



SCOTTISH ENVIRONMENT PROTECTION AGENCY or SEPA

TERMS AND CONDITIONS FOR PURCHASING GOODS AND SERVICES

CONTENTS

Clause	Page No
1. Definitions, Interpretations and Basis of Contract	2
2. Services	7
3. Delivery	9
4. Quality	10
5. Inspection of Premises and Nature of Services	12
6. Supplier's Status	12
7. Supplier's Personnel	12
8. Manner of Carrying Out the Services	13
9. Labelling and Packaging	14
10. Price	14
11. Payment	15
12. Corrupt Gifts or Payments	16
13. Free-Issue Materials	16
14. Ownership	16
15. Foreground IPR	16
16. Force Majeure	17
17. Limitation of Liability	17
18. Loss and Insurance	18
19. Termination	19
20. Cessation of Service	20
21. Audit Rights	22
22. Confidential Information, Freedom of Information and Data	22
23. Equal Opportunities	24
24. General	25
25. Notices	26
26. Assignment / Sub-Contracting	26
27. Publicity	26
28. Further Assurance	26
29. Assignment of Foreground IPR	26
30. Governing Law	27

SCOTTISH ENVIRONMENT PROTECTION AGENCY OR SEPA
TERMS AND CONDITIONS FOR PURCHASING GOODS AND SERVICES

1. Definitions, Interpretations and Basis of Contract

1.1 In these Conditions the following words and phrases are given specific meanings. These meanings are set opposite them:

"Baseline Security Standard Checks"	has the meaning given to it in Condition 2.2;
"Business Day"	means any day from Monday to Friday inclusive on which SEPA is open for business;
"Cessation"	means the cessation or partial cessation of the Goods and/or Services, or any part thereof, for whatever reason, including, for the avoidance of doubt, the termination, partial termination or expiry of the Contract, and any reduction in the level of Goods or Services;
"Conditions"	mean the terms and conditions set out in this document;
"Contract"	means the agreement concluded between you and us pursuant to Condition 1.3 for the supply of Goods and Services incorporating the Conditions;
"Contract Documents"	means any Purchase Order, these Conditions, our invitation to tender regarding the Goods and/or Services, your response to our invitation to tender and any clarifications to our invitation to tender and/or to your response to our invitation to tender that are agreed in writing between you and us;
"Contract Price"	means the price which we will pay to you for full performance of this Contract;
"Control"	means that a company or person possesses,

	directly or indirectly, the power to direct or cause the direction of the management and policies of the other company or person (whether through the ownership of voting shares, by contract or otherwise);
" Disclosure"	has the meaning given to it in Condition 2.2.4;
"Foreground IPR"	means all Intellectual Property Rights arising as a result of your provision of the Goods or Services to us;
"Goods"	means the goods to be supplied under the Contract as described in the Contract Documents and any deliverables to be provided as part of the Services;
"Intellectual Property Rights" or "IPR"	any and all intellectual property or industrial rights of any description anywhere in the world including without limitation to the foregoing generality any patents, trade marks, domain names, registered designs, copyright (including without limitation to the foregoing generality rights in computer software, object and source code), rights in the nature of copyright, database rights, semi-conductor topography rights, unregistered design rights, rights in and to trade names, business names, product names and logos, inventions, databases, discoveries, specifications, formulae, processes, know how, trade secrets, confidential information and any analogous or similar right in any jurisdiction (whether any such rights referred to in this definition are registered, unregistered, registerable or not and any applications or

	rights to apply for registration of any of them together with any registered rights resulting from any such applications or rights to apply for registration);
"Losses"	means all costs, liabilities, losses, damages, claims, actions, proceedings, awards, charges, demands and/or expenses (including without limitation all legal and other professional fees and expenses) on a full indemnity basis;
"New Supplier"	means any person, firm, company or other entity which may, on Cessation, be engaged to provide all or any part of the Goods and/or Services or all or any part of the goods and/or services which formerly comprised the Goods and/or Services;
"Parent Company"	means any company which controls the Supplier (as defined in Section 1156 of the Companies Act 2006 as a holding company) or a company which is in the same group as the Supplier and either carries on similar business or directly or indirectly controls the Supplier;
"Partner Organisation"	means (i) any other contracting authority (as defined in either the Public Contracts (Scotland) Regulations 2006 or the Public Contracts Regulations 2006) that is obtaining the Goods and/or Services pursuant to a public procurement exercise that SEPA has conducted either alone or in conjunction with other contracting authorities and (ii) any person or body associated with us from time

	to time and engaged on our business;
"Personnel"	means any individual who is employed or engaged by you or a sub-contractor to provide all or any part of the Goods or Services to us;
"Premises"	means the location where the Services are to be performed, as specified in the Purchase Order;
"Purchase Order"	means SEPA's purchase order and/or commissioning letter to which these Conditions are attached and/or which refers to these Conditions;
"Relevant Date"	means in respect of any Personnel or former Personnel, the date of a Relevant Transfer from you and/or any of your sub-contractors to us and/or any New Supplier;
"Relevant Transfer"	means a relevant transfer for the purposes of TUPE;
"SEPA", "we" and "us"	means the Scottish Environment Protection Agency established by the Environment Act 1995 and having its principal place of business at Strathallan House, Castle Business Park, Stirling FK9 4TZ;
"Services"	mean the services to be supplied under the Contract, as described in the Contract Documents;
"Supplier" and "you"	means the party named in the Purchase Order;
"Supplier's Background IPR"	means all Intellectual Property Rights owned by you before beginning to provide the Goods or Services to us;
"Transfer Assistance Period"	means the period beginning on the earliest of: (i) the date that you or any of your sub-

contractors become aware of a Cessation;

or

(ii) the date of us informing you of a re-tender in respect of the Goods and/or Services or any part thereof; or

(iii) the date we give or receive notice of a Cessation; or

(iv) the date 6 months prior to expiry of the Contract;

and expiring on the date of Cessation;

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended); and

"VAT"

value added tax;

- 1.2 In the Conditions any reference to the words "include" or "including" means without limitation (except where the context requires otherwise).
- 1.3 The Purchase Order constitutes an offer by us to you to purchase the Goods and Services. That offer is subject to the Contract Documents.
- 1.4 All purchase transactions between you and us are subject to these Conditions unless otherwise agreed in writing by us. The Contract Documents make up the whole agreement between you and us and supersede any previous agreement between you and us relating to the same subject matter. No other terms and conditions submitted, proposed or stipulated by you will apply to the Contract.
- 1.5 If there is any conflict or inconsistency among the Contract Documents the terms of some of the documents take priority over other documents. The descending order of importance is as follows: firstly the Purchase Order; then the Conditions; then any clarifications to our invitation to tender and/or your response to our invitation to tender that are agreed in writing between you and us; then our invitation to tender; and then your tender response.
- 1.6 You acknowledge that we may make the Goods and/or Services available to the Partner Organisations. Where we inform you in writing you will take instructions directly from, and issue invoices directly to and accept payment directly from, the Partner Organisations (though

this will always be subject to our consent which we may withdraw at any time by informing you in writing). References to our interests, business, Confidential Information, IPR, statutory obligations and proprietary rights will be deemed to include those of the other Partner Organisations. Obligations and duties owed by you to us under the Contract will also be owed to the other Partner Organisations. We will be entitled to enforce such obligations and duties on their behalf. All claims, demands, actions, costs, expenses, losses and damages suffered or incurred by a Partner Organisation due to or in connection with a breach of the Contract by you or in connection with any obligation or duty owed by you under the Contract will be deemed to be suffered or incurred by us, and we will be entitled to seek such remedies as may be available under the Contract or at law in respect thereof.

2. Services

- 2.1 You will provide the Services in a proper, diligent, prompt and professional manner to our reasonable satisfaction.
- 2.2 You will carry out the following checks on your employees who are involved in carrying out the Services. You will ensure that the same checks are carried out on the employees of any contractors or sub-contractors who you involve in providing the Services. These checks must be carried out with the knowledge and prior consent of such employees. You will complete these checks before the employees access the Premises:
 - 2.2.1 the identity of the employee must be checked and confirmed;
 - 2.2.2 the employment history, including periods of unemployment, of the employee over the preceding three years must be checked and confirmed;
 - 2.2.3 to ensure that individuals are not prohibited from working in Scotland, the nationality and immigration status of the employee must be checked and confirmed; and
 - 2.2.4 a basic disclosure (the "Disclosure") must be obtained from Disclosure Scotland or other equivalent authority of the region where the employee is normally resident, including the Criminal Records Bureau, and such Disclosure must confirm that the employee has no unspent criminal convictions. Where the Disclosure discloses that the employee has an unspent conviction, you will not permit such employee to enter the Premises.

The above checks together are referred to as the "Baseline Security Standard Checks". Prior to commencing the provision of the Services or to any employee becoming involved in the provision of the Services, you must confirm to us in writing that such Baseline Security Standard Checks have been conducted by you, or by any contractor or sub-contractor engaged by you in connection with the provision of the Services. You agree that we may undertake any of the Baseline Security Standard Checks at our option and that you will reimburse our reasonable costs incurred in undertaking those Baseline Security Standard Checks. You will ensure that the knowledge and prior consent of the employees, referred to above, extends to the checks being carried out by us.

2.3 You will:-

- 2.3.1 give us, if we ask, a list of the names and addresses of Personnel involved in providing the Goods and/or performing the Services and the tasks which each person will be carrying out together with any other information or documents we may ask to see;
- 2.3.2 ensure, if key personnel are specified in the Contract Documents, that those key personnel perform the Services and/or provide the Goods allocated to them in the Contract Documents and you will not make any change to such key personnel unless we have agreed (acting reasonably) to that change in writing;
- 2.3.3 provide only those personnel who have the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with the Contract; and
- 2.3.4 nominate one of your senior managers or directors to have overall responsibility for (i) the Contract; and (ii) the provision of personnel. That person will attend review meetings with us when reasonably required by us.

2.4 You will not:-

- 2.4.1 incur any liability, pledge the credit of SEPA or any Partner Organisation, make any legally binding representations, enter into any contracts or agreements or give any warranty on behalf of SEPA or any Partner Organisation without our prior written approval; or
- 2.4.2 do anything which, in our opinion, is prejudicial to our business or reputation or the business or reputation of any Partner Organisation.

- 2.5 If you or a sub-contractor propose to deliver the Services using a person (including as a consultant, partner or director) who was formerly employed by us, you must first obtain the written consent of SEPA's Director of Finance.

3. Delivery

- 3.1 The Goods will be delivered to the delivery address named in the Contract Documents on the date or within the period stated in the Contract Documents, in either case during our usual business hours. The Services will be delivered at the Premises.
- 3.2 Where the date of delivery of the Goods is to be specified after the placing of the Purchase Order, you will give us reasonable notice of the date of delivery and delivery will take place within 28 Business Days after the date of the Purchase Order unless the Contract Documents state a different delivery date.
- 3.3 The time(s) and date(s) of delivery of the Goods and Services will be of the essence of the Contract and failure to deliver on time will allow us (at our option and without prejudice to our other rights and remedies) to be released from any requirement to accept and pay for Goods and Services and/or to cancel all or part of the Contract.
- 3.4 You will ensure that each delivery is accompanied by a delivery note which shows at least the Purchase Order number, date of the Purchase Order and full details of number of packages and contents.
- 3.5 If the Goods and/or Services are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- 3.6 If we sign a delivery note for the Goods, this does not mean that we accept the Goods or that all of the correct Goods have been delivered.
- 3.7 We will not be deemed to have accepted any Goods and/or Services until we have had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 3.8 You will supply us in good time with instructions or other information required to enable us to accept delivery of the Goods and Services.
- 3.9 We will not be obliged to return to you any packaging for the Goods, whether or not any Goods are accepted by us.
- 3.10 If the Goods are delivered to us in excess of the quantities ordered we will not be bound to pay for the excess. Any excess will remain your responsibility and will be returnable at your

expense provided that you make a request for return within a reasonable time of delivery. We will be entitled to charge you for storing Goods delivered in excess of the quantities ordered and you will pay such charges within seven Business Days of the date of our invoice.

- 3.11 If the Goods are not delivered or the Services are not provided on the due date then, without prejudice to any other rights which we may have, we reserve the right to do all or, at our option, any of the following:
- 3.11.1 cancel the Contract in whole or in part;
 - 3.11.2 refuse to accept any subsequent delivery of the Goods or performance of Services which you attempt to make;
 - 3.11.3 recover from you any expenditure reasonably incurred by us in obtaining replacement Goods or Services from another supplier; and/or
 - 3.11.4 claim damages for any additional costs, loss or expenses incurred by us which are in any way attributable to your failure to deliver the Goods or provide the Services on the due date.
- 3.12 Property and risk in the Goods will, without prejudice to any of our rights or remedies under the Contract, pass to us once we have accepted the Goods in accordance with this Condition 3.

4. Quality

- 4.1 You warrant, undertake and represent to us that:
- 4.1.1 the Goods will be of the best available design, of satisfactory quality, material and workmanship and without fault and the Goods and Services will conform in all respects with the Contract Documents and any other specification supplied or advised by us to you or agreed in writing by us and, without prejudice to the above requirements, will be fit and sufficient for the purpose for which such Goods are ordinarily used and for any purpose that we make known to you; and
 - 4.1.2 the Goods and Services will comply and will be supplied in accordance with all applicable laws, enactments, orders, regulations, codes of practice and other similar instruments.
- 4.2 Our rights under these Conditions are in addition to our statutory rights implied by the Sale of Goods Act 1979 (and any amendments and replacements).
- 4.3 At any time before the delivery of the Goods to us, we may inspect and test the Goods.

- 4.4 If, in our opinion, the results of such inspection and/or testing shows that the Goods do not conform or are unlikely to conform to the Contract Documents or similar specifications, we will inform you. If we inform you of this, you will immediately take any action necessary to ensure the Goods conform. In addition, we will have the right to require and oversee further testing and/or inspection. This Condition 4.4 will apply to such further testing and inspection.
- 4.5 Even if we carry out such inspection or testing, you will remain fully responsible for the Goods and any inspection or testing will not affect your obligations under the Contract.
- 4.6 If any of the Goods or Services fail to comply with the provisions in this Condition 4, we will be entitled to use any one or more of the remedies listed in Clause 4.7 below.
- 4.7 In addition to any other right or remedy which we may have, if any Goods or Services are not supplied in accordance with, or the you fail to comply with, any of the terms of the Contract we may do all or, at our option, any of the following:
- 4.7.1 cancel the Contract;
 - 4.7.2 reject the Goods or Services (in whole or in part) and return the Goods them to you at your risk and cost on the basis that you will pay us a full refund for the returned Goods;
 - 4.7.3 give you the opportunity at your expense either to correct any defect in the Goods or to supply replacement Goods or to re-perform the Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - 4.7.4 refuse to accept any further deliveries of the Goods or provision of Services;
 - 4.7.5 carry out at your expense any work necessary to make the Goods or Services comply with the Contract; and/or
 - 4.7.6 claim such damages as may have been caused by your breach of the Contract.
- 4.8 The guarantee period applicable to the Goods will be 12 months from putting into use or 18 months from delivery, whichever is shorter. This is subject to any alternative guarantee arrangements agreed in writing between you and us.
- If we notify you in writing of any defect in any of the Goods during the guarantee period or within 30 Business Days thereafter you will correct the defects at your expense. We will choose whether the defects may be corrected by repair or by replacement.

5. Inspection of Premises and Nature of Services

- 5.1 You are deemed to have inspected the Premises before tendering so that you understand the nature and extent of the Services to be carried out and have satisfied yourself in relation to all matters connected with the Services and Premises.
- 5.2 We will grant such access as may be reasonable for this purpose if you request.

6. Supplier's Status

In carrying out the Services you will be acting as an independent contractor, not as our agent. Accordingly:

- 6.1 you will not say or do anything that might lead anyone to believe that you are acting as our agent;
- 6.2 you will ensure that your agents, employees and contractors will not say or do anything that might lead anyone to believe that you (or they) are acting as our agent; and
- 6.3 nothing in this Contract will impose any liability on us in respect of any liability incurred by you to any other person. This will not exclude or limit our liability to you caused by a breach of this Contract or any negligence on our part.
- 6.4 You warrant, undertake and represent that:
- 6.4.1 you have full capacity and authority and all necessary licences, permits and consents (including the consent of a Parent Company, if needed) to enter into and to perform the Contract; and
- 6.4.2 at today's date you are not involved in any litigation, arbitration or other dispute which may have an adverse effect upon your liabilities, responsibilities and obligations under the Contract.

7. Supplier's Personnel

- 7.1 You will take any steps reasonably required by us to prevent unauthorised persons being admitted to the Premises. If we tell you that any person is not to be admitted to the Premises or is to be removed from the Premises you will comply with that requirement immediately. Similarly, if we tell you that any person is not to become involved in or is to be removed from involvement in the performance of the Contract you will comply with that requirement immediately. If required by us you will replace any person removed under this Condition with

another suitably qualified person and ensure that any pass issued to the person removed is returned.

7.2 Our decision is final as to whether:

7.2.1 any person is to be admitted to or is to be removed from the Premises;

7.2.2 any person is not to become involved in or is to be removed from involvement in the performance of the Contract; and

7.2.3 you have furnished the information or taken the steps required of you by this Condition.

7.3 You will bear the cost of any notice, instruction or decision by us under this Condition.

7.4 You will indemnify us and keep us indemnified on demand from and against any Losses arising out of or in connection with (i) the employment or engagement and/or the claimed employment or engagement and/or (ii) the termination of employment or engagement and/or the claimed termination of the employment or engagement, of any Personnel or former Personnel. The indemnity in this Condition 7.4 will not apply to any claim by any such Personnel to transfer to the employment of us and/or any New Supplier in the circumstances contemplated by Condition 20.1.

8. Manner of Carrying Out the Services

8.1 You will not deliver any materials, plant or other things nor commence any work on the Premises without obtaining our prior consent.

8.2 You will only have such access to the Premises as is necessary to enable you to carry out the Services. You will co-operate with others working on the Premises at the same time as we may reasonably require.

8.3 We will have the power at any time to order in writing:

8.3.1 the removal from the Premises of any materials which we consider hazardous, noxious or not in accordance with the Contract; and/or

8.3.2 the substitution of proper and suitable materials; and/or

8.3.3 the removal and proper re-execution of any work which we consider is not in accordance with the Contract (even where testing or interim payment has already been carried out).

- 8.4 When the Services are complete you will remove your plant, equipment and unused materials and will clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.
- 8.5 You will ensure that you and your sub-contractors have in place, maintain and, if required, implement plans and procedures to ensure business continuity, and no disruption to the provision of the Goods or Services, both in relation to general day-to-day disruptions and disaster recovery.
- 8.6 You will comply with any security requirements to which we are subject and with any security requirements which we may tell you to comply with from time to time.

9. Labelling and Packaging

- 9.1 You will pack and mark the Goods in a proper manner and you will comply with our instructions, any statutory requirements and any requirements of the carriers. In particular you will mark the Goods clearly with the Purchase Order number, the net, gross and tare weights and you will ensure that the name of the contents is clearly marked on each container. All containers of hazardous goods (and all documents relating to them) must have clear and adequate warnings that comply with all applicable laws and regulations. You will indemnify us against all actions, suits, claims, demands, losses, charges, costs and expenses which we may suffer as a result of any breach of this Condition.
- 9.2 All packaging materials will be destroyed unless your advice note states the materials will be charged for unless returned. We will not be liable if any packaging we return to you does not arrive, unless you notify us that the packaging has not arrived within 10 Business Days of us informing you that we have sent the packaging.
- 9.3 You represent and warrant that you have made as much use of recycled materials in your packaging materials as possible.
- 9.4 You represent and warrant that the minimum packaging necessary will be used in supplying the Goods.

10. Price

- 10.1 The Contract Price for the Goods and Services will be as stated in the Contract Documents and, unless otherwise stated, will be:
- 10.1.1 exclusive of any VAT (which we will pay if we receive a valid VAT invoice); and

- 10.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to our place of business and any duties, imposts or levies other than VAT.
- 10.2 No increase in the Contract Price may be made without our prior written consent.
- 10.3 We will be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by you, whether or not shown on your own terms of sale.
- 10.4 If, as part of the Contract Price, we agree to reimburse travel expenses incurred by you then those expenses must be calculated according to the mileage rates used by HMRC for approved mileage allowance payments. You should ensure where possible that travel is minimised and public transport is used to minimise the environmental impact of the travel.

11. Payment

- 11.1 When you have supplied the Goods and Services to our reasonable satisfaction you may submit invoices to us in accordance with the invoicing terms set out in the relevant Contract Documents. Where no invoicing terms are set out in the Contract Documents and you have supplied the Goods and Services to our reasonable satisfaction, you may invoice us for the applicable price at the end of the relevant supply. We will pay valid, undisputed invoices within 30 days from receipt.
- 11.2 We will pay interest on any amount properly due at four percent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time.
- 11.3 You will ensure that all invoices include our Purchase Order number and a description of the Goods and Services supplied, including the quantity of Goods supplied.
- 11.4 You will pay all taxes and expenses arising from the Contract. You will indemnify us in respect of any tax or employer's national insurance contributions or other expense suffered by us in respect of you, your employees, agents or sub-contractors in relation to the supply of Goods during the period of the Contract (or after termination).
- 11.5 We reserve the right to deduct any sums which you owe us from any sums we owe you, under the Contract or otherwise.
- 11.6 Where you enter into a sub-contract with a supplier or contractor for the purpose of performing your obligations under the Contract, you will ensure that a provision is included in such a sub-contract that specifies a contact to whom issues regarding non-payment can be addressed and which also requires you to pay all sums due by you to the sub-contractor

within, calculating from the date of receipt by you of our payment, a number of days equivalent to the number of days between our receipt and our payment of your invoice. You will make payment within such time and, in any event, within 30 days of receiving a valid invoice.

12. Corrupt Gifts or Payments

You must not do anything that gives or offers any kind of inducement or reward to any of our employees or contractors in relation to the Contract including offering any kind of corporate hospitality. Doing so may be a criminal offence.

13. Free-Issue Materials

Where we give you materials free of charge for the Contract such materials will remain our property. You will maintain all such materials in good order and condition. You will use such materials solely in connection with the Contract. You will notify us of any surplus materials remaining after completion of the Services and will dispose of them as we direct. If you or your contractors waste the materials through bad workmanship or negligence, the waste will be made good at your expense. You will return the materials to us if we demand.

14. Ownership

Title to the Goods will vest in us when the Goods are delivered to us in accordance with the Contract. You will remain responsible for the Goods until we accept them in accordance with the Contract. You will insure the Goods against loss or damage until the responsibility for the Goods has passed to us.

15. Foreground IPR

- 15.1 You hereby grant us a perpetual, irrevocable, worldwide, royalty free, non-exclusive licence (with the right to grant sub-licences and to assign the licence) to use the Supplier's Background IPR for the purpose of using and receiving the Goods and Services and using, reproducing and exploiting the Foreground IPR.
- 15.2 You hereby grant us a perpetual, irrevocable, worldwide, royalty free, non-exclusive licence (with the right to grant sub-licences and to assign the licence) to use, reproduce and exploit the Foreground IPR.

- 15.3 You will, if we ask and at no additional charge to us, provide us with a copy of all materials and media embodying or including the Supplier's Background IPR and the Foreground IPR licensed to us.
- 15.4 Where the Services that you are providing constitute access to your proprietary information, proprietary data and/or proprietary databases, then Conditions 15.1 and 15.2 will not apply to such data, databases or information. You hereby grant to us a non-exclusive licence, with the ability to sub-license and to assign the licence, to access, copy and use the relevant information, data and databases referred to in the Contract Documents (but only for the purposes set out in the Contract Documents).
- 15.5 You warrant to us that neither the Supplier's Background IPR, nor the Foreground IPR, nor the proprietary information, data and/or databases referred to in Condition 15.4 above, nor any use of any of them will infringe the Intellectual Property Rights of any third party. You will indemnify us against all Losses arising in connection with any breach of the warranty in this Condition 15.5.
- 15.6 If an assignment of the Foreground IPR is required under the Purchase Order this Condition shall not apply and Condition 29 (Assignment of Foreground IPR) will apply instead.

16. Force Majeure

- 16.1 Any delay or failure of performance will be excused if (and to the extent) that such delay or failure is caused by an event beyond your or our reasonable control. Such events include acts of God, decrees or restraints of government, strikes, war, fire, riot, sabotage, terrorism and any other cause which cannot be controlled by the party. Performance will only be excused for the period during which performance is impossible and the party will remedy the situation as soon as possible. The period for performance will be extended by however long performance is excused by this Condition.
- 16.2 If any of the events detailed in Condition 16.1 above prevents either party from performing all of its obligations under the Contract for longer than one month, the party affected by such non-performance may terminate the Contract.

17. Limitation of Liability

- 17.1 Neither party excludes or limits liability for death or personal injury arising from a breach of duty or from any breach of any obligations implied by Section 12 of the Sale of Goods Act

1979 or Part 1A of the Supply of Goods and Services Act 1982 as introduced by the Sale and Supply of Goods Act 1994.

- 17.2 Subject to Conditions 17.1 and 17.3 our aggregate and total liability under the Contract (including that arising from negligence, delict or otherwise) will be either the Contract Price or £5 million, whichever is less and your aggregate and total liability under the Contract (including that arising from negligence, delict or otherwise) will be £10 million.
- 17.3 Subject to Conditions 17.1 and 15.5 (or Condition 29.6, as applicable) neither party will be liable to the other for indirect or consequential loss or damage.
- 17.4 Conditions 17.2 and 17.3 do not apply to Condition 15.5 (or Condition 29.6, as applicable).
- 17.5 You represent and warrant to us that you have satisfied yourself that all necessary tests and examinations have been made (or will be made prior to delivery of the Goods and Services) to ensure that the Goods are designed and constructed to be safe and without risk to the health or safety of anyone using them. You represent and warrant to us that you have made available to us enough information about the use, and conditions of use, the Goods have been designed and tested for to ensure we can use the Goods safely and without risk to health. You will indemnify us against all actions, suits, claims, demands, losses, charges, costs and expenses which we suffer as a result of any breach of this Condition.

18. Loss and Insurance

- 18.1 Subject to Condition 17.2 you will pay to us on demand the amount of any direct Losses which we incur as a result of your negligence, any breach by you of the Contract or any damage to property or injury or death caused by you in the supply of the Goods and/or Services.
- 18.2 You will have insurance cover in place with a reputable insurance company for the duration of the Contract and for five years afterwards to cover all liabilities under the Contract. In particular, the policy must cover:
- 18.2.1 £15 million in respect of damage to our property; and
- 18.2.2 professional indemnity cover of £5 million.
- 18.3 Evidence of such insurance will be made available to us at any time on request.

19. Termination

19.1 You will notify us immediately in writing if any of the events referred to in Conditions 19.1.3 to 19.1.8 occurs. In addition to all other rights and remedies of the parties, if:-

19.1.1 you fail in any material respect to perform any of your obligations under the Contract and such failure cannot be corrected to our reasonable satisfaction within 20 Business Days of us notifying you of the failure; or

19.1.2 you commit any serious breach or any repeated breach of any of the Conditions or any other term or provision of the Contract; or

19.1.3 you enter into any form of insolvency, liquidation, administration, or bankruptcy proceedings or if we believe that you are unable to pay your debts as they fall due; or

19.1.4 you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or (being a company) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) have any partner to whom any of the foregoing apply; or

19.1.5 you are guilty of conduct which could bring you or us into disrepute; or

19.1.6 you are the subject of any action, proceeding or prosecution for any breach of any statute, regulation or rule relating to the environment; or

19.1.7 you fail to provide any community benefit that you have agreed to provide; or

19.1.8 you cease or threaten to cease trading; or

19.1.9 you (if an individual) die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or become a patient under any mental health legislation or (being a partnership) have any partner to whom any of the foregoing apply,

then we may terminate the Contract by written notice to you and with immediate effect (or with effect from such other date as we may specify in that notice). Without prejudice to any of our other rights, we may complete the Services or have them completed by a third party, using for that purpose (making fair and proper allowance therefore in any payment subsequently made to you) all materials, plant and equipment on the Premises belonging to you, and we will not

be liable to make any further payment to you until the Services have been completed in accordance with the requirements of the Contract, and will be entitled to deduct from any amount due to you the costs thereof incurred by us (including our own costs). If the total cost to us exceeds the amount (if any) due to you, the difference will be recoverable by us from you.

19.2 We may terminate the Contract by written notice without penalty if we object to a change of Control of you or any of your sub-contractors. We will not object where we:

19.2.1 have given our prior written consent to the particular change of Control, which subsequently takes place as proposed; or

19.2.2 have not served our notice within six months of the date of the change of Control or the date on which we were given notice of the change of Control, whichever is later.

You will notify us in writing within one month of any change of Control taking place.

19.3 If you breach any of your obligations under the Contract we will have the right to seek an order compelling you to perform your obligations in addition to bringing a claim for damages.

19.4 We may terminate the Contract, in whole or in part, or reduce the scope or amount of the Goods or Services to be supplied under the Contract, (and without penalty) at any time by giving you at least 30 days' notice in writing.

19.5 Any rights and remedies provided under the Contract are in addition to, and not instead of, any other rights or remedies provided under the Contract or provided by law.

19.6 Condition 1 (Definitions, Interpretations and Basis of Contract), 4 (Quality), 11.4 (Payment), 15 (Intellectual Property), 17 (Limitation of Liability), 18 (Loss and Insurance), 19 (Termination), 20 (Cessation of Goods and/or Services), 21 (Audit Rights), 22 (Confidential Information, Data Protection and Freedom of Information), 26.2 (Assignment/Sub-Contracting), 27 (Publicity), 28 (Further Assurance), 29 (Assignment of Foreground IPR) and 30 (Governing Law) will survive termination of the Contract and will remain in full force and effect.

20. Cessation of Goods and/or Services

20.1 If, on Cessation, any contract of employment or engagement of any current or former Personnel has effect, or is claimed by such Personnel to have effect, as if originally made between (i) us and such person; and/or (ii) any New Supplier and such person by operation of

TUPE, then you will pay us and/or any New Supplier the amount of any Losses arising out of or in connection with:

- 20.1.1 the employment or engagement; and/or
- 20.1.2 the claimed employment or engagement; and/or
- 20.1.3 the termination of the employment or engagement; and/or
- 20.1.4 the claimed termination of employment or engagement

of any such Personnel in the period on or prior to the Relevant Date (whether such Losses are incurred before, on or after the Relevant Date).

20.2 If we ask, you will promptly enter into an appropriate agreement with any New Supplier on terms which give effect to those in favour of the New Supplier contained in Condition 20.1 and you will pay us the amount of any Losses which arise from a failure to do so, including any Losses which may arise under any agreement with or undertaking we give to any New Supplier which would give the New Supplier the benefit of Condition 20.1.

20.3 During any Transfer Assistance Period, you will not and you will make sure that your sub-contractors do not, in each case without obtaining our written agreement in advance:-

- 20.3.1 materially change the terms and conditions of employment or engagement of any Personnel;
- 20.3.2 replace or re-deploy any Personnel; or
- 20.3.3 materially increase the number of Personnel.

20.4 During any Transfer Assistance Period, you will and you will make sure that your sub-contractors will: -

- 20.4.1 allow us (or such other person as we may specify) access to the Personnel for training or for any other purpose that we specify, within seven Business Days of our request for such access; and
- 20.4.2 do all such things as we may reasonably require to facilitate such access as intended under Condition 20.5.1 above; and
- 20.4.3 provide within seven Business Days of any request by us, details of the terms and conditions of employment of the Personnel and any other information which we may reasonably specify relating to the employment or engagement of the Personnel.

20.5 You will and you will ensure that your subcontractors will, employ each member of Personnel on terms which permit disclosure of the information disclosable under Condition 20.5.3: -

- (i) to us; and

- (ii) by us to any New Supplier; and
- (iii) by us in any future invitation to tender in respect of the Services;

in each case without having to obtain any further consent.

21. Audit Rights

You will keep and maintain (to our satisfaction) records of all expenditure which is reimbursable by us until two years after the Contract terminates. You will also keep such records of the hours worked and costs incurred in connection with any of your employees paid for by us on a time charge basis. You will grant us access to such records upon request.

22. Confidential Information, Freedom of Information and Data

Confidential Information

- 22.1 Subject to any information specifically stated to be confidential information by us, the Contract and the Contract Documents will not be treated as confidential information and may be disclosed without restriction, including under any obligations arising as a result of the Public Services Reform (Scotland) Bill or any legislation resulting from all or any part of that Bill.
- 22.2 Unless we agree otherwise, all information which you obtain from us or which becomes known to you in connection with the Contract must be kept secret and only used by you to perform your obligations under the Contract. This does not apply to information which is already known to the public.
- 22.3 We do not expect that you will have to disclose your confidential information to us, however if there is specific information which you consider to be confidential, please notify us in writing and mark it as confidential. Subject to Conditions 22.1, 22.4, 22.5 and 22.7, we will not use or disclose such information that we accept (acting reasonably) is confidential. This does not apply to information which is already known to the public.
- 22.4 Notwithstanding any other provision of the Contract, we may disclose all information submitted to us to our auditors (including Audit Scotland), the Scottish Government, Members of the Scottish Parliament, Members of the UK Parliament or to any other public sector department or body. Such disclosure will not be a breach of the Contract.
- 22.5 We may wish to disclose your confidential information to third parties as part of a competitive tender process for the future provision of all or part of the Goods and/or Services covered by

the Contract. You hereby acknowledge and agree that we are entitled to disclose such information provided that such third parties accept confidentiality obligations.

- 22.6 If the Contract is terminated (for any reason whatsoever) you must immediately stop using all materials and media relating to any of our confidential information and deliver them to us. If requested by us, you will inform us of all confidential information known to you in any way relating to the Contract.

Freedom of Information, etc.

- 22.7 You acknowledge and agree that we may disclose information held by us in compliance with the Freedom of Information (Scotland) Act 2002 (the "FOI Act"), the Environmental Information (Scotland) Regulations 2004 (the "EIRs") or any other legislation or as otherwise required by law or judicial order. Such information may include information in relation to your response to our invitation to tender or the Contract or any Contract Documents. Information held by us may only be withheld as a result of the exemptions in the FOI Act and EIRs and any decision to withhold or disclose information will be at our sole discretion. Information held cannot automatically be classified as "confidential" or "commercial in confidence" to enable it to be protected from disclosure, regardless of the basis on which it was provided.

Data Protection

- 22.8 You will comply with the provisions of the Data Protection Act 1998 (the "DP Act") in connection with the Contract. In addition, where you are processing personal data for us as a data processor (as defined in the DP Act), you will comply with and act only on our instructions and ensure that there are appropriate technical and organisational measures in place to ensure the security of the personal data in accordance with the Seventh Data Protection Principle as set out in the DP Act. You will not transfer any personal data you obtain from us or process under this Contract to any country or territory outside the European Economic Area unless we consent in writing. If you misplace or lose any personal data and/or commit a breach of this Condition 22.8 that will be deemed to be a breach that cannot be remedied for the purposes of Condition 19.1.1.

Data Security

- 22.9 You will comply with our procedures and policies for the vetting of all Personnel whose role may involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures. You confirm that all

Personnel have been vetted and recruited on a basis that is equivalent to and no less strict than those procedures and policies.

- 22.10 You will not delete or remove any proprietary notices contained within or relating to our data.
- 22.11 You will ensure that any system on which you hold any of our data is a secure system that complies with our security policy. To the extent that our data is held and/or processed by you, you will supply that data to us as requested by us and in the format specified by us. If we ask, you will perform secure back-ups of our data and will ensure that up-to-date back-ups are stored off-site. You will ensure that such back-ups are available to us at all times and are delivered to us on request.
- 22.12 You will preserve the integrity of our data and prevent the corruption or loss of our data. If at any time you suspect or have reason to believe that our data has or may become corrupted, lost or degraded in any way, then you will notify us immediately.
- 22.13 If our data is corrupted, lost or degraded as a result of any act or omission by you or any Personnel, we may require you, at your expense, (i) to restore or procure the restoration of our data and you will do so as soon as practicable; and/or (ii) to restore or procure the restoration of our data ourselves, and you will repay us any reasonable expenses incurred in doing so.
- 22.14 You will on an ongoing basis use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete malicious software from your systems. If malicious software is found on any systems, you will co-operate with us to reduce the effect of the malicious software and assist us to mitigate any losses and to restore our data and systems and the Services to their desired operating efficiency. If the malicious software originates from your or your Personnel's systems then you will repay us all costs incurred by us in taking the action mentioned above.

23. Equal Opportunities

- 23.1 You must ensure that no applicant or employee receives less favourable treatment on the grounds of sex, marital status, disability, age, religion or belief, sexual orientation, colour, race, ethnic or national origins, or is unlawfully discriminated against or disadvantaged by any provision, criteria or practice which you apply which cannot be shown to be objectively justified. You will also make sure that anyone acting on your behalf and your employees and sub-contractors involved in the Contract do not do so either, and that those involved in the

management or operation of the Contract receive appropriate training on equal opportunities legislation and associated good practice.

- 23.2 You must carry out appropriate monitoring of your equal opportunities policies and employment practices and provide us with evidence of this, if we ask.
- 23.3 You will take all reasonable steps to ensure that all Goods and Services supplied under this Contract are produced and/or performed in accordance with all employment rules and regulations, and all International Labour Organisation conventions that have been ratified by the country of their origin, including in relation to working conditions and the use of child labour.
- 23.4 Should part or all of the Services be performed at your premises, you will ensure that your premises comply fully with the requirements of the Disability Discrimination Act 1995.

24. General

- 24.1 No failure or delay by you or us to exercise any right or remedy provided under the Contract or by law will constitute a waiver of that, or of any other right or remedy.
- 24.2 If any provision of the Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal, ineffective or unenforceable or is to be suspended, reduced, set aside or amended or the subject of an equivalent order, that provision will, to the extent required, be deemed not to form part of the Contract and the parties will each use their reasonable endeavours in good faith to modify the Contract so that the intent of the Contract can be legally carried out. We will have no liability to you for any Losses incurred as a result of a court or other authority's decision that the Contract or any provision or part of any provision of the Contract is invalid, illegal, ineffective or unenforceable or is to be suspended, reduced, set aside or amended or the subject of an equivalent order.
- 24.3 Unless otherwise provided in the Contract, no variation of the Contract will be effective unless it is in writing and signed by both us and your authorised representatives.
- 24.4 Any rights and remedies provided under the Contract are in addition to, and not instead of, any other rights or remedies provided under the Contract or provided by law.

25. Notices

- 25.1 Any notice given under the Contract will be in writing and be given by hand or sent by first class recorded delivery post. Notices will be sent to the addresses shown in the Contract Documents. Either party can change its address for notices by telling the other in writing.
- 25.2 If sent by post to the correct address, notices will be deemed given two Business Days after the date of posting. If delivered by hand to the correct address during our usual hours of business, notices will be deemed given on that same day.

26. Assignment/Sub-Contracting

- 26.1 You may sub-contract to those sub-contractors named in the Contract Documents but you are not allowed to sub-contract to anyone else or to transfer or assign the Contract or any of your rights or obligations under the Contract or any part of it. We may assign or novate the Contract in whole or in part.
- 26.2 If you sub-contract any work under the Contract, you will still be responsible to us for carrying out the Contract. We can take action against you if your subcontractor does not do what it is meant to do.

27. Publicity

You must agree with us in advance and in writing any press release or public intimation that you make about the Contract or Goods or Services. You must not use the name "Scottish Environment Protection Agency" or "SEPA" (or any of our associated or subsequent names) without the express written consent of our Director of Finance. We may make reference publicly to the Contract and to your provision of the Goods and/or Services.

28. Further Assurance

Each party will do anything and execute any documents as may be reasonably necessary in order to give effect to the provisions of these Conditions.

29. Assignment of Foreground IPR

- 29.1 This Condition will apply in place of Condition 15 (Foreground IPR) if an assignment of the Foreground IPR is required under the Purchase Order.

- 29.2 You hereby grant us a perpetual, irrevocable, worldwide, royalty free, non-exclusive licence (with the right to grant sub-licences and to assign the licence) to use the Supplier's Background IPR for the purpose of using and receiving the Goods and Services and using, reproducing and exploiting the Foreground IPR.
- 29.3 By signing any of the Contract Documents (including without limitation the confirmation of acceptance of these terms and conditions as part of your response to our invitation to tender or to any other invitation or questionnaire) you hereby assign to us all right, title and interest in the Foreground IP with effect from the date of their creation.
- 29.4 You will, if we ask and at no additional charge to us, sign any document and do anything that we require to transfer ownership of the Foreground IPR to us and also provide us with a copy of all materials and media embodying or including the Supplier's Background IPR and/or the Foreground IPR.
- 29.5 You may make a written request to us to use the Foreground IPR. We will respond in writing within 30 Business Days, and if we agree to your request, you will be granted a non-exclusive, worldwide, personal, non-sub-licensable, royalty free licence of the Foreground IPR from the date of our agreement. We may amend this licence at our discretion.
- 29.6 You warrant to us that neither the Supplier's Background IPR, nor the Foreground IPR, nor any use of any of them will infringe the Intellectual Property Rights of any third party. You will indemnify us against all Losses arising in connection with any breach of the warranty in this Condition 29.6.

30. Governing Law

The Contract will be governed by and construed in accordance with the law of Scotland and you and we agree that any court action relating to the Contract will take place exclusively in the courts in Scotland.