom it wishes to disclose any of the Confidential Information pursuant to Clause 27.1.2 this Section, in terms of which such Contract Worker is bound by confidentiality obligations in respect of that Confidential Information at least as onerous as those set out in this Clause 27.
- 27.6 Upon the expiry or termination of the Agreement, the Contractor will promptly, and in any event within 14 days of such expiry or termination, return to the Purchaser or destroy (at the absolute discretion of the Purchaser) any Confidential Information in its possession, and provide the Purchaser with a certificate, signed by a duly authorised officer, certifying that the Contractor has complied with its obligations under this Clause 27.6. The obligation to destroy any Confidential Information pursuant to this Clause 27.6 includes an obligation to permanently delete from any information technology systems owned and/or used by the Contractor, any copies of that Confidential Information held in electronic form.
- 27.7 Nothing in this Clause 27 will prevent the Contractor from using in the normal course of its business any techniques, ideas or know-how gained during the performance of the Services to the extent that such use does not result in any unauthorised disclosure of any Confidential Information or an infringement of the Purchaser's (or anyone else's) Intellectual Property Rights.
- 28 Freedom of Information**
- 28.1 The Contractor acknowledges that the Purchaser is subject to the requirements of the Information Legislation. The Contractor will provide such assistance and co-operation as the Purchaser may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation including (although not only) by providing the Purchaser with a copy of any information which it is holding on behalf of the Purchaser in the form that the Purchaser specifies within 7 days of a request from the Purchaser to that effect.
- 28.2 The Purchaser will be entitled to determine at its absolute discretion whether to disclose upon request or otherwise publish any information under the Information Legislation, including (although not only) any information provided to it by the Contractor or which relates in any way to the Contractor or the Agreement. In particular the Purchaser will be entitled to determine at its absolute discretion whether it is required to disclose upon request or otherwise publish any information under the Information Legislation, or whether, even if it is not required to disclose upon request or otherwise publish that information under the Information Legislation, it would nevertheless be in the public interest to do so.
- 28.3 Without affecting Clause 28.2 of this Section, the Purchaser will use reasonable endeavours to consult with the Contractor in accordance with the Scottish Ministers' code of practice on the discharge of functions by public bodies under any of the Information Legislation (and/or any subsequent guidance issued by the Scottish Ministers which amends or replaces that code of practice), before disclosing or otherwise publishing under the Information Legislation any information provided to it by the Contractor or which relates in any way to the Contractor or the Agreement.
- 29 Publicity**
- 29.1 Subject to Clause 29.2 of this Section, the Contractor undertakes not to:
- 29.1.1 disclose or permit disclosure of any details of the Agreement to any third party;
- 29.1.2 disclose that the Purchaser is a customer or client of the Contractor to any third party (other than any Sub-contractor); or
- 29.1.3 use the Purchaser's name and/or brand in any promotion or marketing, without the prior written consent of the Purchaser.
- 29.2 Clause 29.1 of this Section will not apply to the extent the Contractor is required to make any disclosure:
- 29.2.1 in order to comply with a legal requirement; or
- 29.2.2 in order to instruct professional advisers in connection with the Services.
- 30 Anti-corruption**
- 30.1 The Contractor shall not (and shall procure that no Contract Worker nor any other person acting on its behalf shall) offer or give or agree to offer or give any person any gift or consideration of any kind as an inducement or reward for:
- 30.1.1 showing or forbearing to show favour or disfavour to any person in relation to the Agreement; or
- 30.1.2 doing or forbearing to do (or having done or forborne to do) any act in relation to the obtaining or performance of the Services or any other agreement.
- 30.2 In the event of any breach of this Clause 30 or the commission of any offence by the Contractor or Contract Worker or person acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916, the Purchaser may terminate the Agreement forthwith by notice in writing to the Contractor.
- 30.3 In exercising its rights or remedies under this Clause 30, the Purchaser shall:
- 30.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
- 30.3.2 give due consideration, where appropriate, to action other than termination of the Agreement, including:
- 30.3.2.1 requiring the Contractor to procure the termination of a Sub-contract where the prohibited act is that of a Sub-contractor; or
- 30.3.2.2 requiring the Contractor to procure the dismissal of an employee of any Contractor Party where the prohibited act is that of such employee.
- 31 Force Majeure**
- 31.1 The expression "Force Majeure" shall, subject to Clause 31.2 of this Section, mean any event materially and adversely affecting the performance by a party of its obligations arising beyond its reasonable control. Events which may constitute Force Majeure include fires, floods, acts of war, acts of terrorism and natural disasters.
- 31.2 An event will not be Force Majeure if:
- 31.2.1 it is an event affecting a third party and as regards that third party the event would not have constituted Force Majeure applying the definitions and exclusions in this Agreement;
- 31.2.2 it is an event affecting a third party and, as regards the affected party, a substitute third party is reasonably available to the affected party;
- 31.2.3 it is attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees;
- 31.2.4 it is attributable to a staff shortage, strike or industrial action relating to the affected party;
- 31.2.5 it is attributable to the adoption of a new currency in the United Kingdom or Scotland;
- 31.2.6 it is attributable to the inability of a party to pay any sum of money to the other party or any third party;
- 31.3 Subject to Clause 31.4 of this Section, a party affected by Force Majeure shall not be liable to the other for any loss of any kind which is directly or indirectly caused by reason of any failure or delay in the performance of its obligations under this Agreement which is due to Force Majeure.
- 31.4 Notwithstanding Clause 31.3 of this Section, a party affected by Force Majeure shall:
- 31.4.1 notify the other party in writing within 5 days of the occurrence of the event constituting Force Majeure;
- 31.4.2 use its reasonable endeavours to continue to perform, or resume performance of, its obligations under this Agreement hereunder for the duration of the event constituting Force Majeure; and
- 31.4.3 shall not be relieved from any obligation to pay any sum of money to the other party.
- 31.5 If either party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part it shall forthwith notify the other as to the circumstances and the period for which it is estimated that such failure or delay is likely to continue.
- 31.6 If either party is prevented from performance of its obligations under the Agreement for a continuous period in excess of 3 months by reason of Force Majeure, the other party may terminate the Contract immediately on service of written notice upon the party so prevented.
- 31.7 The only events which shall afford relief from liabilities under the Agreement for failure or delay shall be any event constituting Force Majeure.
- 32 Assignment and Sub-contracting**
- 32.1 The Contractor shall not assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Agreement or any part thereof without the previous consent in writing of the Purchaser.
- 32.2 The Purchaser hereby consents to the assignment by the Contractor of the right to receive payment of the Charges (or any part thereof) which are due and payable pursuant to the Contract, and the payment of any interest in respect of those Charges, subject to all the rights and remedies of the Purchaser in connection with the payment of the charges including the right to withhold sums pursuant to Clause 23.
- 32.3 The Contractor shall remain fully liable for the actions and defaults of all of its Sub-contractors. Sub-contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Agreement.
- 32.4 The Contractor will procure that its Sub-Contractors comply with all the relevant obligations of the Agreement in the same way as the Contractor is bound to comply.
- 32.5 The Purchaser shall be entitled to assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Agreement or any part thereof:
- 32.5.1 to any person (including but not limited to any body in the private sector) which substantially performs any of the functions that previously had been performed by the Purchaser; or
- 32.5.2 with the previous consent in writing of the Purchaser (which will not be unreasonably withheld or delayed).
- 33 Notices**
- 33.1 Each party shall from time to time notify the other of the communications protocols to be followed in connection with the Services but subject to any such protocol, any notice

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- or other communication shall be validly served if sent by letter to the address of the relevant party as detailed in the Agreement (or, where the party is a company, that company's registered office).
- 33.2 A notice delivered or sent or transmitted to the correct address of a party 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.
- 34 Severability**
- 34.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction (an "Illegal Term"), such provision shall be severed and subject to Clause 34.2 of this Section, the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the Illegal Term eliminated.
- 34.2 If an Illegal Term is so fundamental that its severance prevents the accomplishment of the purpose of the Agreement, the parties shall immediately commence good faith negotiations to remedy such invalidity, but if the parties have not implemented that remedy within 2 weeks of the declaration of the provision as an Illegal Term, either party may terminate the Agreement forthwith by notice in writing to the other.
- 35 Waiver**
- 35.1 The failure of either party to insist upon the performance or the strict performance of any provision of the Services, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 35.2 No waiver of any of the provisions of the Agreement shall be effective unless it is expressly stated to be a waiver and notified in writing to the other party.
- 36 Remedies**
- 36.1 Except as otherwise expressly provided in the Agreement:
- 36.1.1 all remedies available to a party under the Agreement are cumulative and may be exercised concurrently or separately; and
- 36.1.2 the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 37 Warranties and Representations**
- 37.1 The Contractor warrants and represents that:
- 37.1.1 the Contractor has full capacity and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform the Services;
- 37.1.2 to the best of its knowledge there is no inhibition, restriction or prohibition which in any way affects the capacity of the Contractor to enter into and perform the Services;
- 37.1.3 the Contractor shall discharge its obligations under the Agreement with all reasonable skill, care and diligence and in accordance with Good Industry Practice.
- 38 Data Protection Act**
- 38.1 In this Section the terms "Personal Data" and "Processing" have the meanings given to them in the DPA (and "Process" shall be construed accordingly).
- 38.2 The Contractor will take all necessary steps to ensure that in performing its obligations under the Agreement it operates at all times in compliance with the DPA.
- 38.3 **Personal Data**
- 38.4 If the Purchaser passes to the Contractor, or otherwise gives the Contractor access to, Personal Data under the Agreement:
- 38.4.1 the Contractor will not Process that Personal Data except for the purposes of the Agreement and in accordance with the instructions of the Purchaser;
- 38.4.2 the Contractor will not acquire any rights in that Personal Data, and will return that Personal Data to the Purchaser immediately, if the Purchaser asks it to do so;
- 38.4.3 the Contractor will put in place appropriate technical and organisational measures against unauthorised or unlawful Processing of that Personal Data, and against accidental loss or destruction of or damage to that Personal Data, in compliance with the DPA. Technical and organisational measures will be considered appropriate for the purposes of this Clause if they conform to the provisions of ISO 17799 (or any replacement standard relating to data security) or such other data security measures as are appropriate for the purposes of complying with the DPA;
- 38.4.4 the Contractor will permit the Purchaser to have access to the Contractor's premises, personnel and records on at least five days' notice, for the purposes of inspecting, testing and auditing the technical and organisational measures put in place by the Contractor under Clause 38.4.3 of this Section;
- 38.4.5 the Contractor will promptly take whatever steps are necessary to comply with any requirement made by the Purchaser to ensure that the technical and organisational measures put in place by the Contractor comply with the DPA; and
- 38.4.6 the Contractor will not transfer any of that Personal Data outside the European Economic Area, except upon the express written instructions of the Purchaser, and in accordance with any additional terms which the Purchaser imposes on such transfer.
- 39 Transfer of Responsibility**
- 39.1 Upon the expiry or termination of the Agreement, for any reason whatsoever, the Contractor shall cooperate with the Purchaser to such extent as the Purchaser may require for the period required by the Purchaser (of up to a maximum of 6 months after the date of such expiry or termination) to ensure an orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Agreement to the Purchaser or a third party.
- 39.2 The Purchaser shall reimburse to the Contractor all reasonable costs and expenses incurred by the Contractor in satisfying the provisions of this Clause 39.
- 39.3 The cooperation referred to in Clause 39.1 of this Section may include, if the Purchaser requires:
- 39.3.1 the making available of any Issued Property, the making available of relevant instruction and operating manuals and the provision of instruction in the use of any equipment or machinery forming part of the Issued Property; and/or
- 39.3.2 the continued provision of the Services, or part of them, or the continued performance of the Contractor's obligations under Agreement.
- 40 Audit Access**
- 40.1 The Contractor shall grant to the Purchaser, any auditors of the Purchaser (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Purchaser) and any other person authorised by the Purchaser (together the "Auditors") access to all of the Records and shall provide reasonable assistance at all times to the Purchaser or the Auditors (including the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records, all for the purposes of enabling the Purchaser or the Auditors:
- 40.1.1 to carry out an audit of the Contractor's compliance with the Agreement;
- 40.1.2 to carry out an audit of all activities carried out and security precautions taken in connection with the performance of the Services;
- 40.1.3 to prepare, audit, examine and certify the accounts of the Purchaser; or
- 40.1.4 to conduct any audit or investigation by Audit Scotland or any other auditor.
- The Contractor shall be repaid any reasonable expenses properly and necessarily incurred in giving such reasonable assistance.
- 40.2 Without prejudice to Clause 40.1 of this Section, in the event of an investigation into suspected fraudulent activity or other impropriety by any Contractor Party or Contract Worker:
- 40.2.1 the Purchaser and/or the Auditors may without notice enter any premises of any Contractor Party and take access to the Records, which shall be made available to them (whether they are held at such premises or otherwise) by the Contractor or Contractor Party;
- 40.2.2 the Contractor shall render all necessary assistance to the conduct of such investigation (including the provision of office accommodation and the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records or any other subject of investigation or enquiry by the Purchaser or the Auditors); and
- 40.2.3 the Contractor shall be paid any reasonable expenses properly and necessarily incurred in giving such necessary assistance in the event that the result of such investigation is that no fraudulent activity or other impropriety by a Contractor Party or a Contract Worker is found (but not otherwise).
- 40.3 The Purchaser shall ensure that any representative of the Purchaser given access to any premises or Records by the Contractor in accordance with Clause 40.2.1 of this Section causes the minimum amount of disruption to the business of the Contractor.
- 41 Relationship**
- 41.1 The Agreement shall not have the effect of making any Contractor Party the agent of the Purchaser, and the Contractor will procure that no Contractor Party and no Contract Worker, by act or omission, purports to act as agent of the Purchaser, or leads any party to believe that such a relationship of agency exists.
- 42 Dispute Resolution Procedure**
- 42.1 In the first instance the parties will seek to resolve any Dispute by its escalation to various levels within the organisational structures of the parties.
- 42.2 An individual representing a party at one level may not be made available by a party to represent it at a higher level.
- 42.3 If a Dispute is resolved at any level, the resolution shall be reduced to writing, without delay, and signed by both parties. Once signed by both parties, the resolution shall be binding on the parties.
- 42.4 Unless the resolution of a Dispute is reduced to writing signed by both parties, all discussions and negotiations connected with the Dispute shall be conducted without prejudice to the rights of the parties in any future legal or other proceedings, and no such discussions and negotiations may be produced or relied upon in evidence in any such proceedings.
- 42.5 A meeting of the representatives at the first level shall take place as soon as possible after any Dispute arises.
- 42.6 If a Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the first level (or, following referral pursuant to this Clause, the second level), the Dispute shall be referred to the next level, and the representatives at that next level shall meet within 3 days of the reference to that level.
- 42.7 If a Dispute is referred to the third level, and that Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the third level, either party may request the President of the Law Society of Scotland to appoint a single arbiter to resolve the Dispute. The arbitration shall take place in Scotland, and shall be commenced and conducted in accordance with the Scottish Arbitration Code 1999, or any code which replaces this. The decision of the arbiter shall be final and binding.
- 43 Anti-Bribery**
- 43.1 The Contractor shall:
- 43.1.1 Comply with all applicable laws, regulation, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements")
- 43.1.2 Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 in such activity, practice or conduct had been carried out in the UK;
- 43.1.3 Have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act, to ensure compliance with Relevant Requirements and will enforce them;
- 43.1.4 Immediately notify GCU of a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has not foreign officials as officers, employees or direct or indirect owners at the date of the Agreement);
- 43.1.5 Ensure that all persons associated with the Contractor or other persons who are performing services in connection with this agreement complete with this Clause 43; and
- 43.1.6 Within two months of the date of this Agreement, and annual thereafter, certify to GCU in writing signed by an officer of the Contractor, compliance with this Clause 43 by the Contractor and all persons associated with it and all other persons for whom the Contractor is responsible under Clause 43.1.5. The Contractor shall provide such supporting evidence of compliance as GUC may reasonably request.
- 43.2 For the purposes of this Clause 43, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under this section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 43 a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.
- 43.3 In the event of any breach of this Clause 43 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor):
- 43.3.1 The Contractor shall immediately give GCU full details of any such breach and shall cooperate fully with GCU in disclosing information and documents which GCU may request; and/or
- 43.3.2 GCU shall (without prejudice to any of its rights or remedies under this Agreement or otherwise) be entitled by notice in writing to terminate this Agreement immediately; and
- 43.3.3 The Contractor shall be liable for and shall indemnify and keep GCU indemnified in respect of any and all loss resulting from such termination.
- 43.4 In any dispute, difference or question arising in respect of:
- 43.4.1 The interpretation of this Clause 43; or
- 43.4.2 The right of GCU to terminate this Agreement; or
- 43.4.3 The amount of value of any gift, considered a commission
- The decision of GCU shall be final and conclusive.
- 44 Law and Jurisdiction**
- 44.1 These Conditions and the Agreement shall be governed by and construed in accordance with the law of Scotland and the Scottish Courts will have authority to settle any dispute. The Contractor may only raise an action against the Purchaser in the Scottish Courts.