



Scottish Funding Council

Promoting further and higher education

The Scottish Further and Higher Education Funding Council

Standard Terms and Conditions of Contract for goods and services.

These standard terms and conditions may only be varied with the written agreement of the SFC. No terms or conditions put forward at any time by the Contractor or referred to in any tender or proposal prepared by the Contractor shall form any part of the Contract, unless specifically agreed in writing by the SFC.

1 DEFINITIONS

In these standard terms and conditions, the following terms shall have the following meanings:

- 1.1 **"Anti-Corruption Laws"** means (a) the United Kingdom Bribery Act 2010; and (b) any anti-bribery or anti-corruption related provisions in criminal and competition laws and/or anti-bribery or anti-corruption laws of the jurisdiction in which the Contractor provides the Services, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;
- 1.2 **"Anti-Discrimination Laws"** means (a) the United Kingdom Equality Act 2010; and (b) any equal opportunities related laws, regulations, bye-laws, UK or EU or international standards from time to time applicable, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;
- 1.3 **"Business Day"** means a day on which SFC is open for business in Edinburgh;

- 1.4 “**Contractor**” means the person, firm, company or organisation entering into the Contract with the SFC;
- 1.5 “**Contract**” means the contract between the SFC and the Contractor consisting of (i) the Purchase Order (or, if there is no Purchase Order the contract award letter from the SFC to the Contractor); (ii) any documents referred to in the Purchase Order or contract award letter (including, for example, any service or project specification or tender documentation); and (iii) these standard terms and conditions;
- 1.6 “**Environmental Information Regulations**” means the Environmental Information (Scotland) Regulations 2004 together with any statutory codes of practice, guidance and decisions issued by the Scottish Ministers, and the Scottish Information Commissioner, respectively in relation to such regulations;
- 1.7 “**FOISA**” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act together with any statutory codes of practice, guidance and decisions issued by the Scottish ministers and the Scottish Information Commissioner respectively, in relation to the Act and any subordinate legislation;
- 1.8 “**Goods**” means the goods to be supplied to the SFC by the Contractor in accordance with this Contract;
- 1.9 “**Price**” means the price payable pursuant to the Contract by the SFC to the Contractor for the Goods and Services;
- 1.10 “**Purchase Order**” means the SFC's completed purchase order form issued to the Contractor;
- 1.11 “**Safe Harbor**” means the Safe Harbor scheme and principles operated by the US Department of Commerce, and approved by the European

Commission for the purposes of the eighth data protection principle in the Data Protection Directive 95/46/EC, or any replacement scheme and principles approved by the European Commission for that purpose from time to time;

- 1.12 “**Services**” means the services to be provided to the SFC by the Contractor in accordance with this Contract, including any services in relation to Goods such as installation, maintenance or repair;
- 1.13 “**SFC**” means the Scottish Further and Higher Education Funding Council;
- 1.14 “**SFC Premises**” means the premises of the SFC to which the Goods are to be delivered or at which the Services or any part of them are to be provided; and
- 1.15 “**1998 Act**” means the Data Protection Act 1998.

2 CONTRACTOR’S DUTIES

- 2.1 The Contractor will supply the Goods and provide the Services with all reasonable skill, care and diligence and in accordance with the Contract.
- 2.2 The Contractor will undertake no obligation to any other person or body which would be incompatible with the requirements of the SFC in terms of the Contract.
- 2.3 The Contractor will comply with any reasonable direction or instruction which the SFC may give in connection with the execution of the Contractor’s obligations in terms of the Contract.

3 VARIATION TO THE CONTRACT

- 3.1 The SFC reserves the right at any time to modify its requirements in relation to the Goods or the Services by notice in writing to the Contractor. The

Contractor and the SFC (each acting reasonably) will agree in writing any change to the pricing arrangements or to the timetable for the provision of the Goods or Services as may be necessary as a result of such modification.

4 THE SERVICES

4.1 Where the Contract provides for the Services to:

4.1.1 commence on a certain date;

4.1.2 be completed by a certain date; or

4.1.3 be provided for a certain period,

the Contractor will comply with such requirements.

4.2 If Services are to be provided in distinct elements, the Contractor will comply with any reasonable request of the SFC as to the order in which the Services will be provided.

4.3 The Contractor will provide, at the reasonable request of and in such form as the SFC may require, reports showing the progress of the provision of the Services, the costs to the SFC 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.

5 THE GOODS

5.1 The Goods shall be to the reasonable satisfaction of the SFC, shall conform in all respects with the Contract, and shall be of sound materials, workmanship and design.

5.2 The Goods shall conform in all respects with all relevant legal requirements.

- 5.3 The Goods shall be fit for the purpose for which such goods are ordinarily used. The Goods shall be fit for any particular purpose made known to the Contractor by the SFC, and if any particular purpose is so specified, the SFC shall be entitled to rely on the skill and judgement of the Contractor as to the Goods supplied.

6 OWNERSHIP AND RISK

- 6.1 Ownership and risk in the Goods shall pass to the SFC when the Goods are delivered to the SFC, without prejudice to any of the rights or remedies of the SFC.

7 ACCESS TO SFC PREMISES

- 7.1 The Contractor shall make no delivery of Goods, materials, plant or equipment, nor commence any work at the SFC Premises, without obtaining the SFC's prior written consent as to date and time of access, and, where appropriate, as to the proposed method of working or delivery.
- 7.2 Where any access to the SFC Premises is necessary in connection with supply of the Goods or the provision of the Services, the Contractor shall at all times comply with the reasonable requirements and instructions of the SFC. In particular, the Contractor will ensure that any persons concerned with the delivery of the Goods and/or the provision of the Services comply with the procedures notified to them by the SFC in relation to security and health and safety.
- 7.3 Any access to the SFC Premises shall not be exclusive to the Contractor. The Contractor shall co-operate with others at the SFC Premises as the SFC may reasonably require.
- 7.4 If the SFC gives the Contractor notice that any person concerned with the delivery of the Goods and/or provision of the Services is not to be admitted

to or is to be removed from the SFC Premises, the Contractor will take all reasonable steps to comply with such notice without delay and at the cost of the Contractor.

8 DELIVERY OF THE GOODS

8.1 Unless otherwise stated in the Contract, the Goods shall be delivered to the offices of the SFC in Edinburgh.

8.2 If for any reason the SFC 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 SFC until instructed to make delivery. The SFC shall reimburse the Contractor for any reasonable storage costs properly incurred by the Contractor provided that evidence, to the reasonable satisfaction of the SFC, of such storage costs is provided to the SFC.

8.3 The time specified for the delivery of Goods shall be of the essence, and failure by the Contractor to deliver the Goods at the time specified shall entitle the SFC (at the SFC'S option and by written notice to the Contractor):-

8.3.1 to release itself from any obligation to accept and pay for the Goods and/or:-

8.3.2 to cancel all or part of the Contract,

in either case without prejudice to the SFC's other rights and remedies.

8.4 The signature of a delivery note or similar by or on behalf of the SFC in respect of Goods shall not constitute acceptance by the SFC of those Goods.

9 LABELLING AND PACKAGING

- 9.1 The Goods shall be packed and marked in a proper manner and in accordance with the SFC's reasonable instructions and any relevant legal requirements.
- 9.2 The Contractor shall avoid unnecessary packaging.
- 9.3 Each package shall be marked with the number of the Purchase Order (if any), the weight of the package, and a description of the contents.
- 9.4 All containers of hazardous goods shall bear prominent and adequate warnings in accordance with any legal requirements.
- 9.5 Unless otherwise agreed, all packaging materials which are not removed by the Contractor immediately after delivery of the Goods will be considered non-returnable and will be destroyed, re-cycled or re-used by the SFC as the SFC may elect.

10 INSPECTION AND REJECTION

- 10.1 Before delivery of the Goods to the SFC, the Contractor shall permit the SFC to make any inspections or tests of the Goods as the SFC may reasonably require, and the Contractor shall provide all necessary access and assistance for this. No failure to make a complaint at the time of such inspection or tests, and no approval given during or after such inspection or tests shall constitute a waiver by the SFC of any of the SFC's rights or remedies in terms of the Contract.
- 10.2 The SFC may, by written notice to the Contractor, reject all or any of the Goods which fail to meet the requirements of the Contract. Such notice may only be given within 30 days of delivery to the SFC of Goods concerned. If the SFC shall reject any of the Goods pursuant to this Clause

10.2, the SFC shall be entitled, at no expense to the SFC, and without prejudice to the SFC's other rights and remedies:

10.2.1 to have the Goods concerned repaired by the Contractor, as quickly as possible, so as to meet in all respects the requirements of the Contract; or

10.2.2 to have the Goods concerned replaced by the Contractor with Goods which comply in all respects with the requirements of the Contract; or

10.2.3 to obtain, without delay, a full refund from the Contractor in respect of the Goods concerned.

10.3 The rights of the SFC in Clause 10.2 shall apply to Goods as originally delivered, and to Goods repaired or replaced pursuant to that Clause.

11 UPLIFT

11.1 If any Goods are delivered to the SFC after the date or dates specified in the Contract and the SFC elects to exercise its right in terms of Clause 8.3.1 (release) or the SFC exercises its right under Clause 10.2.3 (refund) in relation to any Goods, then the Contractor shall remove the Goods in question at no expense to the SFC within any reasonable timescale set by the SFC and notified to the Contractor, failing which the SFC shall be entitled (without prejudice to the SFC's other rights and remedies) to dispose of or destroy the Goods in question.

12 GUARANTEE

12.1 The Contractor shall guarantee the Goods for 12 months from the putting into service of the Goods, or 18 months from the delivery of the Goods

which ever shall be shorter, subject to any alternative guarantee arrangements agreed in writing between the SFC and the Contractor.

- 12.2 If within the guarantee period (or within 30 days thereafter) the SFC gives notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use of the Goods the Contractor shall (without prejudice to the SFC's other rights and remedies) as quickly as possible remedy such defects (whether by repair or replacement of the defective Goods as the SFC may elect) without cost to the SFC.

13 INSPECTION OF SFC PREMISES

- 13.1 The Contractor shall be entitled to inspect the SFC Premises so as to understand the nature and extent of the Goods or Services to be provided, and the SFC shall at the request of the Contractor grant such access as may be reasonable for this purpose, on no less than 7 days notice unless otherwise agreed.
- 13.2 The Contractor shall be deemed to have inspected the SFC Premises before entering into the Contract and satisfied itself on all matters concerning the SFC Premises.

14 MATERIALS AND EQUIPMENT

- 14.1 Unless otherwise agreed, the Contractor shall provide all plant, tools, material, and equipment necessary to perform the Services.
- 14.2 The SFC shall have no responsibility in relation to materials owned or supplied by the Contractor, and shall not be liable for any loss or destruction of or damage to any such materials.

- 14.3 After delivery of the Goods and/or completion of the Services as the case may be, the Contractor shall remove the Contractor's plant, tools, unused materials and equipment, and shall clear away from the SFC Premises all waste (unless otherwise agreed with the SFC) arising out of the performance of the Contract, leaving the SFC Premises in a neat and tidy condition.
- 14.4 If the SFC issues materials free of charge to the Contractor for the purpose of the Contract such materials shall remain the property of the SFC. The Contractor shall maintain all such materials in good order and condition and shall use them solely in connection with the Contract. Waste, damage or destruction of such materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense and without delay.
- 14.5 The Contractor shall notify the SFC of any surplus materials remaining after the completion of the Services and shall return them to the SFC or dispose of them as the SFC may direct.

15 PRICING ARRANGEMENTS

- 15.1 The SFC will pay to the Contractor the Price in accordance with the Contract.
- 15.2 The Contractor will submit invoices promptly when payments become due in accordance with the Contract. All invoices shall be in such form and shall contain such information as the SFC may from time to time reasonably require.
- 15.3 All invoices shall be addressed to 'Scottish Further and Higher Education Funding Council, Finance Branch' unless otherwise stated in the Contract.
- 15.4 All invoices shall clearly identify the Purchase Order number or other SFC contract reference number to which they relate.

- 15.5 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 15.6 Payment of any sums due under this Agreement shall be made to the Contractor within 30 days of receipt of a valid invoice raised in accordance with this Agreement. The Contractor will not issue an invoice before the due date for its payment and will quote the purchase order number(s) allocated by SFC for this Agreement on all invoices. If any payment to the Contractor is delayed then (a) the Contractor shall notify SFC in writing, providing a copy of the relevant invoice; and (b) if SFC fails to pay the undisputed invoice or part thereof within 30 Business Days of receiving the Contractor's written notice then the Contractor will be entitled to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

16 CONFIDENTIALITY

- 16.1 All information obtained by the Contractor in connection with the Contract from the SFC will be treated by the Contractor in confidence, and will not be used or disclosed by the Contractor without the prior written consent of the SFC, save where the Contractor is obliged to disclose such information by law.
- 16.2 The provisions of this Clause 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

17 CONTRACTOR INFORMATION AND FOI

- 17.1 The Contractor acknowledges that the SFC may disclose any information provided to it by the Contractor:
- 17.1.1 where obliged to do so by law;

- 17.1.2 where it considers (in its absolute discretion) that it is obliged to do so under the FOISA or the Environmental Information Regulations;
 - 17.1.3 through the SFC's publication scheme published from time to time in terms of the FOISA; and
 - 17.1.4 to the Scottish Ministers, the Scottish Parliament and any statutory successor to the SFC.
- 17.2 Where appropriate, the SFC will use reasonable efforts to inform the Contractor prior to any disclosure or publication of information which, in the reasonable opinion of the SFC, the Contractor may regard as confidential to it.
- 17.3 For the purposes of Clauses 17.1.2, 17.1.3 and 17.2, the Contractor acknowledges that the SFC will be entitled to act in accordance with the Scottish Ministers' current guidance on the discharge of the functions by public bodies under the FOISA.
- 17.4 The Contractor acknowledges that the SFC is subject to the requirements of the FOISA and the Environmental Information Regulations and, where the SFC asks it to do so, shall assist and co-operate with the SFC (at the Contractor's cost and expense) to enable the SFC to comply with its information disclosure obligations.
- 17.5 The provisions of this Clause 17 shall apply during the continuance of this Contract and after its termination howsoever arising.

18 KEY PERSONNEL

18.1 If the Contract specifies, or the SFC at any time designates, any personnel of the Contractor as “key personnel” then the Contractor will ensure that such persons are made available to the SFC in the provision of the Services.

19 ASSIGNATION AND SUB-CONTRACTING

19.1 The Contractor will not assign or sub-contract the Contract in whole or in part without the prior written consent of the SFC. Sub-contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Contract.

19.2 Where the SFC has consented to the placing of any sub-contract in relation to the Contract, a copy of such sub-contract will be sent to the SFC by the Contractor without delay following its placement.

19.3 Where the Contractor places a sub-contract in relation to the Contract, the Contractor will cause a term to be included in such sub-contract which requires payment to be made by the Contractor to its sub-contractor within a specified period (not exceeding 30 days) from the receipt of a valid invoice as defined by the other requirements of the sub-contract.

20 INTELLECTUAL PROPERTY RIGHTS

20.1 In this Clause 20, the term “Intellectual Property” means any patent, trademark, registered design, copyright or other similar right.

20.2 In performing its obligations under the Contract, the Contractor shall not breach any Intellectual Property rights of any third party.

20.3 Any Intellectual Property rights in any items produced by the Contractor for the SFC pursuant to the Contract are assigned to and shall be the property of the SFC and the Contractor shall, at the request of the SFC, sign

(whether before or after the termination of the Contract) any documentation required to effect or evidence the transfer of any Intellectual Property rights in such items to the SFC.

- 20.4 All Intellectual Property rights in any specification, instructions, plans, drawings, patterns, models, designs or other material provided or made available to the Contractor by the SFC shall remain vested solely in the SFC and the Contractor shall not (except to the extent necessary for the implementation of the Contract) without the prior written consent of the SFC use or disclose any such information to any party.
- 20.5 The provisions of this Clause 20 shall apply during the continuance of the Contract and after its termination howsoever arising.

21 HEALTH AND SAFETY

- 21.1 The Contractor warrants to the SFC that it has carried out or will carry out all necessary tests and examinations prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health and safety of the persons using the same.
- 21.2 The Contractor warrants to the SFC that it has made or will make available to the SFC adequate information about the use for which the Goods have been designed and have been tested, and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
- 21.3 The Contractor warrants to the SFC that it shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are to performed (whether such persons are in the vicinity of such place at the time when the

Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation.

22 NO DISCRIMINATION

22.1 The Contractor shall, and shall procure that all Staff, and/or sub-contractors shall comply with any applicable Anti-Discrimination Laws and with SFC's equality and diversity policy as may be amended from time to time, copies of which will be provided by SFC to the Contractor at the Contractor's written request.

22.2 The provisions of Appendix 1 to these standard terms and conditions will apply, and the Contractor will take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor, and all sub-contractors employed in the execution of the Contract.

23 INDEMNITIES

23.1 The Contractor will indemnify and keep indemnified the SFC and its members and its employees against all actions, claims, demands, costs and expenses incurred by or made against the SFC or its members or employees in respect of any loss, damage or personal injury (including death) which arises in connection with:

23.1.1 any failure of the Goods against the requirements of the Contract;

23.1.2 the delivery or installation of the Goods by the Contractor;

23.1.3 the negligence or other wrongful act of the Contractor, the Contractor's employees or agents, the Contractor's sub-contractors, or their employees or agents in the provision of the Services or otherwise in the performance of this Contract;

23.1.4 any breach by the Contractor of Clause 20 (Intellectual Property);
and/or

23.1.5 any breach by the Contractor of Clause 21 (Health and Safety).

24 INSURANCE

24.1 The Contractor will effect insurance with a reputable insurance company or companies covering all the matters which are the subject of indemnities on the part of the Contractor in this Contract.

24.2 Unless otherwise specified in the Contract such insurance shall be in the sum of at least £1,000,000 in respect of any one incident, and at least £5,000,000 in total.

24.3 Upon demand by the SFC, the Contractor will produce a certificate evidencing to the satisfaction of the SFC that such insurance is in place, and that the premia have been paid by the Contractor.

25 DATA PROTECTION

25.1 The Contractor undertakes to the SFC that it will take all necessary steps to ensure that it operates at all times within the requirements of the 1998 Act and, where requested in relation to the Services, the Contractor will assist SFC in discharging its obligations under the 1998 Act.

25.2 Annex 2 of this agreement covers the detailed provisions of Data Protection compliance and security required by the SFC.

26 TERMINATION OF CONTRACT

26.1 The Contractor will notify the SFC in writing immediately upon the occurrence of any of the following events:

- 26.1.1 where the Contractor is an individual: if a petition is presented for his or her bankruptcy or the sequestration of his or her estate, or a criminal bankruptcy order is made against him or her, or the Contractor makes any composition or arrangement with or for the benefit of his or her creditors, or makes any conveyance or assignation for the benefit of his or her creditors, or if an administrator is appointed to manage his or her affairs;
- 26.1.2 where the Contractor is a partnership or firm, or a number of persons acting together in any capacity: if any event in Clause 26.1.1 or 26.1.3 occurs in respect of any partner in the partnership or firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company;
- 26.1.3 where the Contractor is a company: if the company passes a resolution for winding-up or administration, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 26.2 The SFC will be entitled to terminate this Contract by notice to the Contractor with immediate effect:
- 26.2.1 on the occurrence of any of the events described in Clause 26.1.1 to 26.1.3;
- 26.2.2 if the Contractor shall have committed a material breach of this contract which (in the reasonable opinion of the SFC) is not capable of remedy;

26.2.3 if the Contractor shall have committed a material breach of this contract which is capable of remedy, and the Contractor has failed to remedy such a breach within seven days of being required by the SFC in writing to do so; or

26.2.4 where the Contractor is an individual, if (1) he or she shall die, or (2) an order is made by a court having jurisdiction in matters concerning mental health for his or her detention, or for the appointment of a guardian or other person to exercise powers with respect to his property or affairs, or (3) he or she becomes incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000) in relation to the Contract.

26.3 The SFC will be entitled to terminate this Contract by giving to the Contractor not less than 30 days' notice to that effect.

27 CONSEQUENCES OF TERMINATION

27.1 In the event of termination of the Contract for any reason before its expiry, the Contractor will furnish the SFC with a progress report or such other output as may be reasonably requested by the SFC in the circumstances.

27.2 On the termination of the Contract for any reason, including its expiry, the Contractor will promptly return to the SFC any documents, information or other materials obtained from the SFC by the Contractor as a result of the Contract, and will deliver to the SFC all materials extracted from such documents, information or other materials.

27.3 In the event of any termination of the Contract other than by notice pursuant to Clause 26.3 (termination on notice) the Contractor will be entitled to be paid in accordance with and subject to the other terms of the Contract for the Goods and Services provided by the Contractor at the time

of receipt of notice of termination, and will not be entitled to any additional payment by way of compensation or otherwise.

- 27.4 In the event of termination of the Contract by notice pursuant to Clause 26.3 (termination on notice) the Contractor will be entitled to be paid in accordance with and subject to the other terms of the Contract for the Goods and Services provided by the Contractor at the time of receipt of notice of termination, and for the costs of meeting commitments entered into by the Contractor to the extent evidenced to the SFC as not capable of cancellation and entered into solely and exclusively in order to perform the Contract, and will not be entitled to any further additional payment by way of compensation or otherwise.
- 27.5 Termination of the Contract will not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the SFC, and 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.

28 NOTICES

- 28.1 Any notice given under or pursuant to the Contract may be delivered by hand, or sent by first class post, or transmitted by fax. If a notice is so delivered or sent or transmitted to the address (or fax number) of a party as specified in the Contract, or to such other address or fax number as that party may by notice to the other have substituted, the notice 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.

29 STATUS OF CONTRACT AND CONTRACTOR

- 29.1 Nothing in the Contract will have the effect of making the Contractor the agent or employee of the SFC.
- 29.2 The Contractor (or any permitted sub-contractor) will act as employer of all personnel required for the supply of the Goods and the provision of the Services, and will accept all normal duties and responsibilities of employers including, without prejudice to the foregoing generality, those relating to pensions, national insurance, and income tax.
- 29.3 The SFC will not be liable for any costs or claims to which the Contractor (or any sub-contractor, as the case may be) may become liable as an employer.
- 29.4 The Contractor (if an individual) represents and warrants that he or she is regarded by the HM Revenue & Customs and the Department of Work and Pensions and other relevant authorities as self-employed. With the exception of any Value Added Tax payable by the SFC, the Contractor will indemnify the SFC and keep the SFC indemnified against any tax, national insurance contributions or similar impost for which the SFC may be liable in respect of the Contractor by reason of this Contract.

30 ARBITRATION

- 30.1 Any dispute or difference between the parties arising out of this Contract will be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party.

31 AUDIT

31.1 The Contractor will keep and maintain until two years after the Contract has been completed records to the satisfaction of the SFC of all expenditures which are reimbursable by the SFC, and of the hours worked and costs incurred by the Contractor in connection with any employees or sub-contractors of the Contractor paid for by the SFC on a time charge basis. The Contractor will on request afford the SFC or its representatives such access to those records as may be required by the SFC in connection with the Contract.

32 ANTI-CORRUPTION

32.1 The Contractor undertakes to SFC that it will comply with, and that the Services will be performed in accordance with, the Anti-Corruption Laws and that it shall not do, nor omit to do, any act that will lead to SFC being in breach of any of the Anti-Corruption Laws.

32.2 The Contractor shall have in place and comply with its own anti-bribery and corruption procedures adequate to ensure that the Contractor complies with the Anti-Corruption Laws ("**Adequate Procedures**"). If requested, the Contractor shall provide to SFC a copy of the Contractor's Adequate Procedures. The Contractor shall promptly implement any amendments to the Contractor's Adequate Procedures which SFC, acting reasonably, considers necessary to ensure that SFC complies with the Anti-Corruption Laws. In any event, the Contractor will comply with any SFC anti-bribery and corruption policies and procedures, notified by SFC to the Contractor from time to time.

32.3 The Contractor shall review the Contractor's Adequate Procedures on a regular basis and shall promptly implement and notify SFC of any

amendments to the Contractor's Adequate Procedures which it considers necessary for continued compliance with the Anti-Corruption Laws.

32.4 The Contractor shall co-operate with SFC and promptly provide SFC with any information or confirmation which SFC requires from time to time in connection with the obligations of the Contractor pursuant to this Clause 32. This may include enabling SFC, whether itself or through an agent, to conduct an audit of records and information held by the Contractor or its sub-contractors or any other relevant person. The Contractor acknowledges that SFC will place reliance upon the information provided. This obligation shall continue after the expiry or termination of this Agreement.

32.5 The Contractor shall immediately notify SFC in writing of any suspected or known breach of the Contractor's Adequate Procedures or any of the Anti-Corruption Laws which occurred or may have occurred during the term of the Agreement. This obligation to notify SFC shall continue for a period of 5 years after the expiry or termination of this Agreement.

32.6 The Contractor shall ensure that any person employed by it or its sub-contractors or acting on the Contractor's behalf in the provision of the Services complies with the terms of this Clause 32. The Contractor shall be responsible for ensuring that terms equivalent to this Clause 32 are included within any subcontract it uses in relation to the provision of the Services, such that these terms flow down to the subcontractor.

32.7 SFC shall have the right to suspend and/or terminate this Agreement for material breach immediately, or on such other time specified by SFC, upon written notice to the Contractor if:

32.7.1 the Contractor, or any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) fails to comply with any of the Anti-Corruption Laws; or

32.7.2 SFC has a reasonable suspicion that an occurrence as specified in paragraph (i) of this Clause 32.7 has occurred.

32.8 In the event of breach by the Contractor of this Clause 32 any exclusions or limitations of liability set out in this Agreement which would otherwise be applicable to the Contractor shall not apply to any claim or loss arising from or connected with such breach and the parties agree that the following losses shall be recoverable from the Contractor by SFC:

32.8.1 any costs or expenses (including reasonable legal fees) incurred by SFC in investigating a breach or suspected breach of this Clause 32:

32.8.2 any fine or penalty paid or imposed on SFC arising from a breach of this Clause 32; and

32.8.3 any other costs or expenses incurred by SFC as a result of a breach of this Clause 32.

32.9 Regardless of any other provision in this Agreement, SFC shall not be obliged to do, nor obliged to omit to do, any act which would, in its reasonable opinion, put it in breach of any Anti-Corruption Laws.

33 OTHER CONTRACTS

33.1 On entering into this Contract, the Contractor shall notify the SFC of all other contracts in terms of which it is providing goods or services to the SFC.

33.2 If, during the term of this Contract, the Contractor enters into any further contract to provide goods or services to the SFC, it shall provide the SFC with an updated list of the other contracts in terms of which it is providing goods or services to the SFC.

34 PUBLICITY

34.1 The Contractor shall not refer to its contract with the SFC (or the subject matter of the contract in such a way as to imply that it relates to a contract with SFC) in any advertisement, promotional material, publicity release or tender without the prior written agreement of the SFC.

35 RECOVERY OF SUMS DUE

35.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other contract with the SFC.

36 GAELIC LANGUAGE

36.1 In delivery of the Services to SFC, the Contractor will use its reasonable endeavours to support the Gaelic language in accordance with SFC's obligations under the Gaelic Language (Scotland) Act 2005 and SFC's Gaelic Language Plan. If requested by the SFC as part of the Services, the Contractor will provide materials in Gaelic to the standards operated by SFC.

37 GENERAL

37.1 If any provision of the Contract (including any provision of these standard terms and conditions) is held by any court or other competent authority to be void or unenforceable in whole or part, the Contract shall continue to be valid as to the other provisions thereof and any remainder of the affected provision.

37.2 Any waiver by either party of a breach of any provision of the Contract shall not be considered as a waiver of any subsequent breach of the same or any other provision of the Contract.

37.3 The incorporation of any tender, proposal or other document prepared by the Contractor as part of the Contract shall, unless otherwise expressly stated in the Purchase Order or contract award letter, incorporate that tender, proposal or other document to the exclusion of any terms and conditions of contract contained within it.

38 HEADINGS

38.1 The headings to Clauses shall not affect their interpretation.

39 GOVERNING LAW

39.1 These standard terms and conditions and the Contract shall be governed by and construed in accordance with the law of Scotland, and the Contractor hereby 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 SFC to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

Appendix 1 – Equal Treatment

1. For the purposes of this Appendix 1, references to the “Act” are to the Equality Act 2010 (as amended from time to time).
2. In accordance with the Anti-Discrimination laws, the Contractor shall not:
 - (a) discriminate directly or indirectly, harass or victimise any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation. .
3. In relation to the Act, the Contractor shall comply with the provisions of section 41 of the Act in all dealings with any sub-contractors.
4. Where in connection with the Contract the Contractor, its agents or sub-contractors, or the Contractor’s staff are required to carry out work at SFC Premises, or alongside the SFC’s employees on any other premises, the Contractor shall, to the extent required to comply with the provisions of section 149 of the Act as if the Contractor were a body within the meaning of section 157 of the Act (or any European equivalent):
 - (a) comply with the SFC’s own employment policy and codes of practice relating to racial discrimination and equal opportunities, as notified by the SFC to the Contractor;
 - (b) monitor its employees by reference to the racial groups to which they belong, in accordance with the SFC’s procedures for monitoring its own employees; and
 - (c) shall notify the SFC forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Act.
5. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection

with matters referred to in the Contract being in contravention of the Act, the Contractor shall, free of charge:

- (a) provide any information requested in the timescale allotted by the SFC;
 - (b) attend any meetings as required by the SFC, and permit SFC staff to attend relevant meetings at which the Contractor is in attendance;
 - (c) promptly allow access to and investigation of any documents or data deemed to be relevant by the SFC;
 - (d) allow itself and any of its staff to appear as witness in any ensuing proceedings; and
 - (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
6. Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub-contractors, or the Contractor's staff in connection with the subject matter of this Appendix, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the SFC with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the SFC may have been ordered or required to pay a third party.
7. In the event that the Contractor enters into any sub-contract in connection with the Contract, it shall impose terms on its sub-contractors substantially similar to those imposed on it pursuant to this Appendix.

8. To the extent that the Contractor's performance of the Services relates to the exercise of public functions by the Contractor, the Contractor shall, and shall procure that its agents and/or sub-contractors, comply with the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the "**Scottish Regulations**") as if the Contractor were a body within the meaning of the schedule to the Scottish Regulations.

Appendix 2 – Data security conditions for Data Processors (contractors and sub-contractors)

1. Where sub-contractors are employed by the Contractor as a data processor the following conditions also apply to the sub-contractor. For the purpose of these conditions the ‘data processor’ refers to both Contractors and sub-contractors.
2. It is the responsibility of the Contractor to ensure any sub-contractors comply with the following conditions as required by the SFC. This includes providing the same evidence and documentation as required of the Contractor.
3. The data processor will:
 - process data in accordance with the 1998 Act;
 - implement appropriate technical and organisational measures against unauthorised or unlawful processing of personal data processed on behalf of the SFC and against accidental loss or destruction of or damage to such personal data (the measures will be deemed to be appropriate for these purposes if they conform to the provisions of ISO/IEC 27001:2005 or any replacement standard relating to data security);
 - provide the SFC with a copy of a valid and up-to-date registration or notification with the Office of the Information Commissioner. This must include the correct purposes for processing the personal data required by the SFC under the terms of the contract;
 - maintain proper records of the processing of any personal data processed on behalf of the SFC;

- not process personal data on behalf of the SFC and held by it, except in accordance with a contract or otherwise on the instructions of the SFC;
- acquire no rights or interest in the personal data processed on behalf of the SFC and will return such personal data to the SFC at the end of the contract or earlier if so demanded by SFC;
- maintain proper records and evidence of staff training in data protection and secure data handling with regard to the Data Protection Act 1998. This may include in-house presentations or evidence of out-sourced training seminars; and
- not transfer any personal data processed on behalf of the SFC outside the European Economic Area except with the prior written consent of the SFC and in accordance with any additional terms the SFC may impose under this Agreement.

Transfers of personal data

4. The data processor must make available on request to the SFC its policies and procedures for transferring personal data. This includes details of encryption software and procedures for physical transfers of personal data.
5. If any transmission of personal data needs to take place, then good practice must be exercised. Examples of good practice are listed below, this list is not exhaustive.
 - consider whether personal identification data needs to be transferred at all. If not, then consider anonymising the personal identification data or do not include such data in the transfer;

- consider separating the personal identification data from the rest of the data and sending each part separately, then using serial numbers on each part to permit re-uniting later;
 - for data in electronic form use encryption and send the encryption key separately; and
 - when there is no alternative to transferring personal data in an unencrypted form, and a courier service needs to be used, then a secure and reputable courier service must be used to transfer the data direct from point to point.
6. The Contractor will not transfer any Personal Data received from or on behalf of SFC under this Agreement outside the European Economic Area except with the prior written consent of SFC. Before granting such consent, SFC may, among other requirements, require the Supplier to:
- enter into standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in addition to the provisions set out in this Agreement, subject to the approval of SFC;
 - enter into or procure that any relevant subcontractor enters into an appropriate data transfer agreement; or

for transfers to the United States of America, ensure that the recipient has and continues to maintain a current, valid certification under the Safe Harbor program and complies with the Safe Harbor principles.

Monitoring of data processors

7. Subject to the SFC giving not less than seven working days' prior written notice, the data processor will permit the SFC access to the data processor's

premises, personnel and records for the purpose of inspecting, testing and auditing the technical and organisational data security measures referred to above.

Data loss or breaches of data security

8. Any actual or prospective loss of data must be reported to the SFC immediately.
9. Any actual or prospective breach of data security must be reported to the SFC immediately.