



THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

CONSULTANCY TERMS AND CONDITIONS



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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 Company on each Consultant:
 - 1.1.2.1 the identity of the Consultant;
 - 1.1.2.2 the employment history, including periods of unemployment, of the Consultant over the preceding three (3) Years;
 - 1.1.2.3 the nationality and immigration status of the Consultant to ensure that the Consultant is not prohibited from working in Scotland; and
 - 1.1.2.4 obtain a criminal conviction certificate which must confirm that the Consultant 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 **"Company"** means the Company providing the Services to SEPA as named in the Contract Award Document;
 - 1.1.5 **"Commencement Date"** means the date on which this Agreement comes into force as set out in the Contract Award Document;
 - 1.1.6 **"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:
 - 1.1.6.1 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
 - 1.1.6.2 oral descriptions, demonstrations or observations;
 - 1.1.7 **"Consultant(s)"** means the employee(s) or agent(s) of the Company who have been engaged to provide the Services to SEPA;

- 1.1.8 **"Consultant Background IP"** means all Intellectual Property Rights of any nature which are material to the supply of the Services and which are owned by the Company and/or any Consultant or to which the Company and/or any Consultant has rights including but not limited to rights in documentation, information, data, software, source code and equipment which is in existence prior to first providing the Services to SEPA and which is or should be made available by the Company and/or a Consultant in order to enable SEPA to receive the Services;
- 1.1.9 **"Contract Award Document"** means the contract award document issued by SEPA to the Company upon awarding the contract for the provision of the Services;
- 1.1.10 **"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 2002/581EC; 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;
- 1.1.11 **"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 Company and / or any Consultant for SEPA, or otherwise supplied to SEPA by the Company and/ or any Consultant, as part of the Services;
- 1.1.12 **"Environmental Regulations"** means the Environmental Information (Scotland) Regulations 2004, as amended or varied from time to time;
- 1.1.13 **"Expiry Date"** means the date on which this Agreement contract comes to an end as set out in the Contract Award Document;
- 1.1.14 **"Fees"** means the fees to be paid by SEPA to the Company for the Services, as set out in the Contract Award Document;
- 1.1.15 **"FOISA"** means the Freedom of Information (Scotland) Act 2002, as amended or varied from time to time;
- 1.1.16 **"Force Majeure Event"** means an event beyond the reasonable control of the Company that renders the performance of the Agreement impossible whether temporarily or otherwise which for the avoidance of doubt may include prohibitive government regulation, flood, lightening 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;

- 1.1.17 **"Foreground IP"** means all Intellectual Property Rights arising as a result, directly or indirectly, of the provision of the Services by the Company including, without limitation, Intellectual Property Rights in any Deliverables;
- 1.1.18 **"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 providing services which are the same as or similar to the Services;
- 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 Services are to be performed;
- 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 Company first providing the Services to SEPA and which is made available by or used by SEPA in order to enable the Company to provide the Services;
- 1.1.25 **"Services"** means the Services as described in the Contract Award Document;
- 1.1.26 **"Service Levels"** means the performance criteria specified in the Contract Award Document;

- 1.1.27 **"Term"** means the term of this Agreement as set out in the Contract Award Document;
- 1.1.28 **"Tender Documents"** means SEPA's invitation to tender and clarifications issued or accepted by SEPA (if any); and
- 1.1.29 **"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 Company. The phrase "third party" means a person other than SEPA or the Company;
- 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 19, will remain in force until the Expiry Date.
- 2.2 SEPA may serve notice in writing to the Company 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 The Services

- 3.1 For so long as this Agreement is in force the Company will provide the Services to SEPA 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 Company undertakes to SEPA that:
- 3.2.1 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 Company and/or the Consultant from time to time;
 - 3.2.2 prior to a Consultant being proposed to SEPA the Company shall:
 - 3.2.2.1 ensure that the Consultant has the necessary skills, qualifications and experience to perform the Services;
 - 3.2.2.2 ensure that the Consultant has passed the Baseline Security Checks and confirm in writing to SEPA that such Baseline Security Check have been carried out; and
 - 3.2.2.3 provide SEPA with reasonably requested personal and career information about the Consultant;
 - 3.2.3 it will not remove or replace any appointed Consultant without the prior written consent of SEPA;
 - 3.2.4 it will be available upon reasonable notice and will, at its own expense, ensure that any appointed Consultant is available to meet with SEPA to discuss the Services;
 - 3.2.5 it or any appointed Consultant 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
 - 3.2.6 it or any appointed Consultant will not make or incur any legally binding obligation on behalf SEPA without the prior written consent of SEPA.
- 3.3 SEPA will be entitled to reject any of the Consultants proposed by the Company without reason and at any time during the Term.
- 3.4 The Company will provide SEPA with reasonable notice if, for any reason, an appointed consultant is unable to provide the Services and if possible the Company will provide SEPA with an alternative Consultant.

3.5 Where a Consultant is required to work at or go to SEPA's Premises for any reason in connection with this Agreement, the Company will ensure that the Consultant will comply with:

3.5.1 any and all applicable laws including health and safety and environmental laws; and

3.5.2 any reasonable instructions, procedures or policies issued by SEPA from time to time.

4 Manner of carrying out the Services

4.1 The Company shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining SEPA's prior written consent.

4.2 Access to the Premises shall not be exclusive to the Company but shall enable the Consultant(s) to carry out the Services concurrently with the execution of work by others. The Company and Consultant 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.

4.3 SEPA shall have the power at any time during the progress of the Services to order in writing:

4.3.1 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

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

4.3.3 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.

4.4 On completion of the Services the Company 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.

5 Health and safety

5.1 The Company shall perform the Services in such a manner as 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 Instrument, 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. The Company 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.

6 Failure to provide the Services

If the Company fails to provide the 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:

- 6.1 terminate the relevant Purchase Order;
- 6.2 refuse to accept any subsequent performance of the Services which the Company attempts to make;
- 6.3 terminate this Agreement in whole or in part in accordance with Clause 19; and/or
- 6.4 recover from the Company any expenditure reasonably incurred by SEPA in:
 - 6.4.1 obtaining the Services in substitution from another supplier; and/or
 - 6.4.2 carrying out any work necessary to make the Services comply with this Agreement.

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 Company to correct the Deliverable (at the Company'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 Company 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 Company at least five Business Days' notice to that effect.

8 Fees and payment

- 8.1 In return for the provision by the Company of the Services in accordance with this Agreement, SEPA will pay the Company the Fees, in accordance with this Clause 8.
- 8.2 The price of the 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.
- 8.3 Subject to the Company performing the Services, SEPA will pay to the Company 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 8, 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.

- 8.4 SEPA will have the right to retain any payments that would otherwise be due to the Company where it disputes, in good faith, that the Company has properly performed its obligations under this Agreement.
- 8.5 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.
- 8.6 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.
- 8.7 The Company will pay all taxes and expenses arising under this Agreement. The Company will indemnify SEPA in respect of any tax or employer's national insurance contributions or other expense suffered by SEPA in respect of the Company, the Company's employees, agents or sub-contractors in relation to the supply of the Services during the Term or following termination of this Agreement.

9 Change to Agreement requirements

- 9.1 SEPA may order any variations to any part of the 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 Services and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 9.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 9.1 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 Company 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.
- 9.3 Where any such variation of the Services made in accordance with Clauses 9.1 and 9.2 has affected or may affect the costs incurred by the Company in providing the Services, the Company 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 Company in respect of the effect which such variation has had or may have on the costs incurred by the Company in providing the Services) and may authorise such alteration to the sums to be paid to the Company in accordance with the provisions of this Agreement as are, in his opinion, appropriate and reasonable in the circumstances.

10 Warranties

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

- 10.1 the Company has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;
- 10.2 the Services will be provided with all due skill and care, in accordance with this Agreement; and
- 10.3 the Company 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.

11 Intellectual Property Rights

- 11.1 The Company 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 Company will at its own expense promptly return to SEPA any SEPA Background IP in the Company's possession.
- 11.2 The Company 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.
- 11.3 If asked to do so by SEPA, the Company 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 11.2, including by registering any of those Intellectual Property Rights in any part of the world.
- 11.4 The Company hereby waives, and warrants that its employees and contractors have waived, any moral rights arising in the Foreground IP.
- 11.5 All right, title and interest in and to any SEPA Background IP shall remain the property of SEPA.
- 11.6 All right, title and interest in and to any Consultant Background IP shall remain the property of the Company or the Consultant as the case may be.
- 11.7 The Company warrants and undertakes that in the performance of the 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 Deliverables will not infringe the Intellectual Property Rights of any third party.
- 11.8 The Company 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 Company of Clause 11.7.

12 Records and audit rights

- 12.1 The Company will maintain full and accurate records and accounts relating to the provision of the Services to SEPA, including records of amounts paid for goods, services and materials, including labour costs.
- 12.2 The Company will permit SEPA and SEPA's internal and external auditors to inspect all of the Company'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.
- 12.3 The Company's obligation to maintain records and accounts under Clause 12.1, and SEPA's and its auditors' rights to have access to those records and accounts under Clause 12.2, 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.

13 Limitation of liability and insurance

- 13.1 Nothing in this Agreement shall limit or exclude the Company's liability:
 - 13.1.1 for a breach of its obligations under Clauses 3.2.1.4, 3.2.2.2, 14, 15 or 16; and
 - 13.1.2 under the indemnities at Clauses 11.8, 13.3, 17.2 or 18.8.
- 13.2 The Company shall be liable for and shall indemnify SEPA for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from the provision of the Services and shall maintain in force during the period of this Agreement adequate insurance cover with reputable insurers acceptable to SEPA, evidence of such insurance shall be made available to SEPA on its request.
- 13.3 The Company 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 Company of any environmental legislation or regulations.
- 13.4 Subject to Clause 13.1, the Company'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:
 - 13.4.1 150% of all sums paid or payable by SEPA to the Company in the twelve (12) months prior to the date giving rise to such claim; and
 - 13.4.2 FIVE MILLION POUNDS STERLING (£5,000,000).
- 13.5 SEPA's maximum aggregate liability to the Company for all claims arising during the Term (excluding any liability to pay the Fees) shall not exceed the amount paid or payable to the Company for any Services under this Agreement in the twelve (12) months prior to the date giving rise to a claim.
- 13.6 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.

- 13.7 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.
- 13.8 Nothing in this clause shall affect the right of either party to terminate this Agreement in accordance with its terms.

14 Confidentiality

- 14.1 The Company 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 14). The Company will not without the prior written consent of SEPA disclose any such Confidential Information to any person, or use the same.
- 14.2 Neither the Company nor SEPA will make any announcement about this Agreement, or disclose its existence or terms, without the prior written consent of the other.
- 14.3 The obligations of confidentiality in this Clause 14 (but not the rights to use Confidential Information) will remain in force following the expiry or other termination of this Agreement.

15 Data protection

- 15.1 The Company undertakes to SEPA that it will take all necessary steps to ensure that in providing the Services it operates at all times in compliance with the Data Protection Legislation.
- 15.2 Without limiting Clause 15.1, if SEPA passes to the Company, or otherwise gives the Company 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:
- 15.2.1 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;
- 15.2.2 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;
- 15.2.3 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 15.2.3 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;

- 15.2.4 to permit SEPA to have access to the Company'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 Company under Clause 15.2.3;
 - 15.2.5 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 Company comply with the Data Protection Legislation;
 - 15.2.6 the Company 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;
 - 15.2.7 not to disclose or allow access to SEPA Personal Data (other than to the Company's Employees and third parties engaged by the Company to perform the obligations imposed on the Company under this Agreement or as otherwise permitted by the terms of this Agreement), and ensure that such Company'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 Company under this Agreement;
 - 15.2.8 that any of the Company'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;
 - 15.2.9 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;
 - 15.2.10 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;
 - 15.2.11 to notify SEPA immediately if it receives a complaint, notice or any other communication concerning the Company's Processing of the SEPA Personal Data;
 - 15.2.12 to restrict any Processing immediately as directed by SEPA; and
 - 15.2.13 to indemnify SEPA fully on demand against all losses arising from any breach by the Company, or any of the Company's, of this Clause 155 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 Company's unauthorised Processing, unlawful Processing, destruction of and/or damage to any Personal Data Processed by the Company, the Company's Employees or third parties.
- 15.3 The Company shall notify any of the Company's Employees who are required to attend the Premises or any other premises of SEPA in order to comply with the Company's obligations under this Agreement that SEPA may Process the Personal Data of the Company's Employees whilst they are in attendance at the Premises or any other premises of SEPA.

15.4 The Company 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 Company an information notice requiring the Company 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 Company acknowledges that in responding to such requests for information, SEPA shall be entitled to provide information relating to this Agreement.

16 FOISA and Environmental Regulations

16.1 The Company:

16.1.1 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

16.1.2 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.

16.2 The Company shall (and shall procure that its suppliers and sub-contractors shall):

16.2.1 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);

16.2.2 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;

16.2.3 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

16.2.4 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.

16.3 The Company agrees that SEPA shall be responsible for determining, at SEPA's absolute discretion, whether any commercially sensitive information and any other information:

16.3.1 is exempt from disclosure in accordance with the provisions of FOISA or the Environmental Regulations; or

16.3.2 is to be disclosed in response to a request which is subject to FOISA or the Environmental Regulations.

17 Employment

- 17.1 Neither this Agreement nor the provision of the Services by the Company to SEPA under it is intended to create or imply an employment relationship between SEPA and the Company or any of the Company's Staff.
- 17.2 The Company will be responsible for all emoluments and other out-goings in respect of the Company and the Company's Staff (including all wages, bonuses, commissions, PAYE, national insurance contributions, and pensions contributions). The Company 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 Company to comply with any of its obligations under this Clause 17.2, or any other obligations which it may have under any of its contracts with the Company's Staff. SEPA may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Company.

18 Employment Regulations

- 18.1 The parties do not anticipate that the Employment Regulations shall apply so that the contracts of employment of any employees of the Company automatically transfer to SEPA as a result of the Company providing the Services.
- 18.2 The Company 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:
- 18.2.1 information on which of the Company'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 Company's staff carry out the Services as may be reasonably be requested;
 - 18.2.2 information as to the basic terms and conditions of employment of the Company'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
 - 18.2.3 such other information as may reasonably be required by SEPA relating to such of the Company's staff which is in the possession of the Company and each subcontractor at the time of the request or which can reasonably be obtained by the Company from any other third party.
- 18.3 The Company consents to SEPA using the information obtained under Clause 18.2 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.
- 18.4 The information provided under Clause 18.2 will, where reasonably practicable, be anonymised or coded by the Company in such a way so as to prevent the disclosure of Personal Data as defined under the DPA.

- 18.5 The Company will procure that the information provided under Clause 18.2 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.
- 18.6 The Company 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.
- 18.7 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 Company transfer to SEPA.
- 18.8 Without prejudice to the provisions of Clause 18.7 the Company 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):
- 18.8.1 in connection with the employment or termination of employment of any transferring employee at any time up to the relevant transfer date; or
 - 18.8.2 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
 - 18.8.3 as a result of any failure to comply with Regulation 13 or Regulation 14 of the Employment Regulations in respect of any transferring employee.

19 Termination

- 19.1 SEPA may terminate this Agreement at any time by giving the Company not less than one months' written notice.
- 19.2 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.
- 19.3 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 Company to meet any such key milestone will therefore automatically entitle SEPA to terminate this Agreement immediately.

- 19.4 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.
- 19.5 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.
- 19.6 SEPA may terminate this Agreement immediately by giving written notice to the Company if the Company:
- 19.6.1 is unable to provide the Services for a continuous period of ten (10) Business Days; or
 - 19.6.2 has been unable to provide the Services for ten (10) Business Days in aggregate in any continuous period of thirty (30) Business Days.
- 19.7 Within ten (10) Business Days of the expiry or other termination of this Agreement, the Company will return to SEPA any of SEPA's property, and the Company 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.
- 19.8 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 19.8, the provisions of Clauses 8, 11, 12.3, 13, 14, 15, 16, 17, 18,19, 21, 22 and 26 will survive expiry or termination of this Agreement.

20 Assignment and sub-contracting

- 20.1 The Company 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 Company acknowledges that if SEPA consents to the Company subcontracting any of its obligations under this Agreement, the Company 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 Company.

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

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

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

20.3 The Company 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.

21 Disputes

Should any dispute arise between the Company 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.

22 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 Company in connection with this Agreement. The Company consents and shall procure that each Consultant consents to such disclosure and waives and shall procure that each Consultant 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 Company in respect of the Services shall be agreed with SEPA in advance. The Company agrees to SEPA making reference in publicity literature that the Services have been provided for SEPA.

23 Discrimination

The Company shall not, and shall use its best endeavours to procure that the Consultants 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 Company shall take all reasonable steps to secure the observance of these

provisions by all servants, employees or agents of the Company and all sub-contractors employed in the execution of this Agreement.

24 Blacklisting

The Company 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.

25 Force Majeure

- 25.1 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.
- 25.2 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 19.
- 25.3 Where a Force Majeure Event has extended or is reasonably anticipated to extend for a period of more the 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 Company subject to the Force Majeure Event may be terminated with immediate effect.

26 General

- 26.1 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.
- 26.2 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.
- 26.3 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.

26.4 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.