

STANDARD TERMS AND CONDITIONS

KEY DEFINITIONS WHERE WEST LOTHIAN COLLEGE IS TENDERING FOR A DIRECT CONTRACT

“Contract” means the contract concluded between WEST LOTHIAN COLLEGE and the Contractor formed by the Contract Award Letter and the documents referred to in the Contract Award Letter;

“Contract Award Letter” means the letter issued by WEST LOTHIAN COLLEGE to the Contractor notifying the Contractor of its award of the Contract and listing the documentation which, together with these Conditions, forms part of and constitutes the Contract;

“Contractor” means the party contracting with WEST LOTHIAN COLLEGE and identified in the Contract Award Letter;

“Purchaser” means WEST LOTHIAN COLLEGE and

“Tender Documents” means the tender documents issued by WEST LOTHIAN COLLEGE to the Contractor leading to the award of the Contract.

SECTION A – STANDARD DEFINITIONS

1 Definitions

In these Conditions:

- 1.1 **“Account Manager”** means the representative of the Contractor appointed pursuant to Clause 8.1 of Section D;
- 1.2 **“Change”** means any proposed amendment or variation to the Contract;
- 1.3 **“Charges”** means the charges and fees payable in relation to the Contract as set out in [.....];
- 1.4 **“Commencement Date”** means the date detailed in the Contract for the commencement of the performance of the Services or the delivery of Goods;
- 1.5 **“Conditions”** means these terms and conditions;
- 1.6 **“Confidential Information”** has the meaning given to it in Clause 3 of Section E;
- 1.7 **“Contract Period”** means the period of the Contract as detailed in the Contract;
- 1.8 **“Contract Year”** means the period of 12 months from the Commencement Date, and each subsequent period of 12 months;
- 1.9 **“Contractor Party”** means the Contractor and any Sub-Contractor;

- 1.10 “**Contract Worker**” means an officer, servant, employee or agent of a Contractor Party, and any person on or at the Premises in connection with the Contract at the express or implied invitation of the Contractor or any other Contract Worker;
- 1.11 “**Default**” means non-compliance with or default against any obligation under the Contract by the Contractor;
- 1.12 “**Deliverable**” has the meaning given to it in Clause 4 of Section C;
- 1.13 “**Disclosure Certificate**” means a basic disclosure certificate from the Scottish Criminal Record Office (or any successor organisation) or such certificate as may replace the basic disclosure certificate;
- 1.14 “**Discrimination Legislation**” means the Equal Pay Act 1970, the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006 and all applicable European Directives and legislation relation to discrimination;
- 1.15 “**Dispute**” means any dispute or difference between the Purchaser or the Contractor arising from or in connection with a Contract;
- 1.16 “**Dispute Resolution Procedure**” means the procedure set out in Clause 17 of Section E.
- 1.17 “**DPA**” means the Data Protection Act 1998;
- 1.18 “**Force Majeure**” shall have the meaning given in Clause 7 of Section E;
- 1.19 “**Good Industry Practice**” means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;
- 1.20 “**Goods**” means the goods to be supplied by the Contractor to the Purchaser as specified in the Contract, and includes any materials, goods or equipment to be provided by the Contractor in the delivery of the Services;
- 1.21 “**Illegal Term**” shall have the meaning given in Clause 10 of Section E;
- 1.22 “**Information Legislation**” means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;
- 1.23 “**Intellectual Property Rights**” means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country (including the United Kingdom);
- 1.24 “**Issued Property**” means anything issued or otherwise made available to the Contractor for any purpose by or on behalf of the Purchaser including working papers and other written materials;

- 1.25 “**Key Personnel**” shall have the meaning given in Clause 8 of Section D;
- 1.26 “**Law**” means all applicable laws, consents and approvals, including legislative provisions, sub-ordinate legislation, legally binding codes of practice and the common law;
- 1.27 “**Parent Company**” means, if the Contractor is a “company”, any “company” which is a “holding company” of the Contractor, as such terms are defined in section 1159 of the Companies Act 2006;
- 1.28 “**Premises**” means any premises of the Purchaser being a location where Goods are to be delivered or Services are to be provided;
- 1.29 “**Procurement Officer**” means any member of staff who is formally authorised to procure to procure goods, services and works (i.e. to place contracts on behalf of WEST LOTHIAN COLLEGE.
- 1.30 “**Professional Services**” means consultancy services and any services relating to the provision of legal, financial or other specialist advice;
- 1.31 “**Records**” means any files, documents or other records which relate to delivery of the Contract or the management, administration, organisation or planning of them whether in writing or on magnetic or other media;
- 1.32 “**Services**” means the services to be provided by the Contractor to the Purchaser as specified in the Contract (including any Professional Services so specified); and
- 1.33 “**Sub-Contract**” means any contract or proposed contract between the Contractor and any third party in respect of the performance of the Contract (or any part thereof). The terms “Sub-Contractor” and “Sub-Contracting” shall be similarly construed.

2 Interpretation

- 2.1 In these Conditions a reference to a "notice" is to a letter or other document sent by one party to the other which has a specific effect with reference to the Contract. Examples include notices which are given when there are changes to the contract, or breaches of the contract. Notices must be sent in accordance with Clause 9 of Section E.
- 2.2 In these Conditions, unless the context otherwise requires:
- 2.2.1 a reference to the parties is to the Purchaser and the Contractor;
- 2.2.2 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;
- 2.2.3 a reference to one gender includes references to all other genders;
- 2.2.4 the singular includes the plural and vice versa;
- 2.2.5 any reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, replaced, consolidated or re-

- enacted by any subsequent statute, enactment, order, regulation or instrument;
- 2.2.6 any reference to a document shall include any variation, amendment, or supplement to such document;
- 2.2.7 headings are included for ease of reference only and shall not affect the interpretation or construction of these Conditions;
- 2.2.8 references to numbered Clauses are, unless otherwise provided, references to Clauses of these Conditions;
- 2.2.9 references to Sections are to the sections into which these Conditions are sub-divided;
- 2.2.10 the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
- 2.2.11 an obligation to do something includes an obligation to procure it to be done;
- 2.2.12 an obligation not to do something includes an obligation not to wilfully allow it to be done;
- 2.2.13 the word “including” means “including without limitation”; and
- 2.2.14 a reference to “approval” or “consent” shall mean consent in writing.

3 Consortia

- 3.1 If more than one person is detailed in the Contract as the Contractor, references in this Contract to the “Contractor” shall be interpreted and construed as each such person on a joint and several basis.

SECTION B - GOODS

1 Goods

- 1.1 To the extent that any Goods are to be supplied in accordance with the Contract:
- 1.1.1 the Goods must be to the reasonable satisfaction of the Purchaser;
 - 1.1.2 the Goods must conform in all respects with the requirements of the Contract, and shall be of sound materials, workmanship and design;
 - 1.1.3 the Goods shall conform in all respects with all relevant Laws; and
 - 1.1.4 the Goods shall be fit for the purpose for which such goods are ordinarily used, and shall be fit for any particular purpose made known to the Contractor
- 1.2 If no Goods are to be supplied in accordance with the Contract, Clauses 2 to 9 of this Section will not apply.

2 Samples

- 2.1 Where samples have been submitted or equipment has been demonstrated (whether before or after the award of the Contract) the Goods shall conform with and be of the exact kind, model, type or variety as the samples or demonstration equipment.

3 Packaging

- 3.1 The Contractor must comply with all relevant Laws in relation to the packaging of the Goods.
- 3.2 The Contractor must use only the minimum adequate amount of packaging material to prevent contamination of or damage to the Goods.
- 3.3 The Contractor must use packaging material which is designed and produced in such a way as to facilitate its re-use or recycling.
- 3.4 The Contractor must avoid or minimise the use of any hazardous substance in the packaging material.
- 3.5 Unless expressly provided to the contrary in the Contract, all pallets, containers, cases and other transit or packaging materials which are not removed by the Contractor immediately after delivery of the Goods will be considered non-returnable to the Contractor.
- 3.6 Without prejudice to Clause 3.5 of this Section, within 5 days of a demand by the Purchaser, the Contractor will uplift all pallets, containers, cases and other transit or packaging materials used in relation to the Goods. If the contractor fails to so uplift such materials then, without prejudice to the Purchaser's other rights and remedies, the Purchaser may destroy, re-cycle, dispose of or re-use them.

4 Hazardous Goods

- 4.1 All containers of hazardous goods shall bear internationally recognised danger symbols and in addition, in English:

- 4.1.1 prominent and adequate warnings;
- 4.1.2 a full description of the Goods;
- 4.1.3 a full description of the hazardous nature of the Goods;
- 4.1.4 procedures to be followed in the event of an emergency,

5 Delivery

- 5.1 Delivery shall be made at such times and to such locations as the Contract specifies.
- 5.2 The time and date of delivery is of the essence.
- 5.3 If the Contractor does not deliver the Goods at the time specified in the Contract the Purchaser may, without prejudice to the Purchaser's other rights and remedies:
 - 5.3.1 refuse any delivery and shall not be under any obligation to accept nor to pay for the Goods; or
 - 5.3.2 terminate the Contract either in whole or as regards those Goods only.
- 5.4 If for any reason the Purchaser is unable to take delivery of the Goods at the time specified in the Contract, the Contractor shall store the Goods safely and securely on behalf of the Purchaser until instructed to make delivery. The Purchaser shall reimburse the Contractor for any reasonable and proper storage costs actually incurred by the Contractor.
- 5.5 Unless the Contract provides expressly to the contrary, delivery shall be free of charge to the Purchaser.
- 5.6 With each delivery of Goods, the Contractor will provide a delivery note providing particulars of the quantities, weights (on a package by package basis), batch codes and descriptions of the Goods delivered, and such other information reasonably specified by the Purchaser in advance of delivery.
- 5.7 The signature or acceptance of a delivery note will not constitute evidence of acceptance of the Goods.
- 5.8 All Goods of a kind that customarily or in accordance with Good Industry Practice bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, or other device intact.
- 5.9 The batch codes disclosed on delivery notes must tally with information recorded by the Contractor about its manufacturing, purchasing or Sub-contracting processes to allow rapid checks to be made by the Purchaser on its stocks of Goods in the event of a series of complaints about the Goods or a product recall.

6 Inspection And Rejection

- 6.1 The Purchaser may, by written notice to the Contractor at any time within 30 days of delivery, reject all or any of the Goods which fail to meet the requirements of the Contract, or Goods in a consignment which is deficient in weight, quantity or measure.

- 6.2 If the Purchaser rejects any of the Goods pursuant to Clause 6.1 of this Section, the Purchaser shall be entitled, at its option:
- 6.2.1 to have the rejected Goods repaired by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, so as to meet in all respects the requirements of the Contract; or
 - 6.2.2 to have the rejected Goods replaced by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, with Goods which comply in all respects with the requirements of the Contract; or
 - 6.2.3 to obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.
- 6.3 The rights of the Purchaser in Clause 6.2 of this Section shall apply:
- 6.3.1 without prejudice to its other rights and remedies; and
 - 6.3.2 to Goods as originally delivered, and to Goods repaired or replaced pursuant to that Clause.
- 6.4 Unless the Purchaser elects for rejected Goods to be repaired, and agrees to that repair taking place at the Premises, any rejected Goods shall be removed by (and at the expense of) the Contractor within 7 days of the rejection notice. If the Contractor fails to remove rejected Goods within such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such return.
- 6.5 The Purchaser's rights and remedies as regards Goods which fail to meet the requirements of the Contract or Goods in a consignment which is deficient in weight, quantity or measure shall be unaffected if the loss or damage occurred in the transit of the Goods.

7 Guarantee

- 7.1 The Goods shall be guaranteed by the Contractor for the period of 12 months from the putting into service of the Goods, or 18 months from the delivery of the Goods, whichever shall be shorter (the "Guarantee Period").
- 7.2 If at any time before the date falling 60 days after the end of the Guarantee Period the Purchaser gives notice in writing to the Contractor of any defect in any of the Goods arising during the Guarantee Period under proper and normal use of the Goods, the Contractor shall, without delay, remedy such defects without cost to the Purchaser. The Purchaser may elect whether the defect should be remedied by repair or replacement.
- 7.3 The rights of the Purchaser under Clause 7.2 of this Section shall be without prejudice to any other rights and remedies of the Purchaser.
- 7.4 For the purposes of Clause 7.1 of this Section, Goods repaired or replaced pursuant to Clause 7.2 of this Section shall be deemed to be delivered and put into service on the date of repair or replacement, and accordingly shall be guaranteed for a further Guarantee Period.

8 Property and Risk

- 8.1 Property to and risk in the Goods shall pass to the Purchaser when the Goods have been delivered to the Purchaser in accordance with Clause 5 of this Section.
- 8.2 The transfer of property to and risk in the Goods shall be without prejudice to any rights of the Purchaser in relation to the Goods, including its right to reject Goods pursuant to this Contract.

9 Unauthorised Supply of Goods

- 9.1 The Contractor must not issue, deliver, or supply in any manner any Goods to the Purchaser on an unsolicited basis or otherwise than in accordance with the Contract.

SECTION C - SERVICES

1 Services

- 1.1 To the extent that any Services are to be provided in accordance with the Contract they shall be provided by the Contractor in accordance with the Contract with all reasonable skill, care and diligence.
- 1.2 If no Services are to be supplied in accordance with the Contract, Clauses 2 to 4 of this Section will not apply.

2 Scheduling

- 2.1 Where the Contract provides for the Services to:
 - 2.1.1 commence on a certain date;
 - 2.1.2 be completed by a certain date; or
 - 2.1.3 be provided for a certain period,the Contractor will comply with such requirements.
- 2.2 If Services are to be provided in distinct elements, the Contractor will comply with any reasonable request of the Purchaser as to the order in which the Services will be provided.
- 2.3 The Contractor will provide, at the reasonable request of and in such form as the Purchaser may require, reports showing the progress of the provision of the Services, the costs to the Purchaser of the Services provided during the period covered by the report, and a review of any factors likely to affect the satisfactory completion of the Services in accordance with the Contract.

3 Conflict of Interest

- 3.1 If no Professional Services are to be supplied in accordance with the Contract, the following provisions of this Clause 3 will not apply.
- 3.2 Where the Contract is one for the provision of Professional Services, the Contractor shall ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing the Contract, and:
 - 3.2.1 where the Contractor becomes aware of any conflict of interest during the performance of this Contract (whether the conflict existed before the award of this Contract or arises during its performance) it shall immediately notify the Purchaser in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Purchaser may reasonably require;
 - 3.2.2 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 3.2 of this Section is not capable of being avoided or removed the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.
 - 3.2.3 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 3.2 of this Section is capable of being avoided or removed

the Purchaser may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

3.2.3.1 if the Contractor fails to comply the Purchaser's requirements in this respect, or

3.2.3.2 if, in the opinion of the Purchaser, compliance does not avoid or remove the conflict,

the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor; and

3.2.4 if the Contract is terminated pursuant to this Clause 3.2 and in the Purchaser's reasonable opinion the relevant conflict of interest existed at the time of the award of the Contract and could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed in terms of the tender documents pertaining to this Contract, then notwithstanding Clause 18 of Section D (Consequences of Termination), no payment shall be due for any Services provided by the Contractor.

4 Professional Service Deliverables

4.1 If no Professional Services are to be supplied in accordance with the Contract, the following provisions of this Clause 4 will not apply.

4.2 In this Clause 4, "**Deliverables**" mean any advice and tasks and outputs deriving from the provision of Professional Services pursuant to the Contract including all report(s), financial model(s) and workshops outputs, other than any communication or document stated to be draft, subject to further work, incomplete or not in final form.

4.3 The Purchaser shall be entitled to rely upon the Deliverables.

4.4 The Contractor may issue Deliverables in draft form, but if requested to do so the Contractor may not unreasonably refuse to issue a draft Deliverable in final form, nor unreasonably delay that issue.

4.5 The Contractor acknowledges that it shall have no right to be identified as the author of any Deliverable, and hereby waives any such rights conferred by law.

SECTION D – GOODS AND SERVICES

1 Payment

- 1.1 The Purchaser shall pay to the Contractor the Charges in consideration of the performance of the Contractor's obligations under the Contract.
- 1.2 The Purchaser shall pay the Contractor within 30 days of the date of receipt of a valid invoice from the Contractor.
- 1.3 All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Contractor will show this separately on its invoice.
- 1.4 All Charges are stated in Pounds Sterling, and all invoices must be presented and demanded in pounds Sterling.
- 1.5 The Charges represent the entire amount payable by the Purchaser to the Contractor in respect of the performance of the Contractor's obligations under the Contract, and except as otherwise expressly stated to the contrary in the Contract, the Purchaser shall not be liable to the Contractor for any of its costs, expenses or liabilities.
- 1.6 The Contractor will comply with all reasonable requests of the Purchaser in respect of invoicing, including the formatting of invoices and the consolidation or splitting of invoices to reflect different parts of the performance of the obligations of the Contract (including delivery to different locations and/or performance for the ultimate benefit of different persons).
- 1.7 The Contractor shall include a provision in each Sub-Contract requiring the Contractor to pay the relevant Sub-Contractor not more than 30 days after the receipt of a valid and payable invoice.
- 1.8 If the Contractor assigns the right to receive payment of the Charges or any part thereof (whether pursuant to Clause 8.2 of Section E or otherwise) to any other person (a "Payment Assignee"):
 - 1.8.1 the Purchaser will comply with any reasonable request of the Contractor in relation to the payment of the Charges or the handling of invoices, notified to the Purchaser at least 30 days in advance of the date for the relevant payment or the receipt of the relevant invoice;
 - 1.8.2 any payment by the Purchaser to a Payment Assignee will discharge the obligation of the Purchaser to make that payment, as if it had been paid to the Contractor; and
 - 1.8.3 the Contractor will procure that the Payment Assignee complies with the reasonable requests of the Purchaser made pursuant to Clause 1.6 of this Section.

2 Late Payment

- 2.1 The parties will pay interest on any amount payable under the Contract not paid on the due date, for the period from that date to the date of payment at a rate equal to 3% above the base rate set from time to time by the Bank of England.

3 Readiness for change

- 3.1 Each party shall notify the other without delay if it considers that any changes to its technology or business processes may impact on the other party in relation to the Contract.
- 3.2 The Contractor shall notify the Purchaser without delay if it considers that any of the technology used in the Goods or in the provision of the Services is in danger of becoming obsolete as a result of market changes or technology advantages or obsolescence.

4 Access to Premises

- 4.1 If the Contract requires the Contractor to take access to or occupation of any Premises in connection with the Contract, such access or occupation shall be made available to the Contractor free of charge.
- 4.2 The Contractor will not deliver any Goods, materials, plant or equipment, and will not commence any work at the Premises, until it has obtained the Purchaser's prior consent to the date and time of access, and, where appropriate, as to the proposed method of working or delivery (to the extent that such access details are not included within the Contract).
- 4.3 The Premises shall be used by the Contractor solely for the purpose of performing the Contract.
- 4.4 The Contractor shall have access to or occupation of the Premises as non-exclusive licensee only and shall vacate the Premises when no longer required for the purpose of performing the Contract and upon the termination or expiry of the Contract.
- 4.5 All tools, equipment and materials of the Contractor required in the performance of the Contractor's obligations under the Contract shall be and remain at the sole risk of the Contractor, whether or not they are situated at any Premises.

5 Contract Workers at the Premises

- 5.1 If requested the Contractor shall provide a list of the names and addresses of all Contract Workers who may require admission to the Premises in connection with the performance of the Contract, containing such other particulars as the Purchaser may reasonably require.
- 5.2 The Purchaser may refuse to admit to the Premises any Contract Worker whose admission would be, in the opinion of the Purchaser, undesirable.
- 5.3 The Contractor shall comply with (and procure that all Contract Workers comply with) all reasonable instructions given by the Purchaser in relation to the access to and use of the Premises including security and health and safety requirements and occupation and cooperation with other users of the Premises.
- 5.4 If the Purchaser so directs, the Contractor will submit a basic disclosure certificate obtained from Disclosure Scotland in respect of any Contract Workers who requires access to any Premises, prior to such access being taken.

6 Issued Property

- 6.1 All Issued Property shall remain the property of the Purchaser and shall be used by the Contractor only for the purposes of the Contract.
- 6.2 The Contractor shall notify the Purchaser without delay if any Issued Property is not in good condition when received by or on behalf of the Contractor.
- 6.3 The Contractor undertakes to keep safe custody of Issued Property and to return all Issued Property to the Contractor, with the exception of any Issued Property consumed or incorporated for the purposes of the Contract.
- 6.4 The Contractor shall indemnify the Purchaser in respect of all losses of or damage to Issued Property (including waste of Issued Property) arising from bad workmanship or negligence of the Contractor) save for any losses or damage resulting from the normal and proper use of Issued Property for the purposes of the Contract.
- 6.5 The Contractor will return all Issued Property on demand, at any time, and within 7 days of the termination or expiry of the Contract. To the extent that Issued Property includes working papers or other written materials, at the same time as the Contractor returns such Issued Property it shall also return copies it has made of such Issued Property and any other materials of whatsoever nature prepared by the Contractor using the information in such Issued Property.
- 6.6 Neither the Contractor nor any other party shall have a lien on any Issued Property and the Contractor shall take all reasonable steps to ensure that the title of the Purchaser to and the exclusion of any such lien in respect of Issued Property are brought to the notice of all persons dealing with any Issued Property.

7 Contract Workers

- 7.1 The Contractor shall engage, employ, and train suitably experienced and qualified staff for carrying out the Contractor's duties and obligations under the Contract.
- 7.2 If the Purchaser requests, the Contractor will provide the Purchaser with the names of all people whom the Contractor proposes will have a role in the performance of the Contract together with a description of the part each person will play in performing the Contract, and details of their qualifications, experience and previous employment.
- 7.3 The Purchaser may require the Contractor to produce documentary or other evidence to establish that the Contract Workers are suitably qualified and experienced to perform their respective duties under the Contract.
- 7.4 If the Purchaser gives the Contractor notice that any Contract Worker intended for or concerned with the performance of the Contract is not to become or remain involved in the performance of the Contract, the Contractor will take all reasonable steps to comply with such notice without delay, at the cost of the Contractor.
- 7.5 Nothing in the Contract shall have the effect of making any Contract Worker an employee of the Purchaser.

8 Key Personnel

- 8.1 The Contractor shall appoint an Account Manager to be the representative of the Contractor for all purposes connected with the delivery of the Contract, and who shall be authorised by the Contractor to fulfil that role.
- 8.2 The Purchaser may at any time by notice to the Contractor designate any person concerned with the performance of the Contract as “Key Personnel”. Any person referred to in the Contract or the Contractor’s response to the Tender Documents as to be concerned with the delivery of the Contract and the Account Manager will be deemed so designated.
- 8.3 The Contractor will ensure that the Key Personnel are made available in performance of the Contract, unless the Purchaser agrees otherwise. The Purchaser will act reasonably in considering requests for replacements to the Key Personnel where the need for the replacement has arisen due to circumstances beyond the control of the Contractor. If the Contractor proposes a replacement for any person designated as Key Personnel, the Purchaser reserves the right to interview any such person before considering agreeing to the replacement.
- 8.4 If the Purchaser refuses its consent for any replacement Key Personnel the Contractor will propose an alternative, without undue delay.

9 Indemnity

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

10 Limitation of Liability

- 10.1 Subject always to Clause 10.2 of this Section, the liability of each party to the other under the Contract shall be subject to the following cumulative limits, each to the extent permitted by law:
- 10.1.1 the aggregate liability of a party in respect of loss or damage caused by its negligence to any tangible property of the other party shall not exceed £10 million; and
- 10.1.2 the aggregate liability of a party in respect of any claim made by the other party under the Contract flowing from any one event or a series of connected events (other than in respect of claims for loss or damage caused by the party’s negligence to any tangible property of the other party) shall not exceed £10 million however that liability arises including breach of contract, delict, misrepresentation (except fraudulent misrepresentation) or breach of statutory duty; and
- 10.1.3 neither party shall be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings or other indirect or consequential loss or damage (but such limitation shall not limit the Contractor’s liability to the Purchaser for any additional operational and administrative costs and expenses and/or any expenditure or charges rendered necessary as a result of any Default by the Contractor).

- 10.2 The limitations in Clause 10.1 of this Section will not apply to:
- 10.2.1 the liability of a party resulting from any fraudulent act by it, or any liability for personal injury or death; or
 - 10.2.2 the liability of the Contractor pursuant to the indemnities in Clause 12.2 of this Section; or
 - 10.2.3 the liability of a party pursuant to the indemnities in Section F (TUPE) (if such Section forms part of the Contract).

11 Insurance

- 11.1 The Contractor shall maintain in force with reputable insurers employer's liability insurance and public liability insurance in the sum of not less than £5,000,000 (but limit to be agreed with the College) in respect of any one incident and unlimited as to numbers of claims, and adequate insurances covering all the Contractor's other liabilities in terms of the Contract.
- 11.2 Where the Contract relates to Professional Services, the Contractor shall maintain in force with reputable insurers professional liability insurance in the sum of not less than £5 million in respect of any one incident and unlimited as to numbers of claims.
- 11.3 On the request of the Purchaser, the Contractor shall exhibit satisfactory evidence of the insurance policies referred to in this Clause 11, together with satisfactory evidence of payment of the premia.

12 Intellectual property rights

- 12.1 The Contractor must not infringe any Intellectual Property Right of any third party in the performance of the Contract, other than to the extent that the performance of the Contract involves the incorporation of designs furnished by the Purchaser which infringe any Intellectual Property Rights.
- 12.2 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with any breach by the Contractor of Clause 12.1 of this Section.
- 12.3 All rights (including ownership and Intellectual Property Rights) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing, or on magnetic or other media or distributed electronically:
- 12.3.1 forming Issued Property or otherwise made available to the Contractor by the Purchaser shall remain vested in the Purchaser; or
 - 12.3.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in the Purchaser.

13 Corporate Social Responsibility Issues

13.1 Health & Safety

- 13.1.1 The Contractor shall be responsible for the observance by itself and all Contract Workers of all safety precautions necessary for the protection of

all Contract Workers including all precautions relating to manual handling and all precautions required to be taken by or under Laws relating to health and safety.

13.1.2 The Contractor shall promptly notify the Purchaser of any health and safety hazards which may arise in connection with the performance of the Contract.

13.1.3 The Purchaser shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor or any Contract Worker. The Contractor shall draw these hazards to the attention of all Contract Workers and shall instruct such persons in connection with any necessary associated safety measures.

13.2 **Non-Discrimination**

13.2.1 The contractor shall comply with the Discrimination Legislation and shall not unlawfully discriminate within the meaning and scope of the Discrimination Legislation.

13.2.2 The Contractor shall notify the Purchaser immediately of any investigation of or proceedings against the Contractor under the Discrimination Legislation and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

13.2.3 The Contractor must at all times comply with any relevant codes of practice relating to the subject matter of the Discrimination Legislation.

13.3 **Environmental Considerations**

13.3.1 The Contractor will ensure that:

13.3.1.1 no Goods or Services are supplied which will endanger the health and safety of the end users of the Goods or Services (in each case assuming that such persons act reasonably);

13.3.1.2 no Goods are supplied which will cause significant damage to the environment during manufacture, use, or disposal, which consume a disproportionate amount of energy during manufacture, use, or disposal, which cause unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contain materials derived from threatened species or threatened environments.

13.3.2 The Contractor will comply in all material respects with applicable Laws relating to environmental matters which are relevant to the Contract. Where the provisions of any such Laws are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such voluntary agreements or codes of practice.

13.4 **Compliance with General Law**

The Contractor shall comply with all Laws which are relevant to the Contract.

14 Default

- 14.1 If the Contractor is in Default then without prejudice to any of its other rights and remedies the Purchaser may require the Contractor within 14 days (or such other period as the Purchaser may specify, acting reasonably) to produce a draft remedial plan to remedy the Default for the approval of the Purchaser, such approval not to be unreasonably withheld or delayed.
- 14.2 The Contractor will implement the remedial plan approved by the Purchaser pursuant to Clause 14.1 of this Section.
- 14.3 At any time while the Contractor is in Default the Purchaser may without prejudice to any of its other rights and remedies seek to remedy the effects of the Default by carrying out the activities necessary to perform the Services, obtain goods similar to the Goods or otherwise meet the objectives of the Contract, or contract with a third party to do any of the same, and:
- 14.3.1 the Contractor will use all reasonable endeavours to co-operate with the Purchaser and any third party to mitigate the effects of the Default; and
- 14.3.2 the Contractor will indemnify the Purchaser in respect of the reasonable costs and expenses incurred by the Purchaser in remedying or seeking to remedy the effects of the Default.

15 Withholding of Sums Payable

- 15.1 If the Contractor is in Default the Purchaser may withhold a proportion of any sum which is payable by the Purchaser to the Contractor until the Default has been remedied, such proportion to be reasonable and commensurate with regard to:
- 15.1.1 the extent to which the Default has caused or will cause a diminution in the extent or quality, including delay, of the Contractor's performance of the Contract; and
- 15.1.2 the amount of any loss or any additional costs which the Purchaser has incurred or may incur in consequence of the Default.
- 15.2 If any sum of money shall be due from the Contractor to the Purchaser, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other contract or Contract with the Purchaser.

16 Termination

- 16.1 The Purchaser may at any time by notice in writing terminate the Contract if:
- 16.1.1 there is Bidding Misrepresentation;
- 16.1.2 there is an Insolvency Event; or
- 16.1.3 there is an Unremedied Default.
- 16.2 The Purchaser shall be entitled to terminate the Contract by giving not less than 30 days' notice to the Contractor.

- 16.3 The Contract shall expire and terminate automatically at the end of the Contract Period.

17 Termination Definitions

- 17.1 For the purposes of Clause 16 of this Section:

17.1.1 “**Bidding Misrepresentation**” means the discovery by the Purchaser that the non-collusive tendering certificate submitted by the Contractor to WEST LOTHIAN COLLEGE in response to the Tender Documents or any other communication, document or other information in whatever form provided by the Contractor to WEST LOTHIAN COLLEGE or the Purchaser is erroneous, false, misleading or untrue in any material respect;

17.1.2 Where the Contractor is a Company, “**Insolvency Event**” means that:

17.1.2.1 the Contractor or any Parent Company passes a resolution for winding-up or the court makes a winding-up order, other than for the purpose of a genuine and good faith reconstruction or amalgamation which the Purchaser has consented to in advance;

17.1.2.2 the Contractor or any Parent Company passes a resolution for administration;

17.1.2.3 an administrator, administrative receiver, receiver or manager is appointed to the Contractor or any Parent Company by a creditor or by the court, or possession is taken of any of the Contractor's or any Parent Company's property under the terms of a floating charge;

17.1.2.4 the Contractor or any Parent Company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as if the reference in section 123(1)(a) to £750 was to £10,000); or

17.1.2.5 any similar event occurs under the law of any other jurisdiction.

17.1.3 Where the Contractor is an individual, “**Insolvency Event**” means that:

17.1.3.1 a petition is presented for the Contractor's bankruptcy or the sequestration of the Contractor's estate;

17.1.3.2 a criminal bankruptcy order is made against the Contractor;

17.1.3.3 the Contractor makes any composition or arrangement with or for the benefit of the Contractor's creditors, or makes any conveyance or assignment for the benefit of the Contractor's creditors, or an administrator is appointed to the Contractor's affairs;

17.1.3.4 the Contractor becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

17.1.3.5 any similar event occurs under the law of any other jurisdiction.

- 17.1.4 Where the Contractor is a partnership or firm, or a number of persons acting together in any capacity, "**Insolvency Event**" means that:
- 17.1.4.1 an event listed in Clauses 17.1.3.1 to 17.1.3.5 of this Section occurs in respect of any partner in the partnership or firm or any of those persons;
 - 17.1.4.2 a petition is presented for the Contractor to be wound up as an unregistered company; or
 - 17.1.4.3 any similar event occurs under the law of any other jurisdiction.
- 17.1.5 "**Unremedied Default**" means that the Contractor is in Default and:
- 17.1.5.1 the Default is capable of remedy and the Contractor has failed to remedy such Default within 30 days of receipt of written notice to the Contractor specifying the Default and requiring its remedy (unless a remedial plan produced in respect of that Default and approved by the Purchaser pursuant to Clause 14.1 of this Section is being implemented by the Contractor to the reasonable satisfaction of the Purchaser); or
 - 17.1.5.2 a remedial plan produced in respect of that Default and approved by the Purchaser pursuant to Clause 14.1 of this Section is not being implemented by the Contractor to the reasonable satisfaction of the Purchaser; or
 - 17.1.5.3 the Default is not capable of remedy.

18 Consequences of Termination

- 18.1 The termination or expiry of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 18.2 Termination of the Contract will not affect the continued operation of those Clauses which are stated to apply after its termination or any other of the provisions of the Contract which, having regard to their terms, are intended to apply on or to survive termination or expiry.
- 18.3 If on the termination or expiry of the Contract any Intellectual Property Rights in connection with the Contract owned by a Contractor Party are required by the Purchaser for the efficient conduct of its business or the orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Contract to the Purchaser or a third party, the Purchaser may acquire from the Contractor at the then fair market rate a non-exclusive licence to use any such Intellectual Property Rights which licence shall:
- 18.3.1 be subject to a single, one-off payment;
 - 18.3.2 be perpetual and irrevocable;
 - 18.3.3 afford the Purchaser the right to make such modifications, adaptations and enhancements as it sees fit to products in relation to which the Intellectual Property Rights arise;

- 18.3.4 permit the Purchaser to engage a third party to use, modify, adapt or enhance any such products, provided that such third party shall have entered into a confidentiality agreement with the Purchaser in a form to the reasonable satisfaction of the Contractor; and
- 18.3.5 carry the right to grant sub-licences,
and the Contractor will procure that such a licence is granted by any Contractor Party.
- 18.4 If fair market value cannot be agreed pursuant to Clause 18.3 of this Section, the matter will be referred to the Dispute Resolution Procedure.
- 18.5 On the termination of the Contract pursuant to Clause 16.1 of this Section, Clause 5.3.2 of Section B (rejection of Goods), Clause 3.2 of Section C (conflict of interest) or 6.2 of Section E (corruption), the Contractor will indemnify the Purchaser in respect of:-
 - 18.5.1 any additional operational and administrative costs and expenses suffered or incurred by the Purchaser as a result of such termination;
 - 18.5.2 the costs and expenses suffered or incurred by the Purchaser in providing (or procuring that another party provides) goods or services similar to the Goods or Services on a temporary basis until the completion of a tendering or reappointment process carried out by the Purchaser to find a successor to the Contractor, but only to the extent that such costs and expenses exceed the Charges that would have been payable (or a reasonable estimate of such charges, to the extent uncertain) had the Contract not been terminated; and
 - 18.5.3 the costs and expenses suffered or incurred by the Purchaser in carrying out the tendering or reappointment process referred to in Clause 18.5.2.
- 18.6 The costs and expenses of the Purchaser referred to in Clause 18.5 of this Section shall include reasonable charges to reflect the application of the Purchaser's internal resources, evidenced by records of time spent and other resources applied.

SECTION E - GENERAL TERMS AND CONDITIONS

1 Variations to the Contract

- 1.1 The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of each of the parties, each having completed the following change control procedure:
- 1.1.1 Should either party wish to propose a Change, it shall submit to the other 2 copies of a change control notice (CCN) completed in so far as that party is able;
 - 1.1.2 Each CCN shall contain:
 - 1.1.2.1 the title of the Change;
 - 1.1.2.2 the originator and date of the proposal of the Change;
 - 1.1.2.3 the reason for the Change;
 - 1.1.2.4 full details of the Change including any specifications;
 - 1.1.2.5 the price, if any, of the Change;
 - 1.1.2.6 a timetable for implementation of the Change; and
 - 1.1.2.7 details of the likely impact, if any, of the Change on other aspects of the Contract.
 - 1.1.3 The CCN will be completed by the other party and both parties will seek to agree the content of the CCN.
 - 1.1.4 In the case of a Change proposed by the Purchaser, the parties will act reasonably in agreeing the content of the CCN and will execute a variation or amendment to the Contract to implement the agreed CCN, without delay.
 - 1.1.5 In the case of a Change proposed by the Contractor, the Purchaser will act reasonably in considering the content of the CCN but the agreement or otherwise to the content of a CCN shall be at the Purchaser's sole discretion.
- 1.2 The Contract shall not be varied or amended by the use, notification, issue or receipt by a party of any document containing or incorporating any standard terms and conditions of either party.
- 1.3 The Contract constitutes the entire agreement between the parties at its date of execution in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract.

2 Non-solicitation of employees

- 2.1 Without in any way restricting the right of any person freely to accept employment and change employment, neither the Purchaser nor the Contractor shall, during the

term of the Contract and for the period of 6 months thereafter, without the other party's written consent:

- 2.1.1 subject to Clause 2.2 of this Section, employ any of the employees of the other party who have at any time been engaged in the performance of the Contract to perform similar duties to those involved in the performance of the Contract; or
- 2.1.2 solicit to employment any such employees of the other party.
- 2.2 A party shall not be in breach of Clause 2.1 of this Section if a person (without having been previously approached directly or indirectly) responds to a general recruitment advertisement placed by or on behalf of the prospective new employer.
- 2.3 If a party breaches Clause 2.1 of this Section it shall indemnify the other party in respect of that party's costs and expenses in replacing the employee employed by the other party including advertising and other recruitment costs and initial training (but not the cost of ongoing emoluments).

3 Confidentiality

- 3.1 Subject to Clause 3.3 of this Section, all information of a confidential nature obtained by the Contractor under or in connection with the Contract from the Purchaser ("**Confidential Information**") will be treated by the Contractor in confidence, and will not:
 - 3.1.1 be used by the Contractor other than for the purposes of the Contract; or
 - 3.1.2 be disclosed by the Contractor, other than to those Contract Workers who need to have access to that information for the purposes of the Contract and in accordance with Clause 3.5 of this Section,

without the prior written consent of the Purchaser.
- 3.2 Information will not be treated as "Confidential Information" for the purposes of Clause 3.1 of this Section if it was generally available to the public when it was received by the Contractor from the Purchaser and information will cease to be "Confidential Information" for the purposes of Clause 3.1 of this Section if it subsequently becomes generally available to the public other than as a result of a breach by the Contractor of this Clause.
- 3.3 Clause 3.1 of this Section does not prohibit the disclosure by the Contractor of any Confidential Information which:
 - 3.3.1 was known to the Contractor prior to its disclosure to the Contractor by the Purchaser or which subsequently comes into the Contractor's possession from a third party which does not owe a duty of confidence to the Purchaser in respect of that information;
 - 3.3.2 the Contractor is obliged by law to disclose; or
 - 3.3.3 the Contractor requires to provide to its insurers or professional advisers to allow the Contractor to properly conduct its business.

- 3.4 The Contractor will take all technical and organisational measures and other precautions necessary to ensure that the Confidential Information is not used or disclosed other than as permitted by Clauses 3.1 and 3.3 of this Section.
- 3.5 Without affecting the generality of Clause 3.4 of this Section, the Contractor will put in place a written agreement with any Contract Worker to whom it wishes to disclose any of the Confidential Information pursuant to Clause 3.1.2 of this Section, in terms of which such Contract Worker is bound by confidentiality obligations in respect of that Confidential Information at least as onerous as those set out in this Clause 3.
- 3.6 Upon the expiry or termination of the Contract, the Contractor will promptly, and in any event within 14 days of such expiry or termination, return to the Purchaser or destroy (at the absolute discretion of the Purchaser) any Confidential Information in its possession, and provide the Purchaser with a certificate, signed by a duly authorised officer, certifying that the Contractor has complied with its obligations under this Clause 3.6. The obligation to destroy any Confidential Information pursuant to this Clause 3.6 includes an obligation to permanently delete from any information technology systems owned and/or used by the Contractor, any copies of that Confidential Information held in electronic form.
- 3.7 Nothing in this Clause 3 will prevent the Contractor from using in the normal course of its business any techniques, ideas or know-how gained during the performance of the Contract to the extent that such use does not result in any unauthorised disclosure of any Confidential Information or an infringement of the Purchaser's (or anyone else's) Intellectual Property Rights.

4 Freedom of Information

- 4.1 The Contractor acknowledges that the Purchaser is subject to the requirements of the Information Legislation. The Contractor 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 7 days of a request from the Purchaser to that effect.
- 4.2 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 Contractor or which relates in any way to the Contractor 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.
- 4.3 Without affecting Clause 4.2 of this Section, the Purchaser will use reasonable endeavours to consult with the Contractor 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 Contractor or which relates in any way to the Contractor or the Contract.

5 Publicity

- 5.1 Subject to Clause 5.2 of this Section, the Contractor undertakes not to:
- 5.1.1 disclose or permit disclosure of any details of the Contract to any third party;
 - 5.1.2 disclose that the Purchaser is a customer or client of the Contractor to any third party (other than any Sub-contractor); or
 - 5.1.3 use the Purchaser's name and/or brand in any promotion or marketing, without the prior written consent of the Purchaser.
- 5.2 Clause 5.1 of this Section will not apply to the extent the Contractor is required to make any disclosure:
- 5.2.1 in order to comply with a legal requirement; or
 - 5.2.2 in order to instruct professional advisers in connection with the Contract.

6 Anti-corruption

- 6.1 The Contractor shall not (and shall procure that no Contract Worker nor any other person acting on its behalf shall) offer or give or agree to offer or give any person any gift or consideration of any kind as an inducement or reward for:
- 6.1.1 showing or forbearing to show favour or disfavour to any person in relation to the Contract; or
 - 6.1.2 doing or forbearing to do (or having done or forborne to do) any act in relation to the obtaining or performance of the Contract or any other agreement.
- 6.2 In the event of any breach of this Clause 6 or the commission of any offence by the Contractor or Contract Worker or person acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916, the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.
- 6.3 In exercising its rights or remedies under this Clause 6, the Purchaser shall:
- 6.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - 6.3.2 give due consideration, where appropriate, to action other than termination of the Contract, including:
 - 6.3.2.1 requiring the Contractor to procure the termination of a Sub-contract where the prohibited act is that of a Sub-contractor; or
 - 6.3.2.2 requiring the Contractor to procure the dismissal of an employee of any Contractor Party where the prohibited act is that of such employee.

7 Force Majeure

- 7.1 The expression "Force Majeure" shall, subject to Clause 7.2 of this Section, mean any event materially and adversely affecting the performance by a party of its obligations arising beyond its reasonable control. Events which may constitute Force Majeure include fires, floods, acts of war, acts of terrorism and natural disasters.
- 7.2 An event will not be Force Majeure if:
- 7.2.1 it is an event affecting a third party and as regards that third party the event would not have constituted Force Majeure applying the definitions and exclusions in this Contract;
 - 7.2.2 it is an event affecting a third party and, as regards the affected party, a substitute third party is reasonably available to the affected party;
 - 7.2.3 it is attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees;
 - 7.2.4 it is attributable to a staff shortage, strike or industrial action relating to the affected party;
 - 7.2.5 it is attributable to the adoption of a new currency in the United Kingdom or Scotland;
 - 7.2.6 it is attributable to the inability of a party to pay any sum of money to the other party or any third party;
- 7.3 Subject to Clause 7.4 of this Section, a party affected by Force Majeure shall not be liable to the other for any loss of any kind which is directly or indirectly caused by reason of any failure or delay in the performance of its obligations under this Contract which is due to Force Majeure.
- 7.4 Notwithstanding Clause 7.3 of this Section, a party affected by Force Majeure shall:
- 7.4.1 notify the other party in writing within 5 days of the occurrence of the event constituting Force Majeure;
 - 7.4.2 use its reasonable endeavours to continue to perform, or resume performance of, its obligations under this Contract hereunder for the duration of the event constituting Force Majeure; and
 - 7.4.3 shall not be relieved from any obligation to pay any sum of money to the other party.
- 7.5 If either party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part it shall forthwith notify the other as to the circumstances and the period for which it is estimated that such failure or delay is likely to continue.
- 7.6 If either party is prevented from performance of its obligations under the Contract for a continuous period in excess of 3 months by reason of Force Majeure, the other party may terminate the Contract immediately on service of written notice upon the party so prevented.

- 7.7 The only events which shall afford relief from liabilities under the Contract for failure or delay shall be any event constituting Force Majeure.

8 Assignment and Sub-contracting

- 8.1 The Contractor shall not assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof without the previous consent in writing of the Purchaser.
- 8.2 The Purchaser hereby consents to the assignment by the Contractor of the right to receive payment of the Charges (or any part thereof) which are due and payable pursuant to the Contract, and the payment of any interest in respect of those Charges, subject to all the rights and remedies of the Purchaser in connection with the payment of the charges including the right to withhold sums pursuant to Clause 15 of Section D.
- 8.3 The Contractor shall remain fully liable for the actions and defaults of all of its Sub-contractors. Sub-contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Contract.
- 8.4 The Contractor will procure that its Sub-Contractors comply with all the relevant obligations of the Contract in the same way as the Contractor is bound to comply.
- 8.5 The Purchaser shall be entitled to assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof:
- 8.5.1 to any person (including but not limited to any body in the private sector) which substantially performs any of the functions that previously had been performed by the Purchaser; or
 - 8.5.2 with the previous consent in writing of the Purchaser (which will not be unreasonably withheld or delayed).

9 Notices

- 9.1 Each party shall from time to time notify the other of the communications protocols to be followed in connection with the Contract but subject to any such protocol, any notice or other communication shall be validly served if sent by letter to the address of the relevant party as detailed in the Contract (or, where the party is a company, that company's registered office).
- 9.2 A notice delivered or sent or transmitted to the correct address of a party shall be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

10 Severability

- 10.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction (an "Illegal Term"), such provision shall be severed and subject to Clause 10.2 of this Section, the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the Illegal Term eliminated.
- 10.2 If an Illegal Term is so fundamental that its severance prevents the accomplishment of the purpose of the Contract, the parties shall immediately commence good faith

negotiations to remedy such invalidity, but if the parties have not implemented that remedy within 2 weeks of the declaration of the provision as an Illegal Term, either party may terminate the Contract forthwith by notice in writing to the other.

11 Waiver

- 11.1 The failure of either party to insist upon the performance or the strict performance of any provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 11.2 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and notified in writing to the other party.

12 Remedies

- 12.1 Except as otherwise expressly provided in the Contract:
- 12.1.1 all remedies available to a party under the Contract are cumulative and may be exercised concurrently or separately; and
- 12.1.2 the exercise of any one remedy shall not exclude the exercise of any other remedy.

13 Warranties and Representations

- 13.1 The Contractor warrants and represents that:
- 13.1.1 the Contractor has full capacity and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform the Contract;
- 13.1.2 to the best of its knowledge there is no inhibition, restriction or prohibition which in any way affects the capacity of the Contractor to enter into and perform the Contract;
- 13.1.3 the Contractor shall discharge its obligations under the Contract with all reasonable skill, care and diligence and in accordance with Good Industry Practice.

14 Transfer of Responsibility

- 14.1 Upon the expiry or termination of the Contract, for any reason whatsoever, the Contractor shall cooperate with the Purchaser to such extent as the Purchaser may require for the period required by the Purchaser (of up to a maximum of 6 months after the date of such expiry or termination) to ensure an orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Contract to the Purchaser or a third party.
- 14.2 The Purchaser shall reimburse to the Contractor all reasonable costs and expenses incurred by the Contractor in satisfying the provisions of this Clause 14.
- 14.3 The cooperation referred to in Clause 14.1 of this Section may include, if the Purchaser requires:

- 14.3.1 the making available of any Issued Property, the making available of relevant instruction and operating manuals and the provision of instruction in the use of any equipment or machinery forming part of the Issued Property; and/or
- 14.3.2 the continued provision of the Services, or part of them, or the continued performance of the Contractor's obligations under Contract.

15 Audit Access

15.1 The Contractor shall grant to the Purchaser, any auditors of the Purchaser (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Purchaser) and any other person authorised by the Purchaser (together the "Auditors") access to all of the Records and shall provide reasonable assistance at all times to the Purchaser or the Auditors (including the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records, all for the purposes of enabling the Purchaser or the Auditors:

- 15.1.1 to carry out an audit of the Contractor's compliance with the Contract;
- 15.1.2 to carry out an audit of all activities carried out and security precautions taken in connection with the performance of the Contract;
- 15.1.3 to prepare, audit, examine and certify the accounts of the Purchaser; or
- 15.1.4 to conduct any audit or investigation by Audit Scotland or any other auditor.

The Contractor shall be repaid any reasonable expenses properly and necessarily incurred in giving such reasonable assistance.

15.2 Without prejudice to Clause 15.1 of this Section, in the event of an investigation into suspected fraudulent activity or other impropriety by any Contractor Party or Contract Worker:

- 15.2.1 the Purchaser and/or the Auditors may without notice enter any premises of any Contractor Party and take access to the Records, which shall be made available to them (whether they are held at such premises or otherwise) by the Contractor or Contractor Party;
- 15.2.2 the Contractor shall render all necessary assistance to the conduct of such investigation (including the provision of office accommodation and the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records or any other subject of investigation or enquiry by the Purchaser or the Auditors); and
- 15.2.3 the Contractor shall be paid any reasonable expenses properly and necessarily incurred in giving such necessary assistance in the event that the result of such investigation is that no fraudulent activity or other impropriety by a Contractor Party or a Contract Worker is found (but not otherwise).

15.3 The Purchaser shall ensure that any representative of the Purchaser given access to any premises or Records by the Contractor in accordance with Clause 15.2.1 of this Section causes the minimum amount of disruption to the business of the Contractor.

16 Relationship

- 16.1 The Contract shall not have the effect of making any Contractor Party the agent of the Purchaser, and the Contractor will procure that no Contractor Party and no Contract Worker, by act or omission, purports to act as agent of the Purchaser, or leads any party to believe that such a relationship of agency exists.

17 Dispute Resolution Procedure

- 17.1 In the first instance the parties will seek to resolve any Dispute by its escalation to various levels within the organisational structures of the parties.

- 17.2 There shall be three levels of escalation, and at each level each party will make available for the purposes of the Dispute Resolution Procedure an appropriate representative most closely matching the description given below.

<u>Level</u>	<u>Representative</u>
First Level	person with day to day responsibility for the Contract.
Second Level	person with managerial responsibility for overseeing the Contract.
Third Level	person with senior managerial responsibility for the general contracting activities of the party.

- 17.3 An individual representing a party at one level may not be made available by a party to represent it at a higher level.
- 17.4 If a Dispute is resolved at any level, the resolution shall be reduced to writing, without delay, and signed by both parties. Once signed by both parties, the resolution shall be binding on the parties.
- 17.5 Unless the resolution of a Dispute is reduced to writing signed by both parties, all discussions and negotiations connected with the Dispute shall be conducted without prejudice to the rights of the parties in any future legal or other proceedings, and no such discussions and negotiations may be produced or relied upon in evidence in any such proceedings.
- 17.6 A meeting of the representatives at the first level shall take place as soon as possible after any Dispute arises.
- 17.7 If a Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the first level (or, following referral pursuant to this Clause, the second level), the Dispute shall be referred to the next level, and the representatives at that next level shall meet within 3 days of the reference to that level.
- 17.8 If a Dispute is referred to the third level, and that Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the third level, either party may request the President of the Law Society of Scotland to appoint a single arbiter to resolve the Dispute. The arbitration shall take place in Scotland, and shall be commenced and conducted in accordance with the Scottish Arbitration Code 1999, or any code which replaces this. The decision of the arbiter shall be final and binding.

18 Law and Jurisdiction

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

SECTION G – LEAD IN

- 1 This Section applies when the Contract contains provision for a period between the award of the Contract and the Commencement Date.
- 2 In this Section:
 - 2.1 "**Lead-In Period**" means any period between the award of the Contract and the Commencement Date as set out in the Contract; and
 - 2.2 "**Transition Plan**" means the Contractor's plan for the Lead-in Period forming part of the Contract.
 - 2.3 During the Lead-In Period the Contractor will:
 - 2.3.1 ensure that all Contract Workers have received the training necessary to allow the Contractor to perform the Contract from the Commencement Date;
 - 2.3.2 prepare draft procedural instructions to be issued to all Contract Workers in connection with the Contract, and submit the draft to the Purchaser for approval (which will not be unreasonably withheld);
 - 2.3.3 issue procedural instructions as approved by the Purchaser to all Contract Workers in advance of the Commencement Date; and
 - 2.3.4 comply with its obligations pursuant to the Transition Plan.
 - 2.4 During the Lead-In Period the Purchaser will use its reasonable endeavours to comply with its obligations pursuant to the Transition Plan.
 - 2.5 The Conditions will apply to the Lead-In Period from the commencement of that period, notwithstanding that this is prior to the Commencement Date.

SECTION I – DATA PROTECTION

1 Definitions and Application

- 1.1 In this Section the terms "Personal Data" and "Processing" have the meanings given to them in the DPA (and "Process" shall be construed accordingly).
- 1.2 This Section applies when the Contract involves the Purchaser passing to the Contractor, or otherwise giving the Contractor access to, Personal Data.

2 Compliance

- 2.1 The Contractor will take all necessary steps to ensure that in performing its obligations under the Contract it operates at all times in compliance with the DPA.

3 Personal Data

- 3.1 If the Purchaser passes to the Contractor, or otherwise gives the Contractor access to, Personal Data under the Contract:
 - 3.1.1 the Contractor will not Process that Personal Data except for the purposes of the Contract and in accordance with the instructions of the Purchaser;
 - 3.1.2 the Contractor will not acquire any rights in that Personal Data, and will return that Personal Data to the Purchaser immediately, if the Purchaser asks it to do so;
 - 3.1.3 the Contractor will put in place appropriate technical and organisational measures against unauthorised or unlawful Processing of that Personal Data, and against accidental loss or destruction of or damage to that Personal Data, in compliance with the DPA. Technical and organisational measures will be considered appropriate for the purposes of this Clause if they conform to the provisions of ISO 17799 (or any replacement standard relating to data security) or such other data security measures as are appropriate for the purposes of complying with the DPA;
 - 3.1.4 the Contractor will permit the Purchaser to have access to the Contractor's premises, personnel and records on at least five days' notice, for the purposes of inspecting, testing and auditing the technical and organisational measures put in place by the Contractor under Clause 3.1.3 of this Section;
 - 3.1.5 the Contractor will promptly take whatever steps are necessary to comply with any requirement made by the Purchaser to ensure that the technical and organisational measures put in place by the Contractor comply with the DPA; and
 - 3.1.6 the Contractor will not transfer any of that Personal Data outside the European Economic Area, except upon the express written instructions of the Purchaser, and in accordance with any additional terms which the Purchaser imposes on such transfer.