

Standard Term and Conditions of Contract

May 2020



1. DEFINITIONS

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. **“Baseline Security Checks”** means the following checks carried out by the Supplier on each of the Supplier’s Employees:

- 1.1.1.1. the identity of the Supplier’s Employee;
- 1.1.1.2. the employment history, including periods of unemployment, of the Supplier’s Employee over the preceding three (3) Years;
- 1.1.1.3. 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
- 1.1.1.4. obtain a criminal conviction certificate which must confirm that the Supplier’s Employee has no unspent criminal convictions;

1.1.2. **“Business Day”** means a day, other than a Saturday or Sunday, on which the banks in Edinburgh are open for general commercial business;

1.1.3. **“Charges”** means the fees to be paid by SEPA to the Supplier for the Services, as set out in the Contract Award Letter;

1.1.4. **“Commencement Date”** means the date specified in the Contract Award Letter as the date on which the contract is to begin;

1.1.5. **“Confidential Information”** means information that is marked as confidential or otherwise designated by the Party supplying it as 'confidential', or which by its nature is clearly confidential. Confidential Information includes any information concerning the business affairs of either Party, including information in relation to the past, present and potential future finances,

policies, projects, procedures, plans, contractual arrangements, employees, customers, members or other contractors of either Party.

- 1.1.6. **“Contract”** means the contract between the Purchaser and the Supplier consisting of the Contract Award Letter, these Conditions and other documents (or parts thereof) specified in the Contract Award Letter;
- 1.1.7. **“Contract Award Letter”** means the document setting out SEPA’s requirements for the Contract;
- 1.1.8. **“Data Breach”** means;
 - 1.1.8.1. any unauthorised or unlawful Processing of SEPA Personal Data;
 - 1.1.8.2. any unauthorised loss, corruption, damage, destruction, alteration, disclosure or access to SEPA Personal Data; or
 - 1.1.8.3. any security breach relating to SEPA Personal Data, which is deemed to be sufficiently serious or substantial to justify notification to the Information Commissioner or other relevant supervisory authority in accordance with the Data Protection Legislation; or
 - 1.1.8.4. any breach sufficiently serious or substantial to give rise to a material risk of litigation by the individuals whose Personal Data is the subject of the breach.
- 1.1.9. **“Data Controller”, “Data Processor”, “Data Subject”** and **“Data Subject Access Request”** have the meanings given in the Data Protection Laws;
- 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; (iii) 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 Supplier for SEPA, or otherwise supplied to SEPA by the Supplier, as part of the Services;

- 1.1.12. **“Expiry Date”** means the date on which this Contract comes to an end as set out in the Contract Award Letter;
- 1.1.13. **“Force Majeure Event”** means an event beyond the reasonable control of the Supplier that renders the performance of this Contract 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;
- 1.1.14. **“GDPR”** means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
- 1.1.15. **“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;
- 1.1.16. **“Information Legislation”** means the Freedom of Information (Scotland) Act 2002, as amended or varied from time to time and the Environmental Information (Scotland) Regulations 2004, as amended or varied from time to time;
- 1.1.17. **“Intellectual Property Rights”** means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Supplier;
- 1.1.18. **“Personal Data”** has the meaning given in the Data Protection Legislation;
- 1.1.19. **“Premises”** means the location where the Services are to be performed, as specified in the Contract Award Letter;
- 1.1.20. **“Processing”** has the meaning given in the Data Protection Legislation and cognate expressions shall be construed accordingly;

- 1.1.21. "**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;
- 1.1.22. "**Services**" means the services to be provided as specified in the Contract Award Letter and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;
- 1.1.23. "**Service Levels**" means the performance criteria specified in the Contract Award Letter (if any);
- 1.1.24. "**Supervisory Authority**" has the meaning given in the Data Protection Legislation;
- 1.1.25. "**Supplier**" means the person, firm or company to whom the Contract is issued;
- 1.1.26. "**Supplier's Employees**" means the people engaged by the Supplier to provide the Services to SEPA, and "**Supplier's Employee**" shall be construed accordingly;
- 1.1.27. "**Term**" means the term of this Contract as set out in the Contract Award Letter; and
- 1.1.28. "**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 Contract:
- 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 Contract, that is either SEPA or the Supplier; the word "**parties**" means both SEPA and 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 Contract will prevail over the terms of any Schedule and its Parts.

2. Term

- 2.1. This Contract will come into force on the Commencement Date, and unless terminated earlier by either party pursuant to Clause 18 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 Contract for a further period as shall be mutually agreed between the parties in writing.

3. Services

- 3.1. The Supplier shall provide the Services in accordance with this Contract and in return for the payment of the Charges.
- 3.2. The Supplier shall ensure that the Services:
 - 3.2.1. are provided with all reasonable skill, care and diligence;
 - 3.2.2. Good Industry Practice; and
 - 3.2.3. are supplied in accordance with the terms of the Contract.
- 3.3. The Supplier shall ensure that it receives and maintains any licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

4. Charges

- 4.1. The Charges for the Services shall be as set out in the Contract Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by SEPA, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 4.2. The Supplier shall invoice SEPA as specified in the Contract Award Letter. Each invoice shall include such supporting information required by SEPA to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 4.3. In consideration of the supply of the Services by the Supplier, SEPA shall pay the Supplier the invoiced amounts no later than 14 days after receipt of a valid invoice which includes a valid Purchase Order Number.
- 4.4. If there is a dispute between the Parties as to the amount invoiced, SEPA shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause Error! Reference source not found.. Any disputed

amounts shall be resolved through the dispute resolution procedure detailed in clause 20Error! Reference source not found..

5. Access to the Premises

5.1. Where the Supplier requires access or to occupy any SEPA Premises for the purpose of performing this Contract, the Supplier will not deliver to the Premises any equipment or materials necessary to provide the Services, and shall not commence any work at the Premises, until it has agreed details with SEPA as to the date and time of access, and the proposed delivery or working method (including safety cases and method statements where requested by SEPA acting reasonably).

5.2. Where the Supplier's Employees have access to SEPA Premises, SEPA (acting reasonably) may require that the Supplier ensures 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.

5.3. The Supplier shall comply with, and shall ensure that the Supplier's Employees comply with, SEPA's reasonable instructions with regard to accessing and occupying the Premises, including any health and safety requirements.

6. Failure to provide the Services

6.1. If the Supplier fails to provide the Services in accordance with this Contract, then without prejudice to any right or remedy SEPA is entitled to by law or under this Contract, SEPA shall be entitled to immediately:

6.1.1. terminate the relevant Purchase Order;

6.1.2. refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

6.1.3. terminate this Contract in whole or in part in accordance with Clause 18Error! Reference source not found. and/or

6.1.4. recover from the Supplier any expenditure reasonably incurred by SEPA in:

6.1.4.1. obtaining the Services in substitution from another supplier; and/or

6.1.4.2. carrying out any work necessary to make the Services comply with this Contract.

7. Deliverables

- 7.1. SEPA shall be entitled to rely upon the Deliverables, other than those stated to be draft or to the extent stated to be subject to further work, incomplete or not in final form.
- 7.2. The Supplier may issue Deliverables in draft form, or state them to be subject to further work, incomplete or not in final form, but if requested to do so the Supplier may not unreasonably refuse to issue such Deliverables in final form, nor unreasonably delay that issue.
- 7.3. 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 Contract.
- 7.4. The Supplier acknowledges that it shall have no right to be identified as the author of any Deliverable, and waives any such rights conferred by law.

8. Limitation of Liability

- 8.1. Each Party's liability to the other under the Contract shall be limited to the amounts stated in the Contract Award Letter, each to the extent permitted by law.
- 8.2. If there is no limit of liability stated in the Contract Award Letter, then the Parties' liability shall be limited as follows:
- 8.2.1. the maximum aggregate liability of a Party in relation to physical damage to property caused by that Party shall be £5,000,000; and
- 8.2.2. the maximum aggregate liability of a Party in relation to the Contract (excluding any damage to property) shall be £1,000,000.
- 8.3. The limitations in Clauses 8.1 and 8.2 shall not apply to liability resulting from any fraud, or any liability for personal injury or death.

9. Indemnity

- 9.1. The Supplier will indemnify and keep indemnified SEPA against all actions, claims, demands, costs and expenses incurred by or made against SEPA which arise in connection with anything done or omitted to be done in connection with the Contract by the negligence or other wrongful act or omission of the Supplier, an Employee or Sub-Contractor.

10. Insurance

- 10.1. During the Term and for 12 months after the expiry of the Term, the Supplier shall maintain in force with reputable insurers:
- 10.1.1. employer's liability insurance and public liability insurance in the sum of not less than £5,000,000 in respect of any one incident and unlimited as to numbers of claims;
 - 10.1.2. professional indemnity insurance and product liability insurance to the values (if any) identified in the Contract Award Letter;
 - 10.1.3. adequate insurances covering all the Supplier's other liabilities under the Contract; and
 - 10.1.4. such other insurances as may be identified in the Contract Award Letter.
- 10.2. On SEPA's reasonable request, the Supplier shall exhibit satisfactory evidence of the insurance policies referred to in this Clause 10, together with satisfactory evidence of payment of the premia in respect of each insurance.

11. Assignment and sub-contracting

- 11.1. The Supplier shall not be entitled to assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof without SEPA's prior written consent, such consent not to be unreasonably withheld or delayed.
- 11.2. SEPA shall be entitled to assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof without the consent of the Supplier.
- 11.3. The Supplier shall remain fully liable for the actions and defaults of all of its Sub-Contractor and sub-contracting will not relieve the Supplier of its obligations or duties under the Contract.

12. Intellectual Property Rights

- 12.1. All intellectual property rights in any data or materials provided by SEPA to the Supplier for the purposes of the Contract shall remain the property of SEPA but SEPA hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Supplier to perform its obligations under the Contract.
- 12.2. All intellectual property rights in any deliverables or materials created or developed by the Supplier pursuant to the Contract or arising as a result of the provision of

the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in SEPA by operation of law, SEPA hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

- 12.3. The Supplier hereby grants SEPA:
- 12.3.1. a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-licence) to use all intellectual property rights in the materials created or developed pursuant to the Contract and any intellectual property rights arising as a result of the provision of the Services; and
 - 12.3.2. a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use:
 - 12.3.3. any intellectual property rights vested in or licensed to the Supplier on the date of the Contract; and
 - 12.3.4. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services, including any modifications to or derivative versions of any such intellectual property rights, which SEPA reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.
- 12.4. The Supplier shall indemnify, and keep indemnified, SEPA in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by SEPA as a result of or in connection with any claim made against SEPA for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Supplier's Employees.

13. Governance and Records

- 13.1. The Supplier shall:
- 13.1.1. attend progress meetings with SEPA at the frequency and times specified by SEPA and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 13.1.2. submit progress reports to SEPA at the times and in such a format as may be specified by SEPA.
- 13.2. The Supplier shall keep and maintain until 6 years after the end of the Contract, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and

all payments made by SEPA. The Supplier shall on request afford SEPA or SEPA's representatives such access to those records as may be reasonably requested by SEPA in connection with the Contract.

14. Confidentiality, Transparency and Publicity

- 14.1. Subject to clause 14.2 and except where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
- 14.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 14.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract.
- 14.2. Notwithstanding clause 14.1, a Party may disclose Confidential Information which it receives from the other Party:
- 14.2.1. where disclosure is required by that party under the applicable law (including any requirements for disclosure by SEPA under the Information Legislation) or by a court of competent jurisdiction;
 - 14.2.2. to its auditors or for the purposes of regulatory requirements;
 - 14.2.3. on a confidential basis, to its professional advisers;
 - 14.2.4. to Police Scotland where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 14.2.5. where the receiving Party is the Supplier, to the Supplier's Employees on a need to know basis to enable performance of the Supplier's obligations under the Contract provided that the Supplier shall procure that any Supplier's Employees to whom it discloses Confidential Information pursuant to this clause 14.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
 - 14.2.6. where the receiving Party is SEPA:
 - a) on a confidential basis to the employees, agents, consultants and contractors of SEPA;
 - b) on a confidential basis to any Government Body, any successor body to a Government Body or any company or other authority to which SEPA transfers or proposes to transfer all or any part of its business;
 - c) to the extent that SEPA (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - d) in accordance with clause 15.

- 14.3. The Supplier shall not, and shall take reasonable steps to ensure that the Supplier's Employees shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of SEPA. The Supplier Acknowledges that SEPA may be obliged by legislation to publicise some details of the Contract in the interests of transparency and compliance with the law.

15. Freedom of Information

- 15.1. The Supplier acknowledges that SEPA is subject to the requirements of the Information Legislation and shall provide all necessary assistance and cooperation as reasonably requested by SEPA to enable SEPA to comply with its obligations under the Information Legislation.
- 15.2. The Supplier acknowledges that SEPA may be required under the Information Legislation to disclose information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances SEPA shall, in accordance with any relevant guidance issued under the Information Legislation, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.3. Notwithstanding any other provision in the Contract, SEPA shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Services is exempt from disclosure in accordance with the Information Legislation.

16. Data Protection and Data Security

- 16.1. The Parties acknowledge for the purposes of the Data Protection Legislation, SEPA is the Controller and the Supplier is the Processor.
- 16.2. The Supplier 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 and shall not perform its obligations under this Agreement in such a way as to cause SEPA to breach any of its applicable obligations under the Data Protection Legislation.
- 16.3. The Supplier must;
- 16.3.1. only process any Personal Data on the documented instructions of SEPA;
 - 16.3.2. Ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;

- 16.3.3. Ensure that all personnel who have access to and/or process personal Data are obliged to keep the Personal Data confidential;
- 16.3.4. Not transfer any Personal Data outside of the European Economic Area;
- 16.3.5. Notify SEPA within 3 Business days on becoming aware of a Personal Data Breach;
- 16.3.6. Return or destroy all Personal Data as directed by SEPA at the expiry of the Contract and provide a certificate of destruction if appropriate, unless the Supplier is required by law to continue to store the Personal Data; and
- 16.3.7. Maintain complete and accurate records and information to demonstrate their compliance with this clause 16.

- 16.4. SEPA does not consent to the Supplier appointing any third party processor of Personal Data under this Contract.

17. Force Majeure

- 17.1. Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Supplier to the extent that the delays or failures are caused by a Force Majeure Event. For the purposes of this clause 17.1, a “Force Majeure Event” is any act, event, omission, happening or non-happening which is both beyond the reasonable control of the parties and is such that the parties with the application of all due diligence and foresight could not prevent. Any act, event, omission, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the willful act, neglect or failure to take reasonable precautions of the affected party, its servants, agents or employees. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than thirty (30) days, either Party may terminate the Contract by written notice to the other Party.

18. Termination

- 18.1. SEPA may terminate the Contract at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Contract is less than 3 months in duration, at least 10 Business Days) later than the date of service of the relevant notice.
- 18.2. Without prejudice to any other right or remedy it might have, the SEPA may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

- 18.2.1. (without prejudice to clause 18.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 18.2.2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 18.2.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 18.2.4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 without SEPA's prior written consent thereto;
 - 18.2.5. breaches any of the provisions of clauses 14 (Confidentiality), 15 (Freedom of Information) and 16 (Data Protection); or
 - 18.2.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 18.2.6) in consequence of debt in any jurisdiction.
- 18.3. The Supplier may terminate the Contract by written notice to SEPA if SEPA has not paid any undisputed amounts within 60 days of them falling due.
- 18.4. Termination or expiry of the Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 8 (limitation of Liability), 9 (indemnities), 10 (Insurance), 12 (Intellectual Property), 14 (Confidentiality), 15 (Freedom of Information), 16 (Data Protection and Data Security), 17 (Force Majeure), 20 (Dispute Resolution), 22 (Notices) and 23 (Governing Law and Jurisdiction) or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 18.5. Upon termination or expiry of the Contract, the Supplier shall:
- 18.5.1. give all reasonable assistance to SEPA and any incoming supplier of the Services;
 - 18.5.2. return all requested documents, information and data to SEPA as soon as reasonably practicable; and
 - 18.5.3. at the request of SEPA in writing, securely delete and destroy all copies of the Personal Data to the standards applicable to SEPA

from time to time and certify in writing to SEPA that such secure deletion and destruction has occurred.

19. Prevention of Fraud and Corruption

- 19.1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 19.2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Supplier's Employees and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify SEPA immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3. If the Supplier or the Supplier's Employees engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Contract or any other contract with SEPA, SEPA may:
 - 19.3.1. terminate the Contract and recover from the Supplier the amount of any loss suffered by SEPA resulting from the termination, including the cost reasonably incurred by SEPA of making other arrangements for the supply of the Services and any additional expenditure incurred by SEPA throughout the remainder of the Agreement; or
 - 19.3.2. recover in full from the Supplier any other loss sustained by SEPA in consequence of any breach of this clause.

20. Dispute Resolution

- 20.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 20.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 20.3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

21. General

- 21.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.
- 21.2. A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3. The Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4. The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 21.5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 21.6. The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7. Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 21.8. If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

22. Notices

- 22.1. Any notice to be given under the Contract shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 22.3, e-mail to the address of the relevant Party set out in the Contract Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

- 22.2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 22.3. Notices under clauses 17 (Force Majeure) and 18 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 22.1.

23. Governing Law and Jurisdiction

- 23.1. These Conditions and the Contract will be governed by and construed in accordance with the law of Scotland and the Scottish Courts will have authority to settle any dispute. The Supplier may only raise an action against SEPA in the Scottish Courts.

For information on accessing this document in an alternative format or language please either contact SEPA by telephone on 03000 99 66 99 or by email to equalities@sepa.org.uk

If you are a user of British Sign Language (BSL) the Contact Scotland BSL service gives you access to an online interpreter enabling you to communicate with us using sign language.

<http://contactscotland-bsl.org/>

www.sepa.org.uk

03000 99 66 99

Strathallan House, Castle Business Park, Stirling, FK9 4TZ