



THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

SUPPLY OF GOODS AND RELATED SERVICES TERMS AND CONDITIONS



Chairman
Bob Downes

Chief Executive
Terry A'Hearn

SEPA Stirling Office

Strathallan House, Castle Business Park,
Stirling FK9 4TZ

tel 01786 457700 fax 01786 446885

www.sepa.org.uk • customer enquiries 03000 99 66 99

CONTENTS

1	Definitions and interpretation.....	3
2	Term	6
3	Supply of the Goods and Services.....	7
4	Title and risk	8
5	Manner of carrying out the Services.....	9
6	Acceptance of Goods.....	9
7	Acceptance of Deliverables	10
8	Failure to supply the Goods and Services.....	11
9	Free issue materials	11
10	Labelling and packing	11
11	Fees and payment	12
12	Change to Agreement requirements.....	12
13	Warranties.....	13
14	Intellectual Property Rights	13
15	Records and audit rights.....	14
16	Limitation of liability and insurance	14
17	Confidentiality.....	15
18	Data protection	16
19	FOISA and Environmental Regulations	17
20	Employment.....	18
21	Employment Regulations	19
22	Termination.....	20
23	Assignment and sub-contracting	21
24	Health and safety	22
25	Disputes.....	22
26	Force Majeure.....	22
27	Publicity	23
28	Discrimination.....	23
29	Blacklisting.....	23
30	General.....	23

1 Definitions and interpretation

1.1 The expressions listed in this Clause are given these meanings unless the context in which they are used requires a different meaning:

1.1.1 **"this Agreement"** means these terms together with the Contract Award Document, any Purchase Order and the Tender Documents. The expression also extends to cover any amendments to this Agreement from time to time;

1.1.2 **"Baseline Security Checks"** means the following checks carried out by the Supplier on each of the Supplier's Employees:

1.1.2.1 the identity of the Supplier's Employee;

1.1.2.2 the employment history, including periods of unemployment, of the Supplier's Employee over the preceding three (3) Years;

1.1.2.3 the nationality and immigration status of the Supplier's Employee to ensure that the Supplier's Employee is not prohibited from working in Scotland; and

1.1.2.4 obtain a criminal conviction certificate which must confirm that the Supplier's Employee has no unspent criminal convictions;

1.1.3 **"Business Day"** means any day which is not a Saturday, a Sunday or a public holiday throughout Scotland in which SEPA is open for business;

1.1.4 **"Commencement Date"** means the date on which this Agreement comes into force as set out in the Contract Award Document;

1.1.5 **"Confidential Information"** means information that is marked as confidential or otherwise designated by SEPA supplying it as 'confidential', or which by its nature is clearly confidential. Confidential Information includes any information concerning the business affairs of SEPA, including information in relation to the past, present and potential future finances, policies, projects, procedures, plans, contractual arrangements, staff, customers, members or other contractors of SEPA. Confidential Information may (but will not necessarily) take the form of:

1.1.5.1 documents, reports, correspondence, data, drawings, plans, process descriptions, photographs, technology, knowhow, techniques, working papers graphs or databases, whether in documentary, electronic or other form; or

1.1.5.2 oral descriptions, demonstrations or observations;

1.1.6 **"Contract Award Document"** means the contract award document issued by SEPA to the Supplier upon awarding the contract for the supply of the Goods and Services;

- 1.1.7 **"Data Protection Legislation"** means any law applicable relating to the processing, privacy and use of personal data, including: (i) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679, and/or any corresponding or equivalent national laws or regulations; (ii) any judicial or administrative implementation of any of the above, any guidance, guidelines, codes of practice, codes of conduct or approved certification mechanisms issued by the Information Commissioners Office, or other regulatory or supervisory authority responsible for administering Data Protection Legislation;
- 1.1.8 **"Deliverables"** means any records, reports, papers, diagrams, drawings, designs, photographs, graphs, models and any other materials (whether in documentary, electronic or other form) produced by or on behalf of the Supplier for SEPA, or otherwise supplied to SEPA by the Supplier, as part of the Services;
- 1.1.9 **"Delivery"** means completion of unloading of the Goods at the Premises and the words **"Deliver"** and **"Delivered"** shall be construed accordingly;
- 1.1.10 **"Delivery Date"** means the date on which the Goods are to be Delivered to SEPA as specified in the Contract Award Document;
- 1.1.11 **"Environmental Regulations"** means the Environmental Information (Scotland) Regulations 2004, as amended or varied from time to time;
- 1.1.12 **"Expiry Date"** means the date on which this Agreement comes to an end as set out in the Contract Award Document;
- 1.1.13 **"Fees"** means the fees to be paid by SEPA to the Supplier for the Goods and Services as set out in the Contract Award Document;
- 1.1.14 **"FOISA"** means the Freedom of Information (Scotland) Act 2002, as amended or varied from time to time;
- 1.1.15 **"Force Majeure Event"** means an event beyond the reasonable control of the Supplier that renders the performance of this Agreement impossible whether temporarily or otherwise which for the avoidance of doubt may include prohibitive government regulation, flood, lightning or other extreme weather conditions, fire, explosion, malicious damage, industrial actions or lockouts, terrorism, war, civil commotion, military operations, riot, national emergency, the act or omission of any third party not being its agent or sub-contractor, any change in the law or in the interpretation of the law by the courts;
- 1.1.16 **"Foreground IP"** means all Intellectual Property Rights arising as a result, directly or indirectly, of the supply of the Goods and Services by the Supplier including, without limitation, Intellectual Property Rights in any Goods or Deliverables;

- 1.1.17 **"Good Industry Practice"** means the standard of skill, care and knowledge which could reasonably be expected from an experienced person who is in the business of supplying goods and services which are the same as or similar to the Goods and Services;
- 1.1.18 **"Goods"** means the goods as described in the Contract Award Document;
- 1.1.19 **"Intellectual Property Rights"** means any of the following rights:
- 1.1.19.1 patents, trade marks, rights in designs, get-up, trade, business or domain names, copyrights or database rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them); and
 - 1.1.19.2 unregistered rights in inventions, know-how, and trade secrets; and
 - 1.1.19.3 any other intellectual property rights which may exist at any time in any part of the world;
- 1.1.20 **"Personal Data", "Process"** (and any derivatives thereof), **"Data Controller", "Data Subjects"** and **"Data Processor"** have the meanings given to them in the Data Protection Legislation;
- 1.1.21 **"Premises"** means the location where the Goods are to be supplied and the Services are to be performed as specified in the Contract Award Document;
- 1.1.22 **"Purchase Order"** means a purchase order issued in accordance with the terms of the Contract Award Document and this Agreement;
- 1.1.23 **"SEPA"** 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;
- 1.1.24 **"SEPA Background IP"** means all Intellectual Property Rights of any nature owned by SEPA or to which SEPA has rights including but not limited to rights in documentation, information, data, software, source code and equipment which is in existence prior to the Supplier first supplying the Goods and Services to SEPA and which is made available by or used by SEPA in order to enable the Supplier to supply the Goods and Services;
- 1.1.25 **"Services"** means the services as described in the Contract Award Document;
- 1.1.26 **"Supplier"** means the supplier supplying the Goods and Services to SEPA as named in the Contract Award Document;
- 1.1.27 **"Supplier Background IP"** means all Intellectual Property Rights of any nature which are material to the supply of the Goods and Services and which are owned by the Supplier or to which the Supplier has rights including but not limited to rights in documentation, information, data, software, source code and equipment

which is in existence prior to first supplying the Goods and Services to SEPA and which is or should be made available by the Supplier in order to enable SEPA to receive the Goods and Services;

- 1.1.28 **"Supplier's Employees"** means the people engaged by the Supplier to provide the Services to SEPA, and **"Supplier's Employee"** shall be construed accordingly;
- 1.1.29 **"Term"** means the term of this Agreement as set out in the Contract Award Document;
- 1.1.30 **"Tender Documents"** means SEPA's invitation to tender and clarifications issued or accepted by SEPA (if any);
- 1.1.31 **"Warranty Period"** means the period of twelve (12) months from the relevant Delivery Date. In the case of any Goods being serviced, repaired or replaced by the Supplier following the initial Delivery, the Warranty Period shall commence from the later Delivery Date; and
- 1.1.32 **"Year"** means a period of twelve (12) months beginning on the Commencement Date or any anniversary of the Commencement Date.

1.2 Unless the context requires a different interpretation, the following rules should be used to interpret this Agreement:

- 1.2.1 any reference to a provision of a statute includes references to that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after the Commencement Date;
- 1.2.2 words used in the singular should be interpreted to include the plural and vice versa. Words which refer to one gender should be interpreted to include the other gender;
- 1.2.3 the word **"party"** means a party to this Agreement, that is either SEPA or the Supplier. The phrase "third party" means a person other than SEPA or the Supplier;
- 1.2.4 the word **"including"** means **"including but not only"**; and
- 1.2.5 in the event of any conflict or inconsistency between them, the terms of the main body of this Agreement will prevail over the terms of the Schedule and its Parts.

2 Term

- 2.1 This Agreement will come into force on the Commencement Date, and unless terminated earlier by either party pursuant to Clause 22, will remain in force until the Expiry Date.
- 2.2 SEPA may serve notice in writing to the Supplier not less than one month prior to the Expiry Date to extend the term of this Agreement for a further period as shall be mutually agreed between the parties in writing.

3 Supply of the Goods and Services

3.1 For so long as this Agreement is in force, the Supplier will supply and SEPA will purchase the Goods and Services in accordance with:

- 3.1.1 the Contract Award Document;
- 3.1.2 these terms and conditions;
- 3.1.3 the Tender Documents; and
- 3.1.4 otherwise in accordance with this Agreement.

3.2 The Supplier undertakes to SEPA that:

3.2.1 the Goods will be manufactured (if manufactured by the Supplier), packed and supplied and the Services will be provided in accordance with:

- 3.2.1.1 this Agreement;
- 3.2.1.2 Good Industry Practice;
- 3.2.1.3 the best interests of SEPA;
- 3.2.1.4 all applicable legislative and regulatory requirements including, but not limited to, environmental legislation, the Bribery Act 2010 and the Modern Slavery Act 2015; and
- 3.2.1.5 all reasonable instructions provided by SEPA to the Supplier and/or the Supplier's Employees from time to time;

and the Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by SEPA and SEPA relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of this Agreement;

3.2.2 prior to the Supplier's Employees carrying out any work in connection with the provision of the Services under this Agreement, the Supplier shall:

- 3.2.2.1 ensure that the Supplier's Employees have the necessary skills, qualifications and experience to perform the Services;
- 3.2.2.2 ensure that the Supplier's Employees have passed the Baseline Security Checks and confirm in writing to SEPA that such Baseline Security Checks have been carried out; and
- 3.2.2.3 provide SEPA with reasonably requested personal and career information about the Supplier's Employees;

- 3.2.3 it will be available upon reasonable notice and will, at its own expense, ensure that the Supplier's Employees are available to meet with SEPA to discuss the Goods and Services;
 - 3.2.4 it or the Supplier's Employees will not hold itself/themselves out as being authorised to bind SEPA in any way or act in any way which may give such impression; and
 - 3.2.5 it or the Supplier's Employees will not make or incur any legally binding obligation on behalf SEPA without the prior written consent of SEPA.
- 3.3 The Supplier shall Deliver the Goods to the Premises on the Delivery Dates during SEPA's normal business hours. Time is of the essence to such Delivery Dates.
- 3.4 SEPA has the right to inspect and test the Goods at any time before Delivery.
- 3.5 If following any inspection or testing under Clause 3.4 SEPA considers that the Goods do not conform or are unlikely to comply with Clause 3.2.1, SEPA shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.6 Notwithstanding any inspection or testing under Clause 3.4, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligation under this Agreement, and SEPA shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.7 The Supplier shall be liable for the costs of storage of the Goods (including insurance, preservation and demurrage charges). The Supplier shall not be entitled to exercise a right of lien over the Goods in respect of payment of such costs and charges.
- 3.8 The Supplier will provide SEPA with reasonable notice if, for any reason, any of the Supplier's Employees are unable to provide the Services and if possible the Supplier will provide SEPA with an alternative employee.
- 3.9 Where the Supplier or the Supplier's Employees are required to work at or go to SEPA's Premises for any reason in connection with this Agreement, the Supplier will comply with and will ensure that the Supplier's Employees comply with:
- 3.9.1 any and all applicable laws including health and safety and environmental laws; and
 - 3.9.2 any reasonable instructions, procedures or policies issued by SEPA from time to time.

4 Title and risk

- 4.1 Risk in the Goods shall pass to SEPA on Delivery.
- 4.2 Title to the Goods shall pass to SEPA from the date of Delivery or payment, whichever is earlier.

- 4.3 Prior to the Delivery Date, the Supplier shall:
- 4.3.1 securely store the Goods separately from all other goods held by the Supplier so that they remain readily identifiable as SEPA's property;
 - 4.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to such Goods; and
 - 4.3.3 maintain such Goods in satisfactory condition, and exercise due care to prevent loss or damage, and keep them insured on SEPA's behalf for their full price against all risks.
- 4.4 If, before title to the Goods passes to SEPA but payment has been made, the Supplier becomes subject to any of the events listed in Clause 22.5 then, without limiting any other right or remedy SEPA may have, SEPA may at any time require the Supplier to Deliver such Goods and, if the Supplier fails to do so promptly, enter any premises of the Supplier or of any third party where the relevant Goods are stored in order to recover them.

5 Manner of carrying out the Services

- 5.1 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining SEPA's prior written consent.
- 5.2 Access to the Premises shall not be exclusive to the Supplier but shall enable the Supplier's Employees to carry out the Services concurrently with the execution of work by others. The Supplier and the Supplier's Employees shall co-operate with any other person as SEPA may reasonably require and comply with all applicable laws and regulations as well as any policies and procedures provided by SEPA from time to time.
- 5.3 SEPA shall have the power at any time during the progress of the Services to order in writing:
- 5.3.1 the removal from the Premises of any materials which in the opinion of SEPA are either hazardous, noxious or not in accordance with this Agreement; and/or
 - 5.3.2 the substitution of proper and suitable materials; and/or
 - 5.3.3 the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not in the opinion of SEPA in accordance with this Agreement.
- 5.4 On completion of the Services the Supplier shall remove its plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat, clean and tidy condition.

6 Acceptance of Goods

- 6.1 SEPA shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

- 6.2 If any Goods Delivered to SEPA do not comply with Clauses 3.2.1 or 13, or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that SEPA may have, SEPA may reject those Goods and:
- 6.2.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five (5) Business Days of being requested to do so; and
 - 6.2.2 claim damages for any other costs, expenses or losses resulting from the Supplier's Delivery of Goods that are not in conformity with the terms of this Agreement.
- 6.3 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6.4 If the Supplier fails to promptly repair or replace rejected Goods in accordance with Clause 6.2.1, SEPA may, without affecting its rights under Clause 6.2.2, obtain substitute Goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse SEPA for the costs it incurs in doing so.
- 6.5 If SEPA rejects any Goods they are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, SEPA may charge the Supplier storage costs and sell or dispose of the rejected Goods. SEPA will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.
- 6.6 If SEPA rejects any Goods three or more times under Clause 6.2, SEPA will have the right to terminate the relevant Purchase Order by giving the Supplier at least five Business Days' notice to that effect.

7 Acceptance of Deliverables

- 7.1 SEPA will not be treated as having accepted any Deliverable until it has had a reasonable opportunity to inspect it following delivery. SEPA will have the right to reject any Deliverable which does not comply with this Agreement.
- 7.2 If SEPA rejects a Deliverable under Clause 7.1, it will have the right to either require the Supplier to correct the Deliverable (at the Supplier's own cost) so that it does comply with this Agreement, or to withhold payment of the Fees in respect of that Deliverable. SEPA will be free to decide which of these options to choose, entirely at its own discretion. If SEPA chooses the first option, but the amended or replacement Deliverable provided by the Supplier still does not comply with this Agreement, SEPA will again have the right to choose between the above two options. If SEPA rejects a Deliverable three or more times in accordance with this Clause 7, SEPA will have the right to choose between the above two options, or to terminate the relevant Purchase Order by giving the Supplier at least five Business Days' notice to that effect.

8 Failure to supply the Goods and Services

If the Supplier fails to supply the Goods and Services in accordance with this Agreement, then without prejudice to any right or remedy SEPA is entitled to by law or under this Agreement, SEPA shall be entitled to immediately:

- 8.1 terminate the relevant Purchase Order;
- 8.2 refuse to accept any subsequent supply of the Goods and Services which the Supplier attempts to make;
- 8.3 terminate this Agreement in whole or in part in accordance with Clause 22; and/or
- 8.4 recover from the Supplier any expenditure reasonably incurred by SEPA in:
 - 8.4.1 obtaining the Goods and Services in substitution from another supplier; and/or
 - 8.4.2 carrying out any work necessary to make the Goods and Services comply with this Agreement.

9 Free issue materials

Where SEPA for the purposes of this Agreement issues materials free of charge to the Supplier, such materials shall be and remain the property of SEPA. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with this Agreement. The Supplier shall notify SEPA of any surplus materials remaining after completion of the Services and shall dispose of them as SEPA may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's employees, agents or sub-contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of SEPA, the Supplier shall deliver up such materials whether processed or not to SEPA on demand.

10 Labelling and packing

- 10.1 The Goods shall be packed and marked in a proper manner and in accordance with SEPA's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the number of the Purchase Order (if any), the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify SEPA against all actions, suits, claims, demands, losses, charges, costs and expenses which SEPA may suffer or incur as a result of or in connection with any breach of this Clause.
- 10.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. SEPA accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by SEPA unless the Supplier shall within ten days of receiving notice from SEPA that the packages have been dispatched notify SEPA of such non-arrival.

10.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

11 Fees and payment

11.1 In return for the supply by the Supplier of the Goods and Services in accordance with this Agreement, SEPA will pay the Supplier the Fees, in accordance with this Clause 11.

11.2 The price of the Goods and any related Services shall be as stated in the Contract Award Document and no increase will be accepted by SEPA unless agreed by SEPA in writing before the commencement of performance of this Agreement.

11.3 Subject to the Supplier supplying the Goods and Services, SEPA will pay to the Supplier any undisputed Fees due to it under this Agreement within thirty (30) days of its receipt of a valid invoice for those Fees, which has been raised in accordance with this Clause 11, and provided that such invoice is accompanied by such information as SEPA requires to check that the amount invoiced is properly due in terms of this Agreement.

11.4 SEPA will have the right to retain any payments that would otherwise be due to the Supplier where it disputes, in good faith, that the Supplier has properly performed its obligations under this Agreement.

11.5 Any sums payable under this Agreement are exclusive of value added tax which will be paid where applicable by SEPA at the rate for the time being required by law, provided that a valid VAT invoice has been received by SEPA.

11.6 Neither party shall in any circumstances be required to pay to the other any sum representing interest, penalties, fines or charges which is due to the wilful default, omission or negligence of the party liable to account for value added tax to HM Revenue and Customs.

11.7 The Supplier will pay all taxes and expenses arising under this Agreement. The Supplier will indemnify SEPA in respect of any tax or other expense suffered by SEPA in respect of the Supplier, the Supplier's Employees, agents or sub-contractors in relation to the supply of the Goods and Services during the Term or following termination of this Agreement.

12 Change to Agreement requirements

12.1 SEPA may order any variations to any part of the Goods and/or Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Goods and/or Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

12.2 Save as otherwise provided herein, no variation of the Goods and/or Services as provided for in Clause 12.1 hereof shall be valid unless given or confirmed in the form of an order given by SEPA. All such orders shall be given in writing provided that if for any reason SEPA shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by SEPA within 2

Business Days of the giving of such oral order by SEPA, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 Business Day period.

- 12.3 Where any such variation of the Goods and/or Services made in accordance with Clauses 12.1 and 12.2 has affected or may affect the costs incurred by the Supplier in providing the Goods and/or Services, the Supplier will notify SEPA in writing of the effect which it has had or may have on the said costs and such notification shall be considered by SEPA, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Goods and/or Services) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of this Agreement as are, in his opinion, appropriate and reasonable in the circumstances.

13 Warranties

The Supplier warrants and undertakes to SEPA at the Commencement Date and on an ongoing basis during the Term that:

- 13.1 the Supplier has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;
- 13.2 the Goods and Services shall conform in all respects to the specification set out in the Contract Award Document;
- 13.3 the Services will be provided with all due skill and care in accordance with this Agreement;
- 13.4 the Goods will be of satisfactory quality and fit for the purpose intended by SEPA;
- 13.5 the Goods will be free from defects in design, material and workmanship and remain so during the Warranty Period;
- 13.6 the Goods shall be stored in a wind and watertight area from the date of manufacture until the Delivery Date;
- 13.7 the Goods shall comply with all applicable statutory and regulatory requirements;
- 13.8 the Goods shall be properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- 13.9 the Supplier has sufficient resources to properly perform its obligations under this Agreement, and will continue to have sufficient resources to do so throughout the period that this Agreement is in force.

14 Intellectual Property Rights

- 14.1 The Supplier will not obtain any rights in any SEPA Background IP. If asked to do so by SEPA at any time or otherwise on the expiry or termination of this Agreement, the Supplier will at its own expense promptly return to SEPA any SEPA Background IP in the Supplier's possession.

- 14.2 The Supplier hereby assigns to SEPA absolutely (where appropriate by way of present assignation of future copyright) all and whole its present and future right, title and interest in and to the Foreground IP.
- 14.3 If asked to do so by SEPA, the Supplier will, at SEPA's expense, promptly sign such documents, and do such other things as SEPA requires to perfect its title to the Intellectual Property Rights assigned to it in terms of Clause 14.2, including by registering any of those Intellectual Property Rights in any part of the world.
- 14.4 The Supplier hereby waives, and warrants that its employees and contractors have waived, any moral rights arising in the Foreground IP.
- 14.5 All right, title and interest in and to any SEPA Background IP shall remain the property of SEPA.
- 14.6 All right, title and interest in and to any Supplier Background IP shall remain the property of the Supplier.
- 14.7 The Supplier warrants and undertakes that in the supply of the Goods and Services it will not infringe the Intellectual Property Rights of any third party, and that the use or possession by SEPA, or any licensee of SEPA, of the Goods and Deliverables will not infringe the Intellectual Property Rights of any third party.
- 14.8 The Supplier will indemnify SEPA against all losses, costs, claims, demands, expenses and liabilities of any nature (including legal costs), arising from or relating to any claim arising from a breach or alleged breach by the Supplier of Clause 14.7.

15 Records and audit rights

- 15.1 The Supplier will maintain full and accurate records and accounts relating to the supply of the Goods and Services to SEPA, including records of amounts paid for goods, services and materials, including labour costs.
- 15.2 The Supplier will permit SEPA and SEPA's internal and external auditors to inspect all of the Supplier's records and accounts relating to this Agreement, to verify the Fees payable by SEPA, and to enable SEPA to comply with its internal and external audit requirements.
- 15.3 The Supplier's obligation to maintain records and accounts under Clause 15.1, and SEPA's and its auditors' rights to have access to those records and accounts under Clause 15.2, will continue for so long as this Agreement is in force, and for a period of six (6) Years following the expiry or other termination of this Agreement.

16 Limitation of liability and insurance

- 16.1 Nothing in this Agreement shall limit or exclude the Supplier's liability:
- 16.1.1 for a breach of its obligations under Clauses 3.2.1.4, 3.2.2.2, 17, 18 or 19; and
- 16.1.2 under the indemnities at Clauses 14.8, 16.2, 16.3, 20.2 or 21.8.

- 16.2 The Supplier shall be liable for and shall indemnify SEPA for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from the supply of the Goods and Services and shall maintain in force during the period of this Agreement adequate insurance cover with reputable insurers acceptable to SEPA, and evidence of such insurance shall be made available to SEPA on its request.
- 16.3 The Supplier will indemnify SEPA against all losses, costs, claims, demands, expenses and liabilities of any nature (including legal costs), arising from or relating to any claim arising from a breach or alleged breach by the Supplier of any environmental legislation or regulations.
- 16.4 Subject to Clause 16.1, the Supplier's maximum aggregate liability to SEPA per claim or series of related claims arising during the term of this Agreement shall be the greater of:
- 16.4.1 150% of all sums paid or payable by SEPA to the Supplier in the twelve (12) months prior to the date giving rise to such claim; and
- 16.4.2 FIVE MILLION POUNDS STERLING (£5,000,000).
- 16.5 SEPA's maximum aggregate liability to the Supplier for all claims arising during the Term (excluding any liability to pay the Fees) shall not exceed the amount paid or payable to the Supplier for any Goods and Services under this Agreement in the twelve (12) months prior to the date giving rise to a claim.
- 16.6 Any limitation of liability set out in this Agreement shall not apply so as to restrict either party's liability for death or personal injury resulting from that party's negligence, nor will it apply to any liability for fraudulent misrepresentation.
- 16.7 In no event shall either party be liable under or in connection with this Agreement, whether in contract, delict (including negligence or breach of statutory duty) or otherwise, for any indirect or consequential loss or damage, howsoever arising, or for any loss of revenues, profits, goodwill or anticipated savings, or loss or corruption of data.
- 16.8 Nothing in this clause shall affect the right of either party to terminate this Agreement in accordance with its terms.

17 Confidentiality

- 17.1 The Supplier will each treat as confidential all Confidential Information obtained from SEPA under or in connection with this Agreement, unless such Confidential Information is already public knowledge or which becomes so at a future date (otherwise than as a result of a breach of this Clause 17). The Supplier will not without the prior written consent of SEPA disclose any such Confidential Information to any person, or use the same.
- 17.2 Neither the Supplier nor SEPA will make any announcement about this Agreement, or disclose its existence or terms, without the prior written consent of the other.
- 17.3 The obligations of confidentiality in this Clause 17 (but not the rights to use Confidential Information) will remain in force following the expiry or other termination of this Agreement.

18 Data protection

- 18.1 The Supplier undertakes to SEPA that it will take all necessary steps to ensure that in supplying the Goods and Services it operates at all times in compliance with the Data Protection Legislation.
- 18.2 Without limiting Clause 18.1, if SEPA passes to the Supplier, or otherwise gives the Supplier access to, Personal Data under this Agreement, SEPA and the Supplier agree that SEPA shall be the Data Controller and the Supplier shall be the Data Processor of any Personal Data Processed by the Supplier of which SEPA is the Data Controller ("**SEPA Personal Data**") pursuant to this Agreement. As Data Processor, the Supplier undertakes:
- 18.2.1 to Process the SEPA Personal Data strictly in accordance with this Agreement or otherwise on the instructions of SEPA from time to time, and the Data Protection Legislation ;
 - 18.2.2 not to acquire any rights in the SEPA Personal Data, and will return the SEPA Personal Data to SEPA immediately, if SEPA requests it to do so;
 - 18.2.3 to put in place appropriate technical and organisational measures against unauthorised or unlawful Processing of the SEPA Personal Data, and against accidental loss or destruction of, or damage to, the SEPA Personal Data, in compliance with the Data Protection Legislation, all to the reasonable satisfaction of SEPA. Technical and organisational measures will be considered appropriate for the purposes of this Clause 18.2.3 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 Data Protection Legislation;
 - 18.2.4 to permit SEPA to have access to the Supplier's premises, personnel and records on at least five (5) Business Days' notice, for the purposes of inspecting, testing and auditing the technical and organisational measures put in place by the Supplier under Clause 18.2.3;
 - 18.2.5 to promptly take whatever steps are necessary to comply with any requirement made by SEPA to ensure that the technical and organisational measures put in place by the Supplier comply with the Data Protection Legislation;
 - 18.2.6 to notify SEPA immediately of any breach of the security measures required to be put in place by the Supplier pursuant to Clause 18.2.3;
 - 18.2.7 the Supplier will not transfer any of the SEPA Personal Data outside the European Economic Area, except with the prior written consent of SEPA, and in accordance with any additional terms which SEPA imposes on such transfer;
 - 18.2.8 not to disclose or allow access to SEPA Personal Data (other than to the Supplier's Employees and third parties engaged by the Supplier to perform the obligations imposed on the Supplier under this Agreement or as otherwise permitted by the terms of this Agreement), and ensure that such Supplier's

Employees and third parties are subject to written contractual obligations concerning the SEPA Personal Data which are no less onerous than those imposed on the Supplier under this Agreement;

- 18.2.9 that any of the Supplier's Employees who will have access to the SEPA Personal Data have undergone data protection training and are aware of their obligations under the Data Protection Legislation;
 - 18.2.10 to assist SEPA with all requests which may be received from Data Subjects in relation to the SEPA Personal Data under the Data Protection Legislation and to notify SEPA of any such request within two (2) Business Days of receipt;
 - 18.2.11 to provide SEPA with such information as SEPA may require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;
 - 18.2.12 to notify SEPA immediately if it receives a complaint, notice or any other communication concerning the Supplier's Processing of the SEPA Personal Data;
 - 18.2.13 to restrict any Processing immediately as directed by SEPA; and
 - 18.2.14 to indemnify SEPA fully on demand against all losses arising from any breach by the Supplier, or any of the Supplier's, of this Clause 18 and/or as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of the Supplier's unauthorised Processing, unlawful Processing, destruction of and/or damage to any Personal Data Processed by the Supplier, the Supplier's Employees or third parties.
- 18.3 The Supplier shall notify any of the Supplier's Employees who are required to attend the Premises or any other premises of SEPA in order to comply with the Supplier's obligations under this Agreement that SEPA may Process the Personal Data of the Supplier's Employees whilst they are in attendance at the Premises or any other premises of SEPA.
- 18.4 The Supplier shall assist SEPA at no additional charge in meeting any reasonable requests for information in relation to this Agreement which are made to SEPA in connection with FOISA and/or the Environmental Regulations or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. SEPA may, from time to time, serve on the Supplier an information notice requiring the Supplier within such time and in such form as is specified in the information notice, to furnish to SEPA such information as SEPA may reasonably require relating to such requests for information. The Supplier acknowledges that in responding to such requests for information, SEPA shall be entitled to provide information relating to this Agreement.

19 FOISA and Environmental Regulations

- 19.1 The Supplier:

- 19.1.1 acknowledges that SEPA is subject to the requirements of FOISA and the Environmental Regulations and SEPA may disclose any information where required by FOISA and/or the Environmental Regulations; and
 - 19.1.2 shall assist and co-operate with SEPA (at SEPA's expense) to enable SEPA to comply with SEPA's FOISA obligations and SEPA's Environmental Regulations obligations.
- 19.2 The Supplier shall (and shall procure that its suppliers and sub-contractors shall):
- 19.2.1 transfer to SEPA all requests for information held by or on behalf of SEPA as soon as practicable after receipt and in any event within three (3) days of receiving the request (and shall in no event respond directly to any such request made under FOISA unless expressly authorised to do so by SEPA);
 - 19.2.2 provide SEPA with a copy of all information held on behalf of SEPA in its possession or power in the form that SEPA reasonably requests within five (5) days of SEPA requesting that information;
 - 19.2.3 provide all necessary assistance as reasonably requested by SEPA to enable SEPA to respond to a request made under FOISA or the Environmental Regulations promptly; and
 - 19.2.4 ensure that no such information held on behalf of SEPA will include any information that will undermine SEPA's reputation should it be disclosed in response to a request made under FOISA or the Environmental Regulations.
- 19.3 The Supplier agrees that SEPA shall be responsible for determining, at SEPA's absolute discretion, whether any commercially sensitive information and any other information:
- 19.3.1 is exempt from disclosure in accordance with the provisions of FOISA or the Environmental Regulations; or
 - 19.3.2 is to be disclosed in response to a request which is subject to FOISA or the Environmental Regulations.

20 Employment

- 20.1 Neither this Agreement nor the provision of the Services by the Supplier to SEPA under it is intended to create or imply an employment relationship between SEPA and the Supplier or any of the Supplier's Employees.
- 20.2 The Supplier will be responsible for all emoluments and other out-goings in respect of the Supplier and the Supplier's Employees (including all wages, bonuses, commissions, PAYE, national insurance contributions, and pensions contributions). The Supplier will indemnify SEPA against all liabilities, costs (including SEPA's legal costs), claims and demands, and any penalty, fine or interest incurred or payable arising from the failure of the Supplier to comply with any of its obligations under this Clause 20.2, or any other obligations which it may have under any of its contracts with the Supplier's Employees. SEPA may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Supplier.

21 Employment Regulations

- 21.1 The parties do not anticipate that the Employment Regulations shall apply so that the contracts of employment of any employees of the Supplier automatically transfer to SEPA as a result of the Supplier providing the Services.
- 21.2 The Supplier will within ten (10) Business Days of receipt of a request (or a request for updated information) by SEPA (which may be made at any time during the term of this Agreement) supply in writing to SEPA:
- 21.2.1 information on which of the Supplier's staff are and have been involved in providing the Services, whether or not they spend all of their working time on the Services (and, if not, the percentage of their working time generally spent), what role(s) they carry out and any other information relating to the way the Supplier's staff carry out the Services as may reasonably be requested;
 - 21.2.2 information as to the basic terms and conditions of employment of the Supplier's staff at the time of a request for such information, whether contractual or otherwise (including remuneration, benefits, pension benefits, enhanced redundancy benefits and other rewards); and
 - 21.2.3 such other information as may reasonably be required by SEPA relating to such of the Supplier's staff which is in the possession of the Supplier and each subcontractor at the time of the request or which can reasonably be obtained by the Supplier from any other third party.
- 21.3 The Supplier consents to SEPA using the information obtained under Clause 21.2 for their own costing purposes and also disclosing that information to prospective bidders for the provision of the Services (or services similar to the Services) to SEPA.
- 21.4 The information provided under Clause 21.2 will, where reasonably practicable, be anonymised or coded by the Supplier in such a way so as to prevent the disclosure of Personal Data as defined under the DPA.
- 21.5 The Supplier will procure that the information provided under Clause 21.2 is complete and accurate in all material respects and that it is no more than fourteen (14) days old on the date that it is given.
- 21.6 The Supplier shall not keep any information retained by it after the cessation of the provision of the Services for longer than is required under the DPA and shall dispose of any such information in accordance with the DPA.
- 21.7 The parties do not anticipate that on the cessation or partial cessation of the provision of the Services or any part of the Services, the termination, expiry or variation of this Agreement, the Employment Regulations shall apply so that the contracts of employment of any employees of the Supplier transfer to SEPA.
- 21.8 Without prejudice to the provisions of Clause 21.7 the Supplier will, on demand by SEPA, indemnify SEPA against (or, at the option of SEPA, indemnify SEPA on its own behalf) and as a separate obligation undertakes to pay to SEPA the amount of, all losses, fines,

penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which SEPA may incur (directly or indirectly):

- 21.8.1 in connection with the employment or termination of employment of any transferring employee at any time up to the relevant transfer date; or
- 21.8.2 in connection with the employment or termination of employment of any transferring employee from and including the transfer date provided SEPA terminates the employment of the transferring employee (in so far as it has not already terminated) within thirty (30) Business Days of becoming aware of such transfer or alleged transfer; and
- 21.8.3 as a result of any failure to comply with Regulation 13 or Regulation 14 of the Employment Regulations in respect of any transferring employee.

22 Termination

- 22.1 SEPA may terminate this Agreement at any time by giving the Supplier not less than one month's written notice.
- 22.2 This Agreement may be terminated by either party (the "**Terminating Party**") immediately by giving written notice to the other party, if the other party commits a material breach of this Agreement. However where a breach is capable of being remedied, this Agreement may only be terminated where the party in breach has failed to remedy the breach within twenty one (21) days of its receipt of a notice from the Terminating Party, describing the breach, and requesting that it be remedied.
- 22.3 To be clear, a breach will be treated as capable of remedy for the purposes of this Agreement if it can be put right in all respects except for time of performance, except where the time of performance is stated to be "of the essence" of this Agreement, in which case the breach will be treated as irremediable. Time of performance will automatically be deemed to be "of the essence" of this Agreement for any obligation marked in the Contract Award Document. Failure by the Supplier to meet any such key milestone will therefore automatically entitle SEPA to terminate this Agreement immediately.
- 22.4 This Agreement may be terminated immediately by the Terminating Party even in the case of a breach capable of remedy, where the breach is persistent. A breach of this Agreement will be persistent where it has recurred not less than three (3) times in any continuous period of twelve (12) months, regardless of whether on each such occasion the party in breach then corrected that breach.
- 22.5 The Terminating Party shall be entitled to terminate this Agreement immediately if the other party is unable to pay its debts or enters into compulsory or voluntary liquidation, or compounds with or convenes a meeting of creditors, or has an administrative receiver, administrator, trustee, judicial factor, manager, or similar officer appointed, or if a receiver (including an administrative receiver) or other similar officer takes possession of the whole or any part (which is material in the context of the performance of the other party's obligations under this Agreement) of the undertaking, property or assets of the other party, or if a petition is presented in respect of the other party and is not dismissed within twenty eight

(28) days of such presentation, or if the other party is the subject of a moratorium, or if the other party ceases for any reason to carry on business, or takes or suffers any similar action which in the opinion of the Terminating Party means that the other party may be unable to pay its debts.

22.6 SEPA may terminate this Agreement immediately by giving written notice to the Supplier if the Supplier:

22.6.1 is unable to supply the Goods and/or Services for a continuous period of ten (10) Business Days; or

22.6.2 has been unable to supply the Goods and/or Services for ten (10) Business Days in aggregate in any continuous period of thirty (30) Business Days.

22.7 Within ten (10) Business Days of the expiry or other termination of this Agreement, the Supplier will return to SEPA any of SEPA's property, and the Supplier and SEPA will each either return to the other party, or (at the other party's option) destroy, all of the other party's Confidential Information in its possession, and certify in writing to the other party that it has done so.

22.8 The expiry or termination of this Agreement (however it occurs) will not affect any rights or liabilities of either party that may have accrued before expiry or termination. In addition, expiry or termination will not affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such expiry or termination. Without limiting this Clause 22.8, the provisions of Clauses 6.1, 14, 15.3, 16, 17, 18, 19, 20, 21, 22, 24, 26 and 30 will survive expiry or termination of this Agreement.

23 Assignment and sub-contracting

23.1 The Supplier may not assign, subcontract or otherwise transfer this Agreement or any of its rights and obligations under it whether in whole or in part without the prior written consent of SEPA. SEPA will not unreasonably withhold its consent to any such assignment or subcontracting, but the Supplier acknowledges that if SEPA consents to the Supplier subcontracting any of its obligations under this Agreement, the Supplier will remain wholly responsible to SEPA for the actions and omissions of its sub-contractors, so that any failure by such a sub-contractor to comply with this Agreement will be treated as a breach of this Agreement by the Supplier.

23.2 In the event that the Supplier subcontracts any or all of its rights and obligations under this Agreement, the Supplier shall include in any subcontract provisions which:

23.2.1 specify a contact to whom issues regarding non-payment can be addressed; and

23.2.2 require the Supplier to pay all sums due by the Supplier to the subcontractor within, calculating from the date of receipt by the Supplier of SEPA's payment, a number of days equivalent to the number of days between SEPA's receipt and SEPA's payment of the Supplier's invoice. The Supplier will make payment within such time and, in any event, within thirty (30) days of receiving a valid invoice.

23.3 The Supplier acknowledges and agrees that SEPA may at any time assign, subcontract or otherwise transfer any or all of its rights and obligations under this Agreement to any third party of its choice.

24 Health and safety

24.1 The Supplier represents and warrants to SEPA that the Supplier has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that it has made available to SEPA adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.

24.2 The Supplier shall perform the Services in such a manner to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instruments, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of Services of the type supplied to SEPA, whether specifically or generally.

24.3 With prejudice to the generality of clause 24.1 and 24.2 hereof, the Supplier shall indemnify SEPA against all actions, suits, claims, demands, losses, charges, costs and expenses which SEPA may suffer or incur as a result of or in connection with any breach of Clauses 24.1 or 24.2 hereof.

25 Disputes

Should any dispute arise between the Supplier and SEPA, the parties will attempt to resolve the dispute in good faith. Where both parties agree that it may be beneficial they will seek to resolve the dispute through mediation using the services of the Centre for Dispute Resolution to facilitate the mediation process but this shall not prejudice a party's right to raise court or other proceedings.

26 Force Majeure

26.1 If the performance of any obligations under this Agreement is prevented or delayed by a Force Majeure Event then the performance of that obligation will be excused for the duration of the Force Majeure Event provide that notification is given to SEPA as soon as reasonably practicable giving a description of the Force Majeure Event and, where possible, an estimate of its likely duration.

26.2 If the Force Majeure Event in question continues or is likely to continue of a continuous period in excess of 30 (thirty) calendar days discussions will be held with regard to alternative arrangements in respect of this agreement which may include but are not limited to termination of it pursuant to Clause 22.

26.3 Where a Force majeure Event has extended or is reasonably anticipated to extend for a period of more than 60 (sixty) calendar days or for periods in aggregate of more than 60 (sixty) calendar days in any 12 (twelve) month period then this Agreement or the continued participation in it of the Supplier subject to the Force Majeure Event may be terminated with immediate effect

27 Publicity

SEPA reserves the right to disclose to any third party, and through any medium, and at any time, the appointment by SEPA of the Supplier in connection with this Agreement. The Supplier consents to such disclosure and waives any right it may have to prevent or restrict disclosure on grounds of commercial confidentiality or otherwise. Any press release or other public intimation proposed by the Supplier in respect of the Goods and Services shall be agreed with SEPA in advance. The Supplier agrees to SEPA making reference in publicity literature that the Goods and Services have been supplied to SEPA.

28 Discrimination

The Supplier shall not, and shall use its best endeavours to procure that the Supplier's Employees shall not, unlawfully discriminate against any person on grounds of age, sex or sexual orientation, gender reassignment, race, disability, sexual orientation, religion or belief, marital or civil partner status, pregnancy or maternity, colour, nationality, ethnic or national origin. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of this Agreement.

29 Blacklisting

The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the DPA (each as amended or varied from time to time) by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Clause is a material default which shall entitle SEPA to terminate this Agreement.

30 General

30.1 If any Clause (or part of a Clause) of this Agreement should be found not to be valid, lawful or enforceable by a court having proper authority, or if the law changes so that it becomes invalid, unlawful or not enforceable to any extent, then this Clause will apply. The Clause (or part affected) will be treated as having been deleted from the remaining terms of this Agreement which will continue to be valid. In addition, the parties will use reasonable efforts to replace the deleted Clause (or part) with a valid replacement provision which is as close as possible in meaning to the one that has been deleted.

30.2 This Agreement does not create a partnership, agency relationship or joint venture between the parties to it and except as expressly provided in this Agreement neither party will enter into or have authority to enter into any engagement or make any representations or

warranties on the other party's behalf, nor will they seek to otherwise bind or oblige the other party in any way.

- 30.3 This Agreement contains all of the terms of the agreement between the parties relating to the matters covered in this Agreement. Additions or changes to this Agreement will only be binding upon the parties where they are written and signed by a duly authorised representative of each party.
- 30.4 This Agreement is made under Scots law and the Scottish courts will have exclusive authority to settle any dispute arising under or connection with it.