



CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

These Conditions may be varied only by the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. Definitions

- 1.1. In these Terms and Conditions the following words and expressions shall have the meanings set out below unless the context otherwise requires:-

'Assigned Employees' means the employees of the Supplier or any sub-contractor who are from time to time part of an organised grouping of employees which has as its principal purpose the performance of the Services.

'Changes' means any proposed amendment or variation to the Contract.

'Commencement Date' means the date detailed in the Specification for the commencement of the performance of the Services or the delivery of Goods.

'Conditions' means these Terms and Conditions between the Purchaser and the Supplier.

'Contract' means the contract between the Purchaser and the Supplier for the sale and purchase of the Goods and/or the supply and provision of the Services and which is constituted by the Specification and these Conditions.

'Employees' means the employees (if any) of the Purchaser and/or any Preceding Supplier who, immediately before the Commencement Date, are part of an organised grouping of employees which has as its principal purpose the carrying out of services which are materially similar to the Services.

'Employee Charges' means all liabilities, costs, expenses and outgoings in relation to each Employee including, but not limited to salaries, wages, bonus (even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments.

'Employee Liabilities' means any costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the Employees including negligence claims, unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay.

'Goods' means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors pursuant to or in connection with this Contract.

'Intellectual Property Rights' means any copyright and neighboring and related rights, patent, trade mark, service mark or trade name, design rights, database rights, utility models, rights to inventions, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights to use, and protect the confidentiality of, confidential information or any other similar right of whatever nature, whether registered or unregistered, present or future, together with any application and right to apply for and be granted, any renewals or extensions thereof, and rights to claim priority from, such rights and all similar rights or forms of protection which will subsist now or in future anywhere in the world.

'New Supplier' means any successor to the Supplier in the provision of services similar to the Services (or part thereof) to the Purchaser.

'Preceding Supplier' means means any person who provides to the Purchaser services which are materially similar to the Services, immediately prior to the Commencement Date.

'Premises' means the location where the Project is to be performed, as specified in the Specification.

'Project' means the services to be provided as specified in the Specification.

'Purchaser' means Robert Gordon University a body corporate incorporated under the Robert Gordon University (Establishment) (Scotland) Order 2006, a Scottish charity (charity number SC013781) and having its principal administrative office at Garthdee House, Garthdee Road, Aberdeen AB10 7QB, or any wholly owned or associated subsidiary of Robert Gordon University so named in the Specification.

'Re-transfer Date' means the date or dates on which the contracts of employment of the Re-transferring Employees transfer from the Supplier or any sub-contractor to the Purchaser or a New Supplier pursuant to the TUPE Regulations upon the cessation or partial cessation of provision of the Services by the Supplier or any sub-contractor.

'Re-transferring Employee Charges' means all liabilities, costs, expenses and outgoings in relation to each Re-transferring Employee including, but not limited to salaries, wages, bonus (even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments.

'Re-transferring Employee Liabilities' means any costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the Re-transferring Employees including negligence claims, unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay.

'Re-transferring Employees' means those employees of the Supplier or any sub-contractor who are part of an organised grouping of employees which has as its principal purpose the carrying out of the Services (or part thereof) immediately prior to the relevant Re-transfer Date.

'Supplier' means the person, firm or company to whom the Contract is issued.

'Services' means the services described in the Specification.

'Specification' means the document setting out the Purchaser's requirements for the Contract.

'Transfer Assistance Period' means the period (or periods) commencing on the earlier of (i) the date falling nine months before expiry of the Contract or (ii) the date when the Supplier becomes aware that it is to cease providing the Services (in whole or in part) and ending, in either case, on the relevant Re-transfer Date.

'TUPE Regulations' means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.

1.2. In interpreting these Conditions:-

- 1.2.1. headings are for ease of reference only and shall not affect the construction of these Conditions;
- 1.2.2. the words "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as limiting the generality of any preceding words; and
- 1.2.3. where reference is made to a statutory provision this includes any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations or other delegated or subordinate legislation made from time to time under it.

2. Basis of Purchase

- 2.1. The Specification constitutes an offer by the Purchaser to purchase the Goods and/or the Services subject to the terms of the Specification and these Conditions.
- 2.2. The terms of the Specification and these Terms and Conditions shall apply to and form part of the Contract to the exclusion of any terms and conditions referred to, offered, or stated to apply by the Supplier or which are implied by trade, custom, practice or course of dealing at any stage in the dealings between the Purchaser and Supplier with reference to the Goods and/or Services to which the Contract relates. If the Supplier's general, specific or standard terms and conditions contain the same or a similar over-riding provision, then this Condition 2.2 shall prevail.
- 2.3. Any amendment to the terms of the Specification and/or these Terms and Conditions shall be binding upon the Purchaser only if made by a written instrument expressly amending the Specification and/or these Conditions signed by a duly authorised representative of the Purchaser.

3. Specifications and Quality

- 3.1. The Supplier shall supply the Goods and/or Services:
 - 3.1.1. in accordance with the specifications and other requirements described in or attached to the Specification and these Conditions;
 - 3.1.2. using suitably experienced personnel who will carry out their duties with due diligence and in accordance with good industry practice, using materials of good construction and adequate strength which are free of defects in design, materials and workmanship and remain so for 12 months after delivery;
 - 3.1.3. in compliance with the express terms of the Contract and with the implied conditions, warranties and terms contained in the Sale of Goods Act 1979 (as amended) and related statutes and with any specification of the British Standards Institution (or equivalent) which is relevant to the Goods and/or Services at the time of Contract; and
 - 3.1.4. in compliance with all applicable statutes, regulations and/or legal requirements (including but not limited to: (i) the Criminal Finances Act 2017; (ii) the Modern Slavery Act 2015; and (iii) the Bribery Act 2010).
- 3.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry its obligations under the Contract.
- 3.3. The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.
- 3.4. The Supplier agrees that time is of the essence when supplying the Goods and/or Services.
- 3.5. In the event that the Supplier is providing consultancy services to the Purchaser:
 - 3.5.1. The Supplier shall provide the Purchaser with such reports of his work on the Project at such intervals in such form as the Purchaser may from time to time require.
 - 3.5.2. The Purchaser reserves the right by notice to the Supplier to modify the Purchaser's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 18.
 - 3.5.3. The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred by the Supplier or in connection with any

employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.

4. Personnel

- 4.1. The Supplier shall make available for the purposes of the Project any individuals named on the Specification as key personnel when requested by the Purchaser. The Supplier shall provide the Purchaser with a list of the names and addresses of all others regarded by the Supplier as key personnel and, if and when instructed by the Purchaser, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require. The Purchaser may at any time by notice to the Supplier designate any person concerned with the Project or any part of it as a key person. The Supplier shall not without the prior written approval of the Purchaser make any changes in the key personnel referred to in this paragraph.
- 4.2. The Supplier shall take the steps reasonably required by the Purchaser, to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Supplier shall take all reasonable steps to comply with such notice.
- 4.3. The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key personnel and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 4.4. The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition 4.

5. Variations

- 5.1. The Supplier shall not alter or provide goods and/or services different from any of the Goods and/or Services, except as expressly directed in writing by the Purchaser. The Purchaser shall have the right, from time to time during the execution of the Contract, by amendment to the Contract in accordance with Condition 2.3 to direct the Supplier to add to or omit, or otherwise vary, the Goods and/or Services, and the Supplier shall carry out such additions, omissions or variations and be bound by the same conditions, so far as applicable, as though the said additions, omissions or variations were stated in the Specification and/or these Conditions.
- 5.2. Where any such variation of the Services made in accordance with Condition 5.1 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has

had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

6. Delivery, Packaging and Marking

- 6.1. The Goods shall be delivered to and the Services shall be performed: (i) at the Premises; (ii) on the date, milestone or within the period stated in the Specification; and (iii) during the Purchaser's usual business hours or such other dates and/or period as may be agreed in writing by the Purchaser. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall **indemnify** the Purchaser in respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.
- 6.2. Where any access to the premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with the reasonable requirements of the Purchaser.
- 6.3. The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at the Purchaser's option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Purchaser's other rights and remedies.
- 6.4. If Goods are incorrectly delivered the Seller will be responsible for any additional expense incurred in delivering them to the correct address.
- 6.5. If the Purchaser arranges for delivery of the Goods and/or Services the Supplier shall pay the Purchaser's reasonable costs and expenses of delivery of such Goods and/or Services.
- 6.6. If the Goods are to be delivered or the Services are to be performed by instalments the Contract will be treated as a single contract and not severable. Failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Purchaser to the remedies set out at Conditions 9 and 18.
- 6.7. In the event that Goods are to be supplied to the Purchaser, the Supplier shall ensure that:
 - 6.7.1. each delivery of the Goods is accompanied by a delivery note which shows:
 - (i) the date of the Specification; (ii) the number of the Specification (if any); (iii) the type and quantity of the Goods; (iv) special storage

instructions (if any); and (v) if the Goods are being delivered by installments, the outstanding balance of the Goods remaining to be delivered;

- 6.7.2. all Goods supplied against the Contract are adequately protected against damage and deterioration in transit and delivered carriage paid;
- 6.7.3. any information relating to the handling of Goods upon receipt shall be clearly marked in English on the exterior packaging and accompanying paperwork;
- 6.7.4. unless otherwise expressly provided in the Specification, all returnable packaging is collected and disposed of at no cost to the Purchaser; and
- 6.7.5. the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

7. Property and risk

- 7.1. Subject to Condition 7.2, property and risk in the Goods shall pass to the Purchaser immediately after delivery has been satisfactorily effected, provided that such passing of property and risk shall not prejudice either the Purchaser's right to reject the Goods pursuant to Conditions 8 or 9 or any other rights that the Purchaser may have under the Contract.
- 7.2. Where advance or progress payments are made by the Purchaser, property, but not risk, shall pass to the Purchaser as soon as the first of such advance or progress payment(s) has been made. All items paid for by the Purchaser prior to delivery by the Supplier shall be adequately marked and recorded as being the property of the Purchaser.
- 7.3. On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:
 - 7.3.1. in the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;
 - 7.3.2. in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

8. Installation, Testing and Guarantee

- 8.1. Where the Services include installation of any Goods, the Supplier shall install the relevant Goods at the Premises or such other location as the Purchaser may direct.
- 8.2. On installation the Supplier shall carry out in the presence of the Purchaser or its representatives:-

- 8.2.1. general tests specified by the Purchaser in order to verify that the Goods are working in accordance with the applicable specification for such Goods; and
 - 8.2.2. any tests in respect of such Goods specified in the Specification.
- 8.3. If the Goods (or any part thereof) fail the tests referred to in Condition 8.2 then the Supplier shall forthwith implement free of charge such alterations or modifications to or replacements of the Goods as it shall in the circumstances reasonably judge necessary and in sufficient time to allow the repetition of the tests within seven (7) days of the date of failure. The Supplier shall not be entitled to charge the Purchaser for the cost of attendance by its staff, Suppliers and/or sub-contractors at any such tests or any repeat tests.
- 8.4. If the Goods (or any part thereof) fail the repeat tests then the Purchaser shall have the right to reject the Goods in whole or in part.
- 8.5. The Purchaser or the Purchaser's authorised representative may inspect and test the Goods at any time before delivery and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 8.6. The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

9. Right of rejection

- 9.1. In the case of Goods and/or Services delivered against the Contract by the Supplier not conforming whether by reason of not being of the quality, or the quantity or fit for the purpose specified in the Specification, then without limiting any of its other rights or remedies, the Purchaser shall have the right to reject any or all such Goods and/or Services within a reasonable time of their delivery. Upon rejection property and risk in the rejected Goods shall revert to the Seller. Further, where the Purchaser receives Goods as unexamined the Purchaser's rights to subsequently reject them if any latent defect is found shall not be prejudiced nor shall any right of claim for shortage be prejudiced.
- 9.2. Subject to Condition 8, where goods are rejected the Purchaser will afford the Supplier reasonable opportunity to replace rejected Goods and/or Services with Goods and/or Services which conform in all respects to the requirements specified

in the Specification. If the Supplier fails for whatever reason to meet all or any the aforementioned requirements then the Purchaser shall have the right to procure equivalents elsewhere without prejudice to any other rights or remedies which the Purchaser may have against the Supplier.

- 9.3. The making of payment (either in whole or in part) shall not prejudice the Purchaser's right of rejection. The Supplier shall pay to the Purchaser, forthwith on receipt of notice (whether in writing or otherwise) from the Purchaser that the Purchaser has rejected the Goods and/or Services, in full any amounts paid by the Purchaser in respect of rejected Goods and/or Services.
- 9.4. Purchaser's rights and remedies under this Condition 9 are in addition to its rights and remedies implied by statute and common law.
- 9.5. Any Goods rejected or returned by the Purchaser as described in Conditions 9.1 or 9.2 shall be returned to the Supplier at the Supplier's risk and expense.

10. Prices

The price of the Goods and/or Services shall be as stated in the Specification and, unless specifically agreed otherwise, all prices shall be firm and fixed and no variation of price nor reconciliation of costs shall be permitted for the duration of the Contract, inclusive of carriage, packaging, installation and certification (where required) but exclusive of VAT.

11. Payment

- 11.1. Provided the Goods: (i) have been delivered or the Services have been performed on the date, milestone or within the period stated in the Specification; and (ii) comply with the requirements of the Contract to the reasonable satisfaction of the Purchaser, then, unless otherwise agreed, payment shall be made by the Purchaser 30 days after the invoice is received or all of the Goods are delivered or the performance of the Services is completed, whichever is the later.
- 11.2. Each invoice shall quote: (i) the number of the Specification; (ii) the date of the Specification; (iii) the invoice number; (iv) the Supplier's VAT number; and (v) any supporting documents that the Purchaser may require. Payment may be delayed but no prompt discount shall be forfeited by the Purchaser, if the Supplier fails to mark the Specification number on the consignment, package, packing or advice notes, invoices, monthly statements and all other correspondence.
- 11.3. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 11.4. Any payment made shall be without prejudice to the Purchaser's rights to reject the Goods and/or Services pursuant to Conditions 8 or 9 as applicable.
- 11.5. The Purchaser may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier.

- 11.6. Notwithstanding Condition 25 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 11.5 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

12. Intellectual Property Rights

- 12.1. The Supplier shall indemnify and keep indemnified the Purchaser in full and on demand against all liabilities, damages, actions, suits, claims, demands, losses, charges, costs and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional cost and expenses) which the Purchaser may suffer or incur as a result of or in connection with any claim made against the Purchaser that the Goods and/or Services infringe or allegedly infringe the Intellectual Property Rights of any third party.
- 12.2. Where the Services include the creation, development or otherwise of Intellectual Property Rights by the Supplier for the Purchaser, the Purchaser shall own all such Intellectual Property Rights. The Supplier hereby assigns to the Purchaser absolutely with full title guarantee all its property, right, title and interest in such Intellectual Property Rights, including: (i) all statutory and common law rights (including but not limited to the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief in respect of any infringement); (ii) the absolute entitlement to any registration of the Intellectual Property Rights; and (iii) all goodwill attaching to the Intellectual Property Rights. At the request of the Purchaser, the Supplier shall execute and deliver all such further documents and forms and perform such acts as may be required for the purpose of giving full effect to this Condition.
- 12.3. The Supplier acknowledges that all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier ('**Purchaser Materials**') and all rights in the Purchaser Materials are and shall remain the exclusive property of the Purchaser. The Supplier shall keep the Purchaser Materials in safe custody at its own risk, maintain them in good condition until returned to the Purchaser and not dispose or use the same other than in accordance with the Purchaser's written instructions or authorisation.
- 12.4. This Condition 12 shall survive termination of the Contract.

13. Confidential Information

- 13.1. For the purposes of this Condition, "**Information Legislation**" means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

- 13.2. The Supplier shall keep all information provided by the Purchaser, its employees, agents or sub-contractors in strict confidence and use such information only for the purposes of fulfilling the Contract. The Supplier shall only disclose such confidential information to those of its employees, agent and sub-contractors who need to know it for the purposes of fulfilling the Contract, and shall ensure that such employees, agents and sub-contractors comply with the obligations set out in this Condition as though they were a party to the Contract. If the Supplier is required to disclose the confidential information by law, any governmental or regulatory authority or by a court of competent jurisdiction, the Supplier must first inform the Purchaser of the legal or regulatory requirement and give the Purchaser an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- 13.3. The Supplier acknowledges that the Purchaser is subject to the requirements of the Information Legislation. The Supplier will provide such assistance and co-operation as the Purchaser may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation including (although not only) by providing the Purchaser with a copy of any information which it is holding on behalf of the Purchaser in the form that the Purchaser specifies within seven (7) days of a request from the Purchaser to that effect.
- 13.4. The Purchaser will be entitled to determine at its absolute discretion whether to disclose upon request or otherwise publish any information under the Information Legislation, including (although not only) any information provided to it by the Supplier or which relates in any way to the Supplier or the Contract. In particular the Purchaser will be entitled to determine at its absolute discretion whether it is required to disclose upon request or otherwise publish any information under the Information Legislation, or whether, even if it is not required to disclose upon request or otherwise publish that information under the Information Legislation, it would nevertheless be in the public interest to do so.
- 13.5. Without affecting Condition 13.4, the Purchaser will use reasonable endeavours to consult with the Supplier in accordance with the Scottish Ministers' code of practice on the discharge of functions by public bodies under any of the Information Legislation (and/or any subsequent guidance issued by the Scottish Ministers which amends or replaces that code of practice), before disclosing or otherwise publishing under the Information Legislation any information provided to it by the Supplier or which relates in any way to the Supplier or the Contract.
- 13.6. This Condition 13 shall survive termination of the Contract.

14. Data Protection

- 14.1. Both parties will comply with all applicable requirements of the Data Protection Act 2018 (or any successor legislation) and Regulation (EU) 2016/679 General Data Protection Regulation (and any other directly applicable European Union regulation relating to privacy) (the "Data Protection Legislation"). This Condition is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 14.2. Without prejudice to the generality of Condition 14.1, the Purchaser will ensure that an appropriate lawful basis for the processing of Personal Data is identified,

including where necessary gaining appropriate consents and notices, to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.

- 14.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The Supplier shall process Personal Data (as defined in the Data Protection Legislation) on behalf on the Purchaser in accordance with these Conditions.
- 14.4. The data controller retains control of the personal data and remains responsible for its compliance obligations under the Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to the data processor.
- 14.5. Without prejudice to the generality of Condition 14.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
 - 14.5.1. process that Personal Data only on the written instructions of the Purchaser;
 - 14.5.2. 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;
 - 14.5.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 14.5.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled: (i) the Purchaser or the Supplier has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) the Supplier complies with reasonable instructions notified to it in advance by the Purchaser with respect to the processing of the Personal Data;
 - 14.5.5. assist the Purchaser, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 14.5.6. notify the Purchaser immediately on becoming aware of a Personal Data breach;
 - 14.5.7. at the written direction of the Purchaser, delete or return Personal Data and copies thereof to the Purchaser on termination of the Contract unless required by Data Protection Law to store the Personal Data; and
 - 14.5.8. maintain complete and accurate records and information to demonstrate its compliance with this Condition and allow for audits by the Purchaser or the Purchaser's designated auditor.
- 14.6. The data processor agrees that the technical and organisational measures referred

to in Condition 14.5 above shall ensure a level of security appropriate to the risk, taking into account:

- 14.6.1. the state of the art, the costs of implementation;
 - 14.6.2. the nature, scope, context and purposes of processing and risks of varying likelihood; and
 - 14.6.3. severity for the rights and freedoms of individuals.
- 14.7. The data processor agrees that the technical and organisational measures to be implement by it and as referred to in Condition 14.5 above shall include, as appropriate:-
- 14.7.1. pseudonymisation and encryption of personal data;
 - 14.7.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 14.7.3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
 - 14.7.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 14.8. The data processor will indemnify, keep indemnified and defend at its own expense the data controller on demand from and against any costs, claims, damages, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the data controller as a result of any failure or breach by the data processor or its employees, sub-contractors, or agents to comply with its obligations under the Data Protection Legislation or this Condition 14.
- 14.9. The Supplier may only authorise a third party (sub-contractor) to process the Personal Data if:
- 14.9.1. the Purchaser provides prior written consent prior to the appointment of each sub-contractor;
 - 14.9.2. the Supplier enters into a written contract with the sub-contractor that contains terms substantially the same as those set out in these Conditions, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Purchaser's written request, provides the Purchaser with copies of such contracts;
 - 14.9.3. the Supplier maintains control over all Personal Data it entrusts to the sub-contractor; and
 - 14.9.4. the sub-contractor's contract terminates automatically on termination of the Contract for any reason.
- 14.10. The Purchaser may, at any time on not less than 30 days' notice, revise this Condition by replacing it with any applicable controller to processor standard Conditions or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to these Conditions).
- 14.11. In the event the consultancy services are to be provided to the Purchaser, the Supplier must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection

Legislation by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.

15. Safety

- 15.1. In accordance with the requirements of the Health and Safety at Work Act etc. 1974 (as amended) any safety precautions required for the handling of the material covered by the Contract are to be clearly indicated on each consignment.
- 15.2. Hazardous goods must be marked in accordance with European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures. All risk and safety warnings and phrases must be in English.
- 15.3. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Supplier shall observe the requirements of U.K. and international agreements relating to the packing, labelling and carriage of hazardous goods.
- 15.4. Hazard data sheets must be supplied with the delivery for all hazardous materials, and the information contained in the data sheets must meet the legal requirements of the Health and Safety at Work etc. Act 1974 (as amended) and European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures.
- 15.5. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 15.

16. Spares, Usage and Storage

- 16.1. Without prejudice to any rights that the Purchaser may have under the Contract or by statute, common law or otherwise, the Supplier shall, where necessary during the twelve month period from the date of the Contract, supply and fit, free of charge, new spare parts required for the purposes of repair of the Goods.
- 16.2. The Supplier shall ensure that, where applicable, compatible electro-mechanical spares to effect repairs are also made available to the Purchaser, if required, for a period of 7 years from the date of the Contract or such other period as is specified in the Specification.
- 16.3. The Supplier shall ensure that adequate instruction is given to the Purchaser to ensure proper use and storage requirements of the Goods, and shall notify the anticipated life expectancy of any item, whether in storage or in use. The Purchaser's rights, whether under the Contract or by statute, common law or otherwise, will not be prejudiced simply by the Supplier's specification of a supposed life expectancy of any item.

17. Indemnity

- 17.1. Without prejudice to any rights or remedies of the Purchaser, the Supplier shall indemnify and keep indemnified the Purchaser in full and on demand against all

liabilities, damages, actions, suits, claims, demands, losses, charges, costs and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional cost and expenses) which the Purchaser may suffer, or incur, as a result of, or in connection with:

- 17.1.1. any damage to the Purchaser's and third parties' properties, or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods and/or Services, or the negligent or wrongful act or omission of the Supplier or its sub-contractors, employees, agents, representatives or Suppliers; and
- 17.1.2. any claim made against the Purchaser by a third party arising out of or in connection with the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier or its sub-contractors, employees, agents, representatives or Suppliers.
- 17.2. The Supplier shall maintain in force, with a reputable insurance company, a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.
- 17.3. The Supplier shall ensure that any sub-contractors also maintain adequate insurance having regard to the obligation at condition 17.2 as if they were the Supplier.
- 17.4. Where the Supplier is an individual providing consultancy services:
 - 17.4.1. The Supplier represents that the Supplier is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Purchaser against any tax, national insurance contributions or similar impost for which the Purchaser may be liable in respect of the Supplier by reason of this Contract;
 - 17.4.2. The Supplier shall effect with an insurance company or companies acceptable to the Purchaser a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Supplier contained in this Contract in the sum of £1 million at least in respect of any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing; and
 - 17.4.3. If requested by the Purchaser, the Supplier shall produce to the Purchaser the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.
- 17.5. This Condition 17 shall survive termination of the Contract.

18. Cancellation

- 18.1. Any time or period for delivery dispatch or completion specified in the Specification or otherwise agreed in writing by the Purchaser and the Seller shall be of the essence.

18.2. Without prejudice to Condition 17.5, the Purchaser shall be entitled to cancel the Specification in respect of all or part only of the Goods and/or Services at any time prior to delivery of the Goods and/or performance of the Services in which event the Purchaser's sole liability to the Supplier shall be to pay to the Supplier the price for the Goods and/or Services to the extent already supplied or performed and to reimburse the Supplier for any reasonable sums due by the Supplier to a third party in respect of Goods and/or Services for which the Purchaser has exercised its right of cancellation which cannot be avoided by the Supplier.

18.3. The Purchaser shall be entitled to cancel the Contract or any part thereof, without prejudice to any other remedy the Purchaser may have, by giving written notice to the Supplier if :-

18.3.1. the Purchaser has rejected Goods pursuant to Conditions 8 or 9 above; or

18.3.2. there is a material breach by the Supplier of any term of the Specification and/or these Conditions which cannot be remedied or, if remediable, is not remedied within thirty (30) days of that party being requested in writing to do so; or

18.3.3. the Supplier takes any step or action in connection with the Supplier being made bankrupt, having a receiver appointed to any of its assets, making any arrangement with its creditors or ceasing to carry on business, or the Purchaser has reasonable grounds to believe that any of the foregoing events is about to occur in relation to the Supplier; or

18.3.4. the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or agreement with creditors (other than in relation to a solvent restructuring), being wound up (whether voluntary or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or the Purchaser has reasonable grounds to believe that any of the foregoing events is about to occur in relation to the Supplier; or

18.3.5. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

18.3.6. the Supplier's financial position deteriorates to such an extent that in the Purchaser's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

18.3.7. the Supplier suffers or permits a change of control (within the meaning of Section 1124 of the Corporation Tax Act 2010).

In the event of cancellation for any of the foregoing reasons the Purchaser shall not be liable for any unfulfilled commitment under the Contract.

18.4. Termination of the Contract, however arising, shall not affect any of the Purchaser's rights and remedies that have accrued as at termination.

18.5. Conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

18.6. On the occurrence of any of the events described in Condition 18.3, or if the Supplier shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days

of being required by the Purchaser in writing to do so, or, where the Supplier is an individual, if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.

- 18.7. In addition to the rights of termination under Condition 18.6, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 7 days' notice to that effect. In the event of such termination, the Supplier shall, if required to do so by the Purchaser, prepare and submit to the Purchaser a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.
- 18.8. Cancellation under Conditions 18.6 or 18.7 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 12 and 14.11.
- 18.9. Cancellation under this Condition 18 requires that the Supplier returns to the Purchaser promptly any document, paper, material or information supplied by or obtained from the Purchaser or any Government Department in connection with the Contract, or extracted from such documents, papers, materials or information.
- 18.10. Where the Contract has been terminated pursuant to Condition 18.3, the Supplier may retain any documents papers, materials or information which shall be required by the Supplier to prepare any report required under that Condition. Promptly upon submission of the report to the Purchaser, the Supplier will return any documents, papers, materials or information which the Supplier may have retained in terms of this Condition.

19. Free-issue materials

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

20. Anti-facilitation of tax evasion

20.1. The Supplier shall:

20.1.1. not engage in any activity, practice or conduct which would constitute either:

20.1.1.1. a UK tax evasion facilitation offence within the meaning of section 45(5) of the Criminal Finances Act 2017; or

- 20.1.1.2. a foreign tax evasion facilitation offence within the meaning of section 46(5) of the Criminal Finances Act 2017.
 - 20.1.2. have and shall maintain in place throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with this Condition; and
 - 20.1.3. promptly report to the Purchaser any request or demand from a third party to facilitate a UK tax evasion offence or foreign tax evasion offence within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract.
- 20.2. The Supplier shall ensure that any person associated with the Supplier who is performing services and/ or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition.
- 20.3. Breach of this Condition shall be deemed a material breach of contract and shall allow the Purchaser to terminate by written notice with immediate effect.

21. Compliance with anti-slavery and human trafficking laws

- 21.1. In performing its obligations under the Contract, the Supplier shall:
 - 21.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of the Purchaser from time to time in force including the Modern Slavery Act 2015; and
 - 21.1.2. have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance;
 - 21.1.3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 21.1.4. include in its contracts with its sub-contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Condition.
- 21.2. The Supplier represents and warrants that at the date of the Contract:
 - 21.2.1. neither the Supplier nor any of its officers, employees or other persons associated with it:
 - 21.2.1.1. has been convicted of any offence involving slavery and human trafficking; and
 - 21.2.1.2. having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 21.3. The Supplier shall implement due diligence procedures for its sub-contractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

- 21.4. The Supplier shall notify the Purchaser as soon as it becomes aware of actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- 21.5. The Supplier shall:
- 21.5.1. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser in connection with this Contract; and
 - 21.5.2. permit the Purchaser and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Condition, to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this Condition.
- 21.6. The Supplier shall implement a system of training for its employees and sub-contractors to ensure compliance with anti-slavery and human trafficking laws. The Supplier shall keep a record of all training offered and completed by its employees and sub-contractors to ensure compliance with anti-slavery and human trafficking laws and shall make a copy of the record available to the Purchaser on request.
- 21.7. The Supplier shall indemnify the Purchaser against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against, the Purchaser as a result of any breach of Anti-slavery laws.
- 21.8. The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery laws.
- 21.9. The Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of the provisions of this Condition 21.

22. Force majeure

The Purchaser shall not be in breach of the Contract nor liable for delay in performing, or failure to perform any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its control such as but not limited to any dispute, fire, explosion, accident, act of terrorism or Brexit. In such circumstances, the Purchaser shall have the right to: (i) suspend the Contract until such circumstances have ceased; or (ii) terminate the Contract by giving 14 days written notice to the Supplier.

23. TUPE

The parties acknowledge and agree that the Transfer Regulations are not intended to apply to any person as a consequence of the commencement or termination, in whole or in part, of this Agreement or the provision of the Services.

24. Dispute Resolution

- 24.1. The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 24.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be in English.
- 24.3. Any arbitration under Condition 24 is subject to the Arbitration (Scotland) Act 2010.

25. Assignment and sub-contracting

- 25.1. The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.
- 25.2. No sub-contracting by the Supplier shall in any way relieve the Supplier of any of the Supplier's responsibilities under the Contract.
- 25.3. Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser immediately when issued.
- 25.4. Where the Supplier enters into a sub-contract must ensure that a provision is included which:
 - 25.4.1. requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;
 - 25.4.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and
 - 25.4.3. in the same terms as that set out in this Condition 25.4 (including for the avoidance of doubt this Condition 25.4.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

26. No waiver

No failure or delay by the Purchaser in exercising any right or remedy under the Contract or by law shall operate as a waiver of such right or remedy nor shall it prevent or restrict the further exercise of that right or remedy. No single or partial exercise or waiver of any such right or remedy preclude its further exercise or the exercise of any other right or remedy.

27. Severability

If any provision or part-provision of these Conditions and/or the Specification becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the remaining provisions and parts of these Conditions and/or the Specification.

28. Third Party Rights

Unless it expressly states otherwise, these Conditions do not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of these Conditions.

29. Governing Law

The Contract shall be governed by and construed in accordance with Scots Law and the Supplier thereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings by the Purchaser in any one or more jurisdiction preclude the taking of proceedings by the Purchaser in any other jurisdiction, whether concurrently or not.

SUPPLEMENTARY NOTICE

1. Protecting the Environment

Suppliers to The Robert Gordon University are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2. Late Payment of Invoices

Suppliers to The Robert Gordon University are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Director of Finance, Central Services Building, Garthdee Road, Aberdeen, AB10 7FY. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

SCHEDULE

1. Personal Data Processing Purposes and Details

Subject matter of processing:

Duration of processing:

Nature of processing:

Business purposes:

Personal data categories:

Data subject types:

: Identify the data processor's legal basis for processing personal data outside the EEA in order to comply with cross-border transfer restrictions (select one):

- Located in a country with a current determination of adequacy (list country):
_____.

- Binding Corporate Rules.

- Standard Contractual Clauses between data controller as "data exporter" and processor as "data importer".

- Standard Contractual Clauses between data processor as "data exporter" on behalf of data controller and affiliate or subcontractor as "data importer".

- EU-US Privacy Shield Certified.

- Other _____ (describe _____ in detail):_____.

2. [Please complete if personal data is being transferred to a data processor]

Standard Contractual Clauses (controller-to-processor transfers)

Between

(name)

(address and country of establishment)
hereinafter "data exporter"

and

Between

(name)

(address and country of establishment)
hereinafter "data importer"

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in *Annex A*.

Definitions

For the purposes of the Clauses:

1. **personal data, special categories of data, process/processing, controller, processor, data subject and supervisory authority** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data;
2. **the data exporter** means the controller who transfers the personal data;
3. **the data importer** means the processor who agrees to receive from the data exporter personal data intended for processing on its behalf after the transfer in accordance with its instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
4. **the sub-processor** means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of

the data exporter after the transfer in accordance with its instructions, the terms of the Clauses and the terms of the written subcontract;

5. **the applicable data protection law** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
6. **technical and organisational security measures** means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

1. **Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in *Annex A* which forms an integral part of the Clauses.

2. **Third-party beneficiary clause**

- 2.1. The data subject can enforce against the data exporter this [Clause 3](#), [Clause 4\(b\)](#) to [Clause 4\(i\)](#), [Clause 5\(a\)](#) to [Clause 5\(e\)](#) and [Clause 5\(g\)](#) to [Clause 5\(j\)](#), [Clause 6.1](#) and [Clause 6.2](#), [Clause 7](#), [Clause 8.2](#) and [Clause 9](#) to [Clause 12](#) as third-party beneficiary.
- 2.2. The data subject can enforce against the data importer this [Clause 3.2](#), [Clause 5\(a\)](#) to [Clause 5\(e\)](#) and [Clause 5\(g\)](#), [Clause 6](#), [Clause 7](#), [Clause 8.2](#) and [Clause 9](#) to [Clause 12](#), in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
- 2.3. The data subject can enforce against the sub-processor this [Clause 3.3](#), [Clause 5\(a\)](#) to [Clause 5\(e\)](#) and [Clause 5\(g\)](#), [Clause 6](#), [Clause 7](#), [Clause 8.2](#), and [Clause 9](#) to [Clause 12](#), in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 2.4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

3. **OBLIGATIONS OF THE DATA EXPORTER**

The data exporter agrees and warrants:

- 3.1. that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions

of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

- 3.2. that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- 3.3. that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in *Annex B* to this contract;
- 3.4. that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- 3.5. that it will ensure compliance with the security measures;
- 3.6. that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- 3.7. to forward any notification received from the data importer or any sub-processor pursuant to [Clause 5\(b\)](#) and [Clause 8.3](#) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- 3.8. to make available to the data subjects upon request a copy of the Clauses, with the exception of *Annex B* and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- 3.9. that, in the event of sub-processing, the processing activity is carried out in accordance with [Clause 11](#) by a sub-processor providing at least the same level of protection for the personal data and the rights of data subjects as the data importer under the Clauses; and
- 3.10. that it will ensure compliance with [Clause 4\(a\)](#) to [Clause 4\(i\)](#).

4. **Obligations of the data importer**

The data importer agrees and warrants:

- 4.1. to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such

compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- 4.2. that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- 4.3. that it has implemented the technical and organisational security measures specified in *Annex B* before processing the personal data transferred;
- 4.4. that it will promptly notify the data exporter about:
 - 4.4.1. any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
 - 4.4.2. any accidental or unauthorised access; and
 - 4.4.3. any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- 4.5. to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- 4.6. at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- 4.7. to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of *Annex B* which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- 4.8. that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- 4.9. that the processing services by the sub-processor will be carried out in accordance with [Clause 11](#); and

- 4.10. to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

5. **Liability**

- 5.1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in [Clause 3](#) or in [Clause 11](#) by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 5.2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or its sub-processor of any of their obligations referred to in [Clause 3](#) or in [Clause 11](#) because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

- 5.3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in [Clause 3](#) or in [Clause 11](#) because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

6. **Mediation and jurisdiction**

- 6.1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - 6.1.1. to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - 6.1.2. to refer the dispute to the courts in the Member State in which the data exporter is established.
- 6.2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

7. **Cooperation with supervisory authorities**

- 7.1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
- 7.2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
- 7.3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in [Clause 5\(b\)](#).

8. **Governing law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely

.....

9. **Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

10. **Sub-processing**

- 10.1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
- 10.2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in [Clause 3](#) for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of [Clause 6](#) against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses
- 10.3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely

.....

- 10.4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to [Clause 5\(j\)](#), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

11. Obligation after the termination of personal data processing services

- 11.1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 11.2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full):

.....

Position:

.....

Address:

.....

Other information necessary in order for the contract to be binding (if any):

.....

Signature

.....

(Stamp of organisation)

On behalf of the data importer:

Name (written out in full):

.....

Position:

.....

Address:

.....

Other information necessary in order for the contract to be binding (if any):

.....

Signature

.....

(Stamp of organisation)

ANNEX A - to the Standard Contractual Clauses

This Annex forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this *Annex A*.

Data exporter
The data exporter is (please specify briefly your activities relevant to the transfer):

ANNEX B - to the Standard Contractual Clauses

This *Annex B* forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with [Clause 4\(d\)](#) and [Clause 5\(c\)](#) (or documents/legislation attached):

ILLUSTRATIVE INDEMNIFICATION CLAUSE (OPTIONAL)

The parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

Indemnification is contingent upon:

- (a) the data exporter promptly notifying the data importer of a claim; and
- (b) the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the claim.]