

**SOUTH OF SCOTLAND ENTERPRISE AGENCY (SoSE)  
TERMS AND CONDITIONS FOR PURCHASING  
PROFESSIONAL SERVICES**

**1. Interpretation**

- 1.1 In these terms and conditions some words have particular meanings. These are set out in Condition 22 below.
- 1.2 In these terms and conditions unless the context otherwise requires:
- 1.2.1 words and expressions defined in FOISA and Data Protection Law shall have the same meanings in these terms and conditions.
- 1.2.2 more generally, references to statutory provisions include those statutory provisions as amended, replaced, re-enacted for the time being in force and shall include any bye-laws, statutory instruments, rules, regulations, orders, notices, codes of practice, directions, consents or permissions and guidelines (together with any conditions attached to the foregoing) made thereunder;
- 1.2.3 words used in the singular will be interpreted to include the plural and vice versa and words which refer to one gender will be interpreted to include other genders;
- 1.2.4 the words "include" and "including" shall each be construed without limitation to the words following;
- 1.2.5 "disclose" includes permitting a person to access personal data or imparting that data orally or by demonstration, including directly or indirectly giving the person, or arranging for the person to have, access to personal data in any manner and in any form or format whatsoever, and "disclosure" and "disclosed" will be interpreted accordingly;
- 1.2.6 references to clauses and paragraphs are references to the relevant clauses and paragraphs of the terms and conditions respectively; and
- 1.2.7 headings shall not affect the interpretation of these terms and conditions.
- 1.3 These terms and conditions and the other Contract Documents make up the whole agreement between you and us and supersede any previous agreement between you and us relating to the same subject matter. No other term or condition submitted, proposed or stipulated by you will apply to the contract between you and us.
- 1.4 If there is any conflict or inconsistency among the Contract Documents the terms of some of the documents take priority over other documents. The descending order of importance is as follows: firstly the Contract Award Letter; then these terms and conditions; then any clarifications to our invitation to tender or invitation to quote (as applicable) and/or your response to our invitation to tender or invitation to quote (as applicable) that are agreed in writing between you and us; then our invitation to tender or invitation to quote (as applicable); and then your tender or quote response.

**2. The Contract**

- 2.1 You will perform the Services to our reasonable satisfaction and you will act at all times in a diligent and professional manner. The Services must conform fully to the requirements set out in the Contract Documents.

- 2.2 You will perform the Services on and by the dates set out in the Contract Documents and, where we specify time of performance in the Contract Documents, then time of such performance shall be of the essence of the Contract.
- 2.3 You are and must at all times act as an independent contractor. You are not our employee, agent or representative and you have no authority to act on our behalf. You will not act in any way which would give the impression that you are our employee, agent or representative.
- 2.4 As you are our independent contractor, we will not be liable for anything you do or fail to do including without limitation anything you do which causes any person to make a claim against you.
- 2.5 You will not incur any liability on our behalf nor enter into any contracts or agreements on our behalf without our prior approval in writing.
- 2.6 We may request a change to any of our requirements for the Services at any time. You will notify us in writing if such change will result in a price increase or decrease and if we agree the scope of, and charges for, such change with you in writing then the Contract shall be varied accordingly.
- 2.7 If, at any time, you consider that your performance of any of the obligations under this Contract may conflict with other relationships or obligations on you, you must inform us of this. We may then decide, at our sole discretion (acting reasonably), to terminate the Contract immediately by notice in writing and we shall be entitled to serve that notice at any time.

**3. Services**

- 3.1 You will ensure that you make available adequate resources for the performance of the Services. You will only provide Personnel to perform the Services who possess the appropriate experience, skills and qualifications necessary to perform the Services.
- 3.2 In performing the Services, you will comply with all Rules and Regulations, including without limitation all environmental Rules and Regulations.
- 3.3 In performing the Services, we acknowledge that you will be entitled to rely on information provided to you by us and to assume that it is true, complete and not misleading. You shall not require to audit, test or verify information provided to you by us unless the description of the Services requires you to do so. You will not be responsible to us for any losses arising out of the provision to you of false, incomplete or misleading information by us.
- 3.4 Where you need the following to allow you to perform the Services, we will (i) use our reasonable endeavours to provide you with information that is in our possession, (ii) take decisions and obtain management approvals in as timely a manner as reasonably possible; (iii) give you reasonable access to our people and premises and to our other advisers associated with the engagement and (vi) inform you as soon as reasonably practicable if we become aware of any circumstances or events under our control which will or are likely to adversely impact the timeous provision of the Services.
- 3.5 During the Services, you may discuss your work with us orally and show us drafts of your Deliverables. In line with good industry practice, you will do this on the basis that we will not rely on any drafts or oral comments or advice unless their content is finalised and confirmed in the final Deliverables or formal letters of advice.
- 3.6 Unless otherwise stated in the Contract Documents, the Services will be performed for our sole benefit. If we are required by law to share your Deliverables with a third party, we will be entitled to do so without seeking your consent. You hereby irrevocably consent to us sharing your Deliverables with any other advisers or individuals who are engaged by us to provide services to us in connection with any matter in relation to which you are to provide Services.

- 3.7 Once we have accepted the final Deliverables, you will have no responsibility for updating them or to monitor their continuing suitability for our use unless the description of the Services requires you to do so.
- 3.8 If key personnel are specified in the Contract Documents, you will ensure that those key personnel perform the Services allocated to them in the Contract Documents. You will not make any change to such key personnel unless we have agreed (acting reasonably) to that change in writing.
- 3.9 If we ask, you will give us detailed programmes of the order in which you will provide the Services and how you will provide the Services. We may tell you in what order to provide the Services and you will comply with that request. If we ask, you will also give us progress reports on the carrying out of the Services within the timescales specified by us (acting reasonably) and will meet with us to discuss and review the Services provided.
- 3.10 If all or part of the Services are to be provided at the Premises we will be entitled to assume that you will be able to carry out the Services at the Premises. You will not be able to use the Premises as a reason for a failure or delay on your part to supply the Services.
- 3.11 If we ask, you will give us access to your premises (and ensure that we have access to the premises of your sub-contractors) to inspect them, and to observe work being performed there under the Contract. We will give you reasonable notice before making any such request, and will only ask for access during normal working hours.
- 3.12 You will comply with, and will ensure that all Personnel comply with, our [security policy](#) and any instructions we issue to you relating to security, [health, safety](#) or access to the Premises (including without limitation security clearance and the carrying, display and return of security passes).
- 3.13 We will not be liable for any costs or additional costs which arise because of any requirements we have under the Contract Documents.
- 3.14 If we ask, you will give us a list of the names and addresses of Personnel involved in performing the Services and the tasks which each person will be carrying out together with any other information or documents we may ask to see.
- 3.15 You will ensure that any Personnel working at the Premises only access those parts of the Premises where it is necessary for them to do so to perform the Services and then only at times when they are actually performing the Services.
- 3.16 You must get our permission before delivering to the Premises any materials, plant and equipment you will need to perform the Services. You will follow any instructions we give you about how, when and where materials, plant and equipment are to be delivered.
- 3.17 You will be responsible for the security of all the materials, plant and equipment you use in performing the Services. We will not be liable if any property belonging to you or Personnel is stolen, lost or damaged.
- 3.18 If we provide you with equipment or materials for you to perform the Services, those materials will still belong to us and you will keep such equipment and materials in good condition and use them only to perform the Services and for no other purpose.
- 3.19 If we ask for any equipment or materials to be returned, you will return any such material immediately in good working order, fair wear and tear excepted. You will bear any cost associated with returning such equipment or materials and/or returning them to good working order, fair wear and tear excepted. Such equipment and materials will be your responsibility and at your risk until we receive them.
- 3.20 If you have any equipment or materials belonging to us at the end of the Contract, you will return them to us immediately unless we tell you

in writing to dispose of them in some other way in which case you will comply with our instructions.

#### **4. Delivery and Title**

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- 4.1 You must tell us in advance if you need to enter our premises to provide the Services.
- 4.2 If in our reasonable opinion there are defective or missing Deliverables or Services then we may, at our option, (i) permit you at your cost to re-deliver defective or missing Deliverables and re-perform the Services within a specified time; (ii) require you at your cost to re-deliver defective or missing Deliverables and re-perform the Services within a specified time; or (iii) refuse to pay for such defective or missing Deliverables or Services.
- 4.3 Title to the physical elements of the Deliverables shall vest in us upon delivery.

#### **5. Price and Payment**

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- 5.1 The price for the Goods and/or Services shall be as stated in the Contract Documents and shall be deemed to be inclusive of all expenses and charges but exclusive of any and all VAT and/or other applicable taxes
- 5.2 No increase to the price may be made without our prior written consent.
- 5.3 When you have supplied the Services to our reasonable satisfaction you may submit invoices to us in accordance with the invoicing terms set out in the relevant Contract Award Letter. Where no invoicing terms are set out in the relevant Contract Award Letter and you have supplied the Services to our reasonable satisfaction, you may invoice us for the applicable price. We will pay valid, undisputed invoices within 30 days from receipt.
- 5.4 We may set off any amount owing at any time from you to us against the price of the Services payable by us to you.
- 5.5 We will pay interest on any amount properly due at 4 percent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time.
- 5.6 Invoices must be sent to the address specified in the Contract Documents. Each invoice must clearly identify the purchase order. If the purchase order is not clearly identifiable on the invoice the invoice may be returned to you without payment.
- 5.7 If any Value Added Tax is to be paid, you will show this separately.
- 5.8 You will maintain and you will ensure that your sub-contractors maintain complete and accurate records of the Services provided by you to us under the Contract including, without limitation, all payments made by us to you and by you to your sub-contractors for a minimum period of three years from the date of the last payment made by us to you. If we ask, you will give and you will ensure that your sub-contractors give us or our auditors access to and copies of your and your sub-contractors' records.

#### **6. Intellectual Property**

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- 6.1 You hereby grant us a perpetual, irrevocable, worldwide, royalty free, non-exclusive licence (with the right to grant sub-licences) to use the Background IP for the purpose of using and receiving the Deliverables, Services and Foreground IP.
- 6.2 You hereby grant to us a perpetual, irrevocable, worldwide, royalty free, exclusive licence (with the right to grant sub-licences) of the Foreground IP, with effect from the creation of such Foreground IP. You will, if we ask and at no additional charge to us, sign any document and do anything that we require to evidence or effect the licence granted to us in the previous sentence.
- 6.3 You warrant to us that neither the Background IP nor the Foreground IP, nor any use of any of them will infringe the Intellectual Property Rights of any third party.

## **7. Corrupt Gifts and Payments**

- 7.1 You must not do anything that gives or offers any kind of inducement or reward to any of our employees or contractors in relation to the Contract including, without limitation, offering any kind of corporate hospitality. Doing so may be a criminal offence.
- 7.2 You must comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

## **8. Equal Opportunities, Law and Regulation**

- 8.1 You must ensure that no applicant or employee receives less favourable treatment on the grounds of sex, marital status, disability, religion or belief, sexual orientation, colour, race or ethnic origins, or is unlawfully discriminated against or disadvantaged by any provision, criteria or practice which you apply which cannot be shown to be objectively justified. You will also make sure that anyone acting on your behalf and your employees and sub-contractors involved in the Contract do not do so either, and that those involved in the management or operation of the Contract receive appropriate training on equal opportunities legislation and associated good practice.
- 8.2 You must carry out appropriate monitoring of your equal opportunities policies and employment practices and provide us with evidence of this, if we ask.
- 8.3 You will take all reasonable steps to ensure that all Services supplied under this Contract are performed in accordance with all employment Rules and Regulations, and all International Labour Organisation conventions that have been ratified by the country of their origin, in particular (but without limitation) in relation to working conditions and the use of child labour.
- 8.4 Should part or all of the Services be performed at your premises, you will ensure that your premises comply fully with the requirements of the Equality Act 2010.
- 8.5 You must not commit any breach of any Law including, without limitation, (i) 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 (ii) any breach of Data Protection Law by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material breach which cannot be remedied and which shall entitle us to terminate the Contract at any time by written notice with immediate effect.

## **9. Termination**

- 9.1 We may tell you if we think you have breached any of your obligations or warranties under this Contract. If such a breach of contract is capable of remedy, we will give you an opportunity to remedy it to our satisfaction within 20 days.
- 9.2 If the breach cannot be remedied or if you fail to do so within the 20 days, we may terminate the Contract, in whole or in part, at any time by written notice.
- 9.3 If you believe that we have failed to pay a valid, undisputed invoice for sums properly due under the Contract, you should notify us in writing. We will have 30 days from receiving such notification to assess your claim and make payment if appropriate. If we have not paid your valid, undisputed invoice for sums properly due within 30 days of when we receive your written notification asking us to do so, you may terminate the Contract by written notice to us.
- 9.4 We may terminate the Contract immediately, in whole or in part, at any time, by written notice if:-
- 9.4.1 the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9)

(modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or

- 9.4.2 you have, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- 9.4.3 the Contract should not have been awarded to you in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union; or
- 9.4.4 you enter into any form of insolvency or bankruptcy proceedings or if we believe that you are unable to pay, or if you cease to pay, your debts as they fall due; or
- 9.4.5 you fail to comply with your obligations pursuant to Condition 2.7 above; or
- 9.4.6 you, as a result of any act or omission, in our sole opinion, cause damage or risk to our reputation

9.5 We may also terminate the Contract in the event of a failure by you to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.

9.6 The term of the Contract shall be the term set out in the Contract Documents but we may terminate the Contract, in whole or in part, at any time by giving you at least 30 days' notice in writing.

## **10. Consequences of Termination**

- 10.1 On termination or expiry of the Contract you will provide us with a report on the work you have carried out under the Contract. We will pay you on a pro rata basis for work that you have completed in accordance with the Contract unless we have terminated the Contract under Conditions 9.2, 9.4 or 9.5 above, and we will have no further loss or liability to you.
- 10.2 On termination or expiry of the Contract you will stop using and, at our option, deliver to us or destroy any confidential information of ours which you hold whether in paper or electronic form.
- 10.3 On termination or expiry of the Contract you will assist us with any handover to another supplier and/or us if we so request (acting reasonably) and at no extra charge to us.
- 10.4 If we terminate the Contract under Conditions 9.2, 9.4 or 9.5 or if you fail to provide the Deliverables or Services to our reasonable satisfaction, we may instruct somebody else to complete the contract.
- 10.5 If we do instruct somebody else to complete the Contract, we will not pay you any money until the Contract has been completed. We will be entitled to deduct sums that we have had to pay to somebody else to complete the Contract from the money we are due to pay to you. If we pay somebody else more to complete the Contract than we would have paid to you under the Contract, we will not pay you anything further and you will pay us the difference on demand.
- 10.6 Any provisions which expressly or by implication are intended to survive termination of this Contract including without limitation Conditions 4.2, 5.8, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21 and 22, will continue in force beyond termination, expiry, or the grant of a court order which renders all or part of the Contract ineffective.

## **11. Liability, Loss and Insurance**

- 11.1 Subject always to Condition 11.2, the aggregate liability of each party under this Contract for any

breach of the terms of this Contract, or otherwise in relation to the subject matter of this Contract (including without limitation that arising from negligence, delict, tort or otherwise) shall in no event exceed 125% of the price payable for Services pursuant to the Contract.

- 11.2 Neither party excludes or limits liability for death or personal injury arising from the breach of duty of such party, fraud or fraudulent misrepresentation, any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or any loss or corruption of data.
- 11.3 You will pay to us on demand the amount of any loss, costs and expenses which we incur as a result of your negligence, any breach by you of the Contract, any infringement of a third party's Intellectual Property Rights, or any damage to property or injury or death caused by you in the supply of the Services.
- 11.4 You will have in place at all times during the term of the Contract and for a period of 5 years after the end of the Contract insurance with a reputable insurance company at an adequate level of cover in respect of all risks which may be incurred under the Contract and professional indemnity insurance at the level specified in our invitation to tender. Such insurance must include cover in respect of any financial loss arising from any advice given or omitted to be given by you. You will show us evidence of such insurance when we request it.
- 11.5 If you are an individual you will, if we ask, provide us with evidence of your self-employed status. We are entitled to assume that you are self-employed, and you will make sure that we do not have to bear the cost of paying the Inland Revenue or any other Government Department any tax, national insurance or similar payments on the basis that you are not self-employed.

## **12. Confidential Information, Freedom of Information and Data protection**

### **Confidential Information**

- 12.1 Subject to any information specifically stated to be confidential information by us, the Contract and the Contract Documents will not be treated as confidential information and may be disclosed without restriction.
- 12.2 Subject to Conditions 12.1, 12.3, 12.4 and 12.5 and unless you and we agree otherwise, all information which either party obtains from the other party or which becomes known to the other party in connection with the Contract must be kept secret and only used by the party receiving the information to perform its obligations under the Contract or in the case of us, for the purposes set out in the Contract Documents or otherwise made known by us to you. This does not apply to information which is already known to the public, information which is already in the possession of or known to the receiving party and at its free disposal, information the disclosure of which is required by law or by a regulatory body which governs the activities of the receiving party or information which is disclosed to the receiving party by a third party without a breach of any confidentiality obligation by the third party towards the disclosing party.
- 12.3 Notwithstanding any other provision of the Contract, we may disclose all information submitted to us to our auditors, the Scottish Government or to any other public sector body. Such disclosure shall not be a breach of the Contract.
- 12.4 We may wish to disclose your confidential information to third parties as part of a competitive tender process for the future provision of all or part of the Services covered by the Contract. You hereby acknowledge and agree that we are entitled to disclose such information provided that such third parties sign up to confidentiality obligations no less onerous than we are subject to under this Condition 12.

### **Freedom of Information**

- 12.5 You acknowledge and agree that we may disclose information held by us in compliance with the

Freedom of Information (Scotland) Act 2002 (the "FOI Act") or any other legislation or as otherwise required by law. Such information may include, without limitation, information in relation to your response to our invitation to tender or invitation to quote (as applicable) or the Contract. Information held by us may only be withheld as a result of the exemptions in the FOI Act. Information held cannot automatically be classified as "confidential" or "commercial in confidence" to enable it to be protected from disclosure, regardless of the basis on which it was provided.

### **Data Protection**

- 12.6 We and you each agree to comply with the applicable requirements of Data Protection Law to the extent that they apply to our respective activities under the Contract.
- 12.7 Subject to Condition 12.8, we and you each agree that, for the purposes of Data Protection Law, any processing of Data shall be on a data controller to data controller basis.
- 12.8 Where we and you agree in the Contract Documents or otherwise in writing that you will process personal data on our behalf as a data processor, the following provisions of this Condition 12.6 through to 12.18 shall apply.
- 12.9 To the extent that you are a data processor, you shall:
- 12.9.1 process the Data only to the extent, and in such a manner, as is necessary for the Purpose, subject to and in accordance with our express written instructions from time to time.
- 12.9.2 except to the extent that you are required by law to retain any copies of any Data, upon the expiry or termination of the Contract you will deliver to us or destroy and/or permanently delete from your information technology systems all copies of any Data in your possession;
- 12.9.3 implement appropriate technical and organisational measures including the security measures set out in the Contract Documents or otherwise agreed by us with you in writing (the "**Security Measures**"), appropriate to the risks of processing the Data under the Contract against unauthorised or unlawful processing of the Data, and against accidental loss or destruction of or damage to the Data, to ensure compliance with Data Protection Law.
- 12.10 You shall :
- 12.10.1 comply with your obligations as a data processor under Data Protection Law in relation to the processing of personal data by you under the Contract;
- 12.10.2 keep such records and information as are necessary to demonstrate compliance with Data Protection Law in relation to the processing of Data under the Contract by both you and us (so far as possible) and promptly provide such records and information to us on request;
- 12.10.3 permit us (or any auditor appointed by us) or any supervisory authority to have access to your premises, personnel and records, on reasonable notice, for verifying compliance with Data Protection Law and the requirements of this Condition 12;
- 12.10.4 promptly take such steps as we request you to take, to ensure that the measures implemented under Condition 12.9.3 are sufficient to ensure our compliance with Data Protection Law; and

- 12.10.5 assist us to the extent reasonably required in responding to any relevant Data Subject Request; and
- 12.10.6 not transfer any of the Data outside the United Kingdom, except upon and in accordance with our express written instructions. We may require you to transfer the Data back to within the United Kingdom:
- (i) on giving not less than one month's notice in writing to that effect; or
- (ii) at any time in the event of a change in Law which makes it unlawful for the Data to be processed in the jurisdiction, outside the United Kingdom, where it is being processed;
- 12.10.7 ensure that the Data is processed only by employees, contractors or other personnel that are subject to an appropriate duty of confidentiality.
- 12.11 Notwithstanding the terms of the Contract, you may not:
- 12.12 sub-contract the performance of any of your obligations under this Condition (or otherwise authorise any third party to process the Data on your behalf); nor
- 12.13 sub-license the exercise of any of your rights under this Condition; nor
- 12.14 assign or otherwise transfer (as applicable) your rights and obligations under this Condition,
- in each case whether in whole or in part, without our prior written consent, which consent we may give or withhold in our entire discretion and, where given, be given subject to conditions.
- 12.15 You will promptly (and, in any event, no later than 12 hours after becoming aware of the breach or suspected breach) inform us in writing of any breach or suspected breach of any of your obligations in Condition 12.9.3 or of any other unauthorised or unlawful processing of any of the Data or any other loss or destruction of or damage to any of the Data ("Incident"). Such notification shall contain (at a minimum) such information as is required for us to discharge our responsibilities under Data Protection Law in relation to such Incident. You shall thereafter promptly (i) provide us with all such information as we request in connection with such Incident; (ii) take such steps as we require you to take to mitigate the detrimental effects of any such Incident on any of the Data Subjects and/or on us; and (iii) otherwise cooperate with us in investigating and dealing with such Incident and its consequences.
- 12.16 You shall indemnify us and keep us indemnified against any losses, costs, damages, awards of compensation, any monetary penalty notices or administrative fines for breach of Data Protection Law and/or expenses (including legal fees and expenses) suffered, incurred by us, or awarded, levied or imposed against us, as a result of any breach by you of its obligations under this Condition. Any limitations or exclusions of liability in the Contract shall not apply to this indemnity.
- 12.17 You shall comply with your obligations under this Condition at your own cost and expense.
- 12.18 For the avoidance of doubt, you acknowledge that unless a particular disclosure of Data is explicitly made as being on the basis of data controller to data processor, the Data disclosed under the Contract is made on a data controller to data controller basis.

#### Data Security

- 12.19 You will comply with our [procedures and policies](#) for the vetting of all Personnel whose role may involve the handling of information of a sensitive or

- confidential nature or the handling of information which is subject to any relevant security measures. You confirm that all Personnel employed or engaged by you at the start of the Contract were vetted and recruited on a basis that is equivalent to and no less strict than those procedures and policies.
- 12.20 You will not delete or remove any proprietary notices contained within or relating to our data.
- 12.21 You will ensure that any system on which you hold any of our data is a secure system that complies with our security policy. To the extent that our data is held and/or processed by you, you shall supply that data to us as requested by us and in the format specified by us. If we ask, you will perform secure back-ups of our data and shall ensure that up-to-date back-ups are stored off-site. You will ensure that such back-ups are available to us at all times and are delivered to us on request.
- 12.22 You will preserve the integrity of our data and prevent the corruption or loss of our data. If at any time you suspect or have reason to believe that our data has or may become corrupted, lost or degraded in any way, then you shall notify us immediately.
- 12.23 If our data is corrupted, lost or degraded as a result of any act or omission by you or any Personnel, we may require you, at your expense, (i) to restore or procure the restoration of our data and you shall do so as soon as practicable; and/or (ii) to restore or procure the restoration of our data ourselves, and you will repay us any reasonable expenses incurred in doing so.
- 12.24 You will on an ongoing basis use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete malicious software from your systems. If malicious software is found on any systems, you will co-operate with us to reduce the effect of the malicious software and assist us to mitigate any losses and to restore our data and systems and the Services to their desired operating efficiency. If the malicious software originates from your or your Personnel's systems then you will repay us all costs incurred by us in taking the aforementioned action.

#### **13. Employment Liabilities during the Contract**

- 13.1 You shall indemnify us and keep us indemnified on demand from and against any Losses arising out of or in connection with (i) the employment or engagement or the claimed employment or engagement and (ii) the termination of employment or engagement or the claimed termination of the employment or engagement, by you or any of your sub-contractors of any Personnel. This includes, without limitation, any Losses suffered by SE in connection with or arising out of any claim made at any time by any Personnel that he/she is, or was during the term of the Contract, employed by us or is, or was during the term of the Contract, a Worker (as defined by section 230(3) of the Employment Rights Act 1996) engaged by us and/or any claim arising from or connected to such actual or alleged employment status or Worker status. The indemnity in this Condition 13 shall not apply to any claim by any Personnel to transfer to the employment of SE or any New Supplier as contemplated by Condition 14.
- 13.2 Where you or any Personnel are liable to be taxed in the United Kingdom in respect of payment received under the Contract (either directly or indirectly as an employee or contractor), you shall and shall procure that all Personnel shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that payment.
- 13.3 Where you or any Personnel are liable to National Insurance Contributions in respect of payment received under the Contract (either directly or indirectly as an employee or contractor), you shall and shall procure that any Personnel shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to National Insurance Contributions in respect of that payment.

- 13.4 We may, at any time during the term of the Contract, request that you or any Personnel provide information which demonstrates how you or any Personnel comply with Conditions 13.2 and 13.3 above or why those Conditions 13.2 and 13.3 do not apply to you or any Personnel.
- 13.5 A request under Conditions 13.4 above may specify the information which you or any Personnel must provide and the period within which that information must be provided and you shall provide that information, and shall procure that the Personnel provide that information, within the requested timescale.
- 13.6 We may supply any information which we receive under Conditions 13.4 and 13.5 above to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible. You will ensure that all Personnel consent to the processing of their personal data for any of the above purposes.

#### **14. TUPE**

- 14.1 If, on the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract, any contract of employment or engagement of any current or former Personnel has effect, or is claimed by such Personnel to have effect, as if originally made between (i) SE and such person; and/or (ii) any New Supplier and such person by operation of TUPE or otherwise, then you shall pay us and any New Supplier the amount of Losses (whenever they are incurred, and whether or not such Losses are erroneous or unsuccessful) arising out of:
- 14.1.1 the employment or engagement; and/or
- 14.1.2 the claimed employment or engagement; and/or
- 14.1.3 the termination of the employment or engagement; and/or
- 14.1.4 the claimed termination of employment or engagement
- of any such Personnel prior to the date of a relevant transfer for the purposes of TUPE.
- 14.2 If we ask, you shall promptly enter into an appropriate agreement with any New Supplier on the same terms as those in Condition 14.1 in order to give effect to Condition 14.1 and you shall pay us the amount of any Losses which arise from a failure to do so, including without limitation any Losses which may arise under any agreement with or undertaking we give to any New Supplier which would give the New Supplier the benefit of Condition 14.1.

#### **15. Transfer Assistance**

- 15.1 During any Transfer Assistance Period, you shall not and you shall make sure that your sub-contractors do not, in each case without obtaining our written agreement in advance:-
- 15.1.1 materially change the rate of remuneration, hours to be worked or any other terms and conditions of employment or engagement of any Personnel;
- 15.1.2 replace or re-deploy any Personnel; or
- 15.1.3 materially increase the number of Personnel.
- 15.2 During any Transfer Assistance Period, you shall and you shall make sure that your sub-contractors shall: -
- 15.2.1 allow us (or such other person as we may specify) access to the Personnel for training or for any other purpose that we specify, within 7 days of our request for such access; and
- 15.2.2 do all such things as we may reasonably require to facilitate such access as intended under Condition 15.2.1 above; and

- 15.2.3 provide within 7 days of any request by us, details of the terms and conditions of employment of the Personnel and any other information which we may reasonably specify relating to the employment or engagement of the Personnel.

- 15.3 You shall and you shall ensure that your subcontractors shall, employ each member of Personnel on terms which permit disclosure of the information disclosable under Condition 15.2.3: -
- (i) to us; and/or
- (ii) by us to any New Supplier; and/or
- (iii) by us in any future invitation to tender or invitation to quote (as applicable) in respect of the Services;
- in each case without having to obtain any further consent.

#### **16. Business Continuity**

You will ensure that you and your sub-contractors have in place, maintain and, if required, implement plans and procedures to ensure business continuity, and no disruption to the provision of the Services, both in relation to general day-to-day disruptions and disaster recovery.

#### **17. General**

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

#### **18. Publicity**

- 18.1 You must agree with us in advance any press release or public intimation about the Contract and/or the Services that you make. We may make reference publicly to the Contract and to your provision of Services.

#### **19. Notices**

- 19.1 Any notice given under the Contract shall be in writing and be given by hand or sent by first class recorded delivery post. Notices shall be sent to the addresses shown in the Contract Documents. Either party can change its address for notices by telling the other in writing.
- 19.2 If sent to the correct address, notices shall be deemed given two business days after the date of posting. A business day is a day when we are open for business.

## 20. Assignment and Sub-contracting

- 20.1 You may sub-contract to those sub-contractors named in the Contract Documents but you are not allowed to sub-contract to anyone else or to transfer or assign the Contract or any of your rights or obligations under the Contract or any part of it. We may assign or novate the Contract in whole or in part.
- 20.2 If you sub-contract any work under the Contract, you will still be responsible to us for carrying out the Contract. We can take action against you if your sub-contractor does not do what it is meant to do.
- 20.3 Where you sub-contract any work under the Contract, you must ensure the sub-contract includes: -
- 20.3.1 a clause requiring you to pay your sub-contractor within 30 days of you receiving a valid invoice from your sub-contractor.
- 20.3.2 a right for you to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 9.4 occurs; and
- 20.3.3 a requirement that the sub-contractor includes a provision having the same effect as 20.3.2 above in any sub-contract that it awards.

In this Condition 20.3, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from SE in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

## 21. Governing Law

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

## 22. Definitions

In these terms and conditions certain words and phrases have defined meanings as set out below:

<b>"Background IP"</b>	means all Intellectual Property Rights owned by you and in existence prior to you first providing the Services to us;
<b>"Contract"</b>	means the contract for the supply of the Services made up of the Contract Documents and concluded between you and us;
<b>"Contract Award Letter"</b>	means a contract award letter issued by us in relation to the Services;
<b>"Contract Documents"</b>	means any Contract Award Letter, these terms and conditions, our invitation to tender referred to in the Contract Award Letter, your response to our invitation to tender and any clarifications to our invitation to tender and/or your response to our invitation

	to tender that are agreed in writing between you and us;
<b>"Data"</b>	means the personal data being processed by either you or us pursuant to the terms of the Contract and (where Condition 12.8 applies) identified in the Contract Documents;
<b>"Data Protection Law"</b>	means any Law relating to data protection and the processing of personal data from time to time under to the Contract, including: <ul style="list-style-type: none"> <li>(a) the Data Protection Act 2018;</li> <li>(b) the General Data Protection Regulation (EU) 2016/679;</li> <li>(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and</li> <li>(d) any legislation that, in respect of the United Kingdom, replaces, or enacts into United Kingdom domestic law, the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union;</li> </ul>
<b>"Data Subject"</b>	means an individual who is the subject of any of the Data. Where Condition 12.8 applies the categories of data subjects are as detailed in the Contract Documents;
<b>"Data Subject Request"</b>	means a written request made to us/received by us on behalf of a Data Subject to exercise any rights conferred by Data Protection Law'
<b>"Deliverables"</b>	means all reports, advice, memoranda and other products and materials created or developed by you or on your behalf in relation to or as a result of the Services;

<b>"Foreground IP"</b>	means all Intellectual Property Rights arising as a result of your provision of the Services to us;
<b>"Intellectual Property Rights"</b>	means any patent, trade mark (registered or unregistered), registered design, unregistered design right, copyright, database right, domain name, invention, know how or other similar right or any application for any of the foregoing;
<b>"Losses"</b>	means all costs, liabilities, losses, damages, claims, demands or expenses (including without limitation all legal and other professional fees and expenses) on a full indemnity basis;
<b>"Law"</b>	means any applicable Act of Parliament, Act of the Scottish Parliament, subordinate legislation, Scottish subordinate legislation, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any governmental or regulatory body;
<b>"New Supplier"</b>	means any person, firm, company or other entity which may on or following the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract, be engaged by us to provide all or any part of the Services or all or any part of services which formerly comprised the Services;
<b>"party" or "parties"</b>	means you and us;
<b>"Personnel"</b>	means any individual who is employed or engaged by you or a sub-contractor to provide all or part of the Services to us, including without limitation any key personnel, permanent or temporary employee, agency worker, temporary worker, sub-contractor or any personnel of a sub-contractor;
<b>"Premises"</b>	means the premises as set out in the Contract Documents and any other buildings or premises notified by us to you in writing from time to time;
<b>"Purpose"</b>	means the purpose or purposes for which the Data is to be processed as detailed in the Contract Documents;

<b>"Rules and Regulations"</b>	means all applicable legislation and regulations and standards and requirements set down under such legislation and regulations, including but not limited to the Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions and Benefits Act 1992;
<b>"SoSE", "we", "us" or "our"</b>	Means South of Scotland Enterprise Agency, established as a Body Corporate under the South of Scotland Enterprise Act 2019 and having its principal place of business at Carmont House, The Crichton, Bankend Road, Dumfries, DG1 4TA; ;
<b>"Security Measures"</b>	has the meaning given in Condition 12.9.3;
<b>"Services"</b>	means the services detailed in the Contract Documents which are to be supplied to us under the Contract;
<b>"Supplier" or "you"</b>	means you, the party to whom the relevant Contract Award Letter from SE is addressed;
<b>"Transfer Assistance Period"</b>	means the period beginning on the earliest of: - (i) the date that you or any of your sub-contractors become aware of the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract; and (ii) the date of us informing you of a re-tender in respect of the Services or any part thereof; and (iii) the date we give or receive notice of the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract; and (iv) the date 6 months prior to expiry of the Contract; and expiring on the date of the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract;
<b>"Treaties"</b>	in Condition 9.4.3 the Treaties has the meaning given in the European Communities Act 1972
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006

	and/or the Acquired Rights Directive 77/187, as the context dictates, both as amended, re-enacted or extended from time to time.
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