



**Scottish
Water**
Trusted to serve Scotland

SCOTTISH WATER

TERMS & CONDITIONS OF CONTRACT

FOR THE PURCHASE OF GOODS & SERVICES

DOCUMENT VERSION CONTROL

Please record any amendments to this document in the table below and email Procurement Helpline advising of the change.

Version Number	Amended By	Amended Date	Summary of Changes
V2 - 8	Various	2015-2018	Various
V9	Susan Hill	09/02/21	Amendments EU referenced clauses, post Brexit. Removal of option to submit notice by facsimile (FAX)
V10	Gillian Nolan/Susan Hill	07/10/21	Inclusion of 'Buyer' definition
V11	Gillian Nolan/Susan Hill	25/05/22	Supplier Code of Conduct, Modern Slavery & SW address changes
V12	Gillian Nolan/Susan Hill	10/06/22	Addition of Clause 40 'The Supplier' & associated definitions

CONTENTS

1.	DEFINITION.....	1
2.	THE GOODS.....	3
3.	ORDERING PROCESS.....	3
4.	LABELLING AND PACKAGING.....	4
5.	DELIVERY AND ACCEPTANCE.....	4
6.	EXCESS DELIVERIES.....	5
7.	PROPERTY PROVIDED BY SCOTTISH WATER.....	5
8.	PRICE AND PAYMENT.....	6
9.	TITLE.....	7
10.	RISK.....	7
11.	COMPLIANCE.....	8
12.	SUPPLIER'S WARRANTIES AND LIMITATION OF LIABILITY.....	8
13.	FORCE MAJEURE.....	9
14.	VARIATIONS.....	9
15.	TERMINATION FOR CONVENIENCE.....	9
16.	TRANSFER OF RIGHTS.....	10
17.	INDEMNITIES AND INSURANCE.....	10
18.	INTELLECTUAL PROPERTY RIGHTS.....	11
19.	CONFIDENTIALITY AND FREEDOM OF INFORMATION.....	12
20.	INSOLVENCY.....	13
21.	DEFAULT.....	13
22.	RECOVERY OF SUMS DUE.....	13
23.	WAIVER.....	13
24.	SEVERABILITY.....	14
25.	DISPUTE RESOLUTION.....	14
26.	NOTICES.....	14
27.	AUDIT.....	15
28.	DISCRIMINATION.....	15
29.	ANTI-BRIBERY AND CORRUPTION.....	15
30.	GOVERNING LAW.....	17
31.	DATA PROTECTION.....	17
32.	CUMULATIVE REMEDIES.....	18
33.	SURVIVAL.....	18
34.	MODERN SLAVERY.....	19

SCHEDULE 1: ADDITIONAL CONDITIONS FOR THE PURCHASE OF SERVICES	20
35. RESPONSIBILITY FOR INFORMATION	20
36. QUALITY OF SERVICES	20
37. MANNER OF CARRYING OUT THE SERVICES	20
38. ACCESS TO THE PREMISES	20
39. SUPPLIER'S PERSONNEL	21
40. THE SUPPLIER	22
41. NOTIFICATION PROCEDURE	22
42. COMPLETION TESTS	22
43. TUPE	22

1. DEFINITIONS

- 1.1 The following terms shall have the following meanings:
- 1.2 "**Acceptance**" means the acceptance of the Goods in terms of clause 5, and "**Accept**" and "**Accepted**" shall be construed accordingly.
- 1.3 "**Applicable Laws**" means any of the following:
- 1.3.1 any statute, directive, order, enactment, regulation, by-law, ordinance or subordinate legislation in force;
 - 1.3.2 any binding court order, judgment or decree;
 - 1.3.3 any applicable industry code, policy, Water Byelaws or standard enforceable by law; and
 - 1.3.4 any applicable direction, code of practice, policy, rule or order that is given by a Regulator that is binding on the parties, in any jurisdiction applicable to the Contract from time to time.
- 1.4 "**Bribery Legislation**" means (a) the United Kingdom's 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 Supplier performs the Contract.
- 1.5 "**Buyer**" means SW (including for the avoidance of doubt, a SW Group Company) or a company or other legal entity or legal person other than the Supplier, that is a party to the Contract.
- 1.6 "**Contract**" means the contract between SW and the Supplier that is called-off under the Contract between SW and the Supplier consisting of the Order, these Terms and Conditions and any other documents (or parts thereof) expressly incorporated by a term of the Order all as amended or varied pursuant to and in accordance with the terms of the Contract.
- 1.7 "**Controller**" shall have the same meaning as in the UK GDPR.
- 1.7 "**Data**" means for the purposes of Clause 31A the data or information in whatever form including, without limitation, operational technology, settings, passwords, images, still and moving, and sound recordings, the provision of which is necessary for the provision of the Goods or Services or generated under this Contract.
- 1.8 "**Data Protection Laws**" means all laws and regulations, including laws and regulations of the European Union and the United Kingdom (including the UK GDPR) applicable to the processing of personal data, as amended from time to time. In the event of conflict between the laws and regulations of the European Union and the laws of the United Kingdom, applicable to the processing of personal data under the Contract, the laws of the United Kingdom shall prevail for the purpose of the Contract.
- 1.9 "**End User**" means the entity in the supply chain considered the recipient of the Services and who supervises and controls the Supplier's Personnel on a day-to-day basis for the purpose of providing the Services.

- 1.10 “**IR35**” is the commonly known reference to the Intermediaries Legislation and Off-Payroll working rules.
- 1.11 “**EU**” means the European Union.
- 1.12 "**Force Majeure Event**" means any cause affecting the performance by a party of its obligations under the Contract arising from acts, events or omissions beyond its reasonable control, including acts of God, riots, war, acts of terrorism, storm or earthquake, but excluding, in the case of the Supplier, its staff or materials shortage or any industrial dispute relating to the Supplier, its staff or its sub-contractors or any other delay or failure in the Supplier's supply chain or any difficulties which the Supplier may have with its financing.
- 1.13 "**Good Industry Practice**" means using standards, practices, methods and procedures conforming to Law, including but not limited to all rules and guidance relating to cyber security issued by the Centre for the Protection of National Infrastructure (CPNI) and National Cyber Security Centre (NCSC), the Network and Information Systems Regulations 2018 (S.I. 2018/506), the Network and Information Systems (Amendment etc.) (EU Exit) Regulation 2019 or any related, equivalent or subsequent legislation, and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that to which the Goods and Services relates under the same or similar circumstances.
- 1.14 "**Goods**" means any goods, articles, workmanship or materials supplied or to be supplied to the Buyer by the Supplier pursuant to or in connection with the Contract.
- 1.15 "**IPR**" means all patents, registered designs and registered trade marks, and any applications for any of the foregoing and the right to apply for same, copyright, design rights, database rights, rights in the nature of copyright, trade marks, trade names and business names, moral rights, topography rights, utility model rights, rights in confidential and proprietary information, rights in inventions and discoveries, know how and any and all other industrial or intellectual property rights whatsoever which exist or arise anywhere in the world.
- 1.16 "**Order**" means an order for Goods and/or Services made by the Buyer using a standard order form or a verbal or written instruction from the Buyer.
- 1.17 "**Premises**" means the Buyer's premises where the Services are to be performed, as may be specified in the Contract.
- 1.18 "**Price**" means the price to be paid by the Buyer to the Supplier in consideration for the Goods and/or Services as set out in the Contract and described more fully in clause 8.
- 1.19 "**Regulator**" means any regulator or regulatory body to which the Buyer or SW is subject from time to time or whose consent, approval or authority is required so that the Buyer or SW can lawfully carry on its business.
- 1.20 "**Scottish Water's Standards and Specifications**" means the standards and specifications issued by Scottish Water which will be made available and may be updated from time.
- 1.21 "**Services**" means the services to be provided as specified in the Contract and shall where the content so specifies, include any goods, articles and materials to be supplied thereunder.
- 1.22 "**Specification**" means the description (if any) of the Goods and/or Services contained in or referred to in the Contract.

- 1.23 **"Supplier"** means the company or individual or other legal entity or legal person named in the Contract as such and where the context so requires shall include any sub-contractor.
- 1.24 **"Supplier Personnel"** means all employees, staff, other workers, agents and consultants of the Supplier, its authorised affiliates and/or any authorised subcontractor who are engaged in the provision of the Services, from time to time.
- 1.25 **"SW"** means Scottish Water established in terms of the Water Industry (Scotland) Act 2002 and having its principal place of business at The Bridge, 6 Buchanan Gate, Stepps, Glasgow, G33 6FB and, to the extent specified in the Contract, a SW Group Company.
- 1.26 **"SW Group Company"** means SW's subsidiaries, affiliates or holding companies and its subsidiaries including, without limitation, Scottish Water Horizons Limited (SC264806).
- 1.27 **"SW Supplier Code of Conduct"** means SW's supplier code of conduct applicable at the time of creation of the Contract and updated and/or amended from time to time (available from SW's website).
- 1.28 **"Terms and Conditions"** means the terms and conditions contained in this document.
- 1.29 **"UK GDPR"** means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.
- 1.30 **"Water Byelaws"** means SW's byelaws that are in force at the time of creation of the Contract and updated and/or amended from time to time (available from SW's website).

The clause and paragraph headings used herein are for purposes of convenience or reference only. They shall not be used to explain, limit or extend the meaning of any part of the Contract.

In these Terms and Conditions the masculine includes the feminine and the singular includes the plural and vice versa unless the context otherwise requires.

Any reference to "include" or "including", including before this term, is to be construed as meaning without limitation.

2. THE GOODS

- 2.1 The Goods shall be to the entire satisfaction of the Buyer and shall conform in all respects with the Contract, including any Specification and all Applicable Laws.
- 2.2 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Buyer. The Supplier acknowledges that the Buyer has relied and shall rely on the skill, care and judgement of the Supplier in the supply of the Goods and the execution and performance of the Contract.

3. ORDERING PROCESS

- 3.1 The Buyer may place Orders from time to time.
- 3.2 No request for a quotation by the Buyer shall constitute an Order.

- 3.3 The Buyer's purchase order number must be clearly stated by the Supplier on all acceptances (if issued), advices, invoices and correspondence.
- 3.4 Each Order accepted by the Supplier shall be deemed to be an individual legally binding agreement between the Buyer and the Supplier and shall be deemed to be subject to these Terms and Conditions.
- 3.5 The Buyer shall not be bound by any terms or any conditions set out in the Supplier's acceptance (if issued) and the terms of the Contract shall prevail to the exclusion of all other terms or conditions.
- 3.6 No previous correspondence, writings, facsimiles, emails, telegrams or verbal communications between the Supplier and the Buyer regarding the Goods and/or Services shall form any part of or be incorporated into the Contract unless specifically referred to in the Order. For the avoidance of doubt, nothing in the Contract shall exclude or limit liability for fraudulent misrepresentation.
- 3.7 The Buyer reserves the right to withdraw or cancel any Order or request for a quotation without notice at any time prior to receipt of acceptance (if issued) or commencement of performance of the Contract by the Supplier.

4. LABELLING AND PACKAGING

- 4.1 The Goods shall be packaged and as necessary palletised in a safe and secure manner and in accordance with any instructions provided by SW. The contents shall be clearly marked on each container and/or pallet and all containers of hazardous goods (or hazardous Goods) (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify SW in full against all actions, proceedings, claims, demands, losses, damages, charges, costs and/or expenses (including legal and other professional fees) which SW may suffer or incur as a result of or in connection with any breach of this condition.
- 4.2 Each container or pallet shall have delivery or advice notes securely attached detailing SW's purchase order reference number, description of the contents, quantity, weight and information for the safe handling of the Goods.
- 4.3 All packaging materials will be considered non-returnable unless otherwise agreed in writing.

5. DELIVERY AND ACCEPTANCE

- 5.1 The Goods shall be delivered to SW at the place and in accordance with the timescale set out in the Contract or if none is specified at such place and in accordance with such timescale for delivery or deliveries as SW and the Supplier shall agree. The Supplier shall advise SW in writing (including email) of despatch of a consignment of Goods on the day of despatch. The Supplier is responsible for ensuring that intended delivery times are acceptable to SW.
- 5.2 Unless otherwise agreed with SW, the Supplier is responsible for the off-loading of the Goods at no additional charge at the place of delivery stated in the Contract. To the extent permitted by law, any access to the Premises and any labour and equipment that may be provided by SW in connection with delivery or off-loading shall be provided without any liability being attributed to SW.
- 5.3 Where Supplier has access to the Premises, Supplier shall at all times comply with SW's site regulations and all safety and hygiene requirements applicable to the premises and shall ensure that its employees and all for whom it is legally liable so comply.

- 5.4 The Supplier shall include an unpriced delivery receipt with each consignment of Goods which shall act as an inventory of the goods delivered and for no other purpose.
- 5.5 Where the Goods shall be subject to inspection by SW, the Goods shall not be Accepted, or be deemed to be Accepted, until SW shall have notified the Supplier in writing to that effect. If upon the lapsing of a reasonable period of time after the date of delivery to SW, SW does not issue a notice informing the Supplier that the Goods fail to comply with the Contract or otherwise rejects the Goods, Acceptance of the Goods shall be deemed to have taken place.
- 5.6 Where a latent defect arises which could not reasonably have been apparent at the time of inspection such Goods shall be deemed not to have been Accepted by SW until a reasonable time after the latent defect becomes apparent.
- 5.7 In the event that SW is not satisfied with the Goods upon inspection in accordance with clause 5.5, SW may reject the Goods. Should the Goods be rejected by SW then the Supplier will be obliged to remove them at the Supplier's own cost and at its risk from collection of the Goods.
- 5.8 The Supplier waives any right to any lien or right of retention which the Supplier may have on the Goods in its possession.
- 5.9 Time shall be of the essence in respect of the Supplier's compliance with its obligations under the Contract in particular (without limitation) in respect of compliance with timescales set out in the Contract or otherwise agreed between SW and the Supplier.
- 5.10 In the event of any delay in delivery of the Goods or any alteration in the Specification, the Supplier must notify SW in writing of any such delay or alteration (along with an explanation for such delay or alteration) as soon as the Supplier becomes aware of the delay or alteration. SW shall, without prejudice to any other remedies available to it, be entitled to reject the Goods and rescind the Contract without any further obligations thereunder but without prejudice to any rights it may have thereunder.
- 5.11 Should SW reject any of the Goods pursuant to clause 5.7 SW shall be entitled without prejudice to its other rights and remedies to:
- 5.11.1 require that the Goods be either replaced or repaired by the Supplier (as SW may elect) within the time specified at the time of rejection, with Goods which comply in all respects with the Contract, or
 - 5.11.2 obtain a refund from the Supplier in respect of the Goods rejected, or
 - 5.11.3 obtain the Goods elsewhere and recover from the Supplier any additional costs thereby incurred, and
 - 5.11.4 recover from the Supplier the full cost of inspection and/or testing from time to time.
- 5.12 Any Goods rejected or returned by SW under clause 5.7 may, at SW's option, be returned to the Supplier at the Supplier's risk and expense.
- 5.13 The Supplier shall pay for the cost of making good any damage caused by the Supplier or the Supplier's personnel or those instructed by the Supplier to perform the Contract. The Supplier shall notify SW of said damage as soon as reasonably practicable.

5.14 Any damage to or loss of, the Goods, during transit shall be at the Supplier's risk. The Supplier shall promptly at its own expense take all steps required to remedy any damage or loss to Goods.

6. EXCESS DELIVERIES

6.1 If the Supplier delivers quantities in excess of the quantity due, SW shall have the right to accept at a reduced price or to reject the quantity in excess of that due. SW shall not be obliged to accept delivery of the Goods prior to SW's specified delivery date and if SW shall do so:

6.1.1 SW shall be entitled to charge storage to the Supplier, and

6.1.2 the date for payment shall be calculated according to the due delivery date and such payment terms as are specified in the Contract.

7. PROPERTY PROVIDED BY SW

7.1 Any equipment, documentation, information (however stored) or any other assets of SW in the possession of the Supplier or the subject of the Contract shall remain at all times the property of SW and shall be identified, kept separate and clearly marked by the Supplier and recorded as such. The Supplier shall maintain all such articles in good condition and shall use such articles solely in connection with the Contract.

7.2 Without prejudice to any other rights of SW, the Supplier shall deliver up to SW such equipment, documentation, information and assets in whatever form stored as they may have acquired in connection with the Contract on demand.

7.3 In the event of expiry, termination or cancellation of the Contract for any reason, all equipment, documentation, information and assets as Supplier may have acquired in connection with the Contract shall be returned immediately to SW (or destroyed at SW's direction) at the Supplier's expense. SW shall be granted unencumbered free rights of access and inspection to the Supplier's premises for such purposes as SW may decide are appropriate.

7.4 In the event that the said equipment, documentation, information and assets are held at a third party's premises, the Supplier shall procure access to said premises for such purposes as SW may decide are appropriate.

7.5 The Supplier shall notify SW of any surplus equipment, documentation, information and assets remaining after completion of the Contract and shall dispose of them as SW may direct. Waste of equipment, documentation, information and assets arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense.

8. PRICE AND PAYMENT

8.1 The Price shall be payable in consideration of the performance by the Supplier of its obligations in accordance with the Contract. The Price shall be firm and unchangeable for the duration of the Contract, shall include all the requirements referred to in the Contract and SW shall only be liable to pay for the amount stated in the Order. No variation to the Price shall be payable by SW unless the Order is revised by SW prior to the Supplier incurring any change to the Price.

- 8.2 The Price shall be deemed to be inclusive of all carriage, packing and insurance costs unless otherwise specifically stated in the Contract or agreed in writing by SW.
- 8.3 The Price shall be in Pounds Sterling.
- 8.4 Unless otherwise agreed in writing by SW, the Supplier shall render an invoice following delivery of the Goods and where applicable, performance of the Services to SW's satisfaction. Value Added Tax where applicable will be shown separately as a strictly net extra. SW's purchase order number must be quoted on all invoices and SW will accept no liability whatsoever for invoices which do not comply with this condition.
- 8.5 Payment shall be made within thirty (30) days following the receipt of an invoice with which SW has no dispute.
- 8.6 All invoices shall be clearly marked with the purchase order number and shall be sent to Scottish Water Accounts Payable, Juniper House, Heriot Watt Research Park, Avenue North, Edinburgh, EH14 4AP.
- 8.7 Where the Supplier enters into a sub-contract in order to provide the Goods and/or Services, it shall cause a term to be included in such a sub-contract:
- 8.7.1 which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, for the purpose of payment alone, where SW has made payment to the Supplier and the sub-contractor's invoice includes goods or services in relation to which payment has been made by SW then, to the extent that it relates to such goods or services, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction;
- 8.7.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of SW and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to SW's procurement department; and
- 8.7.3 in the same terms as that set out in this clause 8.7 (including for the avoidance of doubt this clause 8.7.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.
- 8.8 The Supplier shall indemnify and keep indemnified SW in full from and against all actions, proceedings, claims, demands, losses, damages, charges, costs or expenses (including reasonable legal or other professional fees, costs or expenses) which SW may suffer or incur as a result of or in connection with any breach of clause 8.7.
- 8.9 For the avoidance of doubt, in respect of the delivery of the Services, SW will not be required to pay the Price, or any fee, expense or other consideration for the Services for any period when, for any reason, the Services are not being performed.
- 8.10 Where the Supplier agrees to use an electronic invoicing system (e-invoicing system) in relation to the Contract, it shall use the electronic invoicing system used by Scottish Water.

9. TITLE

- 9.1 The Supplier warrants that it has good title to the Goods.
- 9.2 Title in the Goods and in the materials, components and equipment to be incorporated in the Goods shall pass to SW either:
- 9.2.1 upon delivery or incorporation in accordance with the Contract, or
 - 9.2.2 when payment or part payment in respect thereof is made to the Supplier, whichever is the earlier.
- 9.3 Where title to the Goods passes to SW upon acceptance at the Supplier's premises or under clause 9.2.2, the Goods their component parts and equipment so far (or to be) incorporated therein shall be identified, clearly marked and kept separate by the Supplier as being the property of SW and recorded as such in all documentation.

10. RISK

The risk of loss, damage or destruction of the Goods shall not pass to SW until Acceptance.

11. COMPLIANCE

- 11.1 The Supplier shall comply with and perform the Contract in strict accordance with:
- 11.1.1 the requirements of the Health and Safety at Work etc. Act 1974 and in accordance with any regulations made under the said Act;
 - 11.1.2 the Public Water Supplies (Scotland) Regulations 2014 as amended from time to time, the Water Byelaws and all water supply hygiene and site working requirements, and other relevant policies of SW;
 - 11.1.3 the Supplier Code of Conduct and
 - 11.1.4 all other Applicable Laws,
- and the Supplier warrants that the Goods shall be designed, tested and constructed so as to be safe and without risks to health and safety, and all necessary information and instructions for the safe and proper use of the Goods must be supplied to SW prior to or at the time of delivery of the Goods.
- 11.2 As soon as identified, the Supplier must inform SW of any operational or health risk which may arise in connection with the Goods, including any possible mis-uses of the Goods.
- 11.3 The Supplier's attention is brought to the existence of the Water Byelaws and the SW Supplier Code of Conduct, both of which are available on SW's website (www.scottishwater.co.uk) or alternatively, in the case of the Water Byelaws, by contacting SW's Water Byelaws team.
- 11.4 The Supplier acknowledges and agrees that a breach of this clause 11 shall entitle SW to terminate the Contract with immediate effect and without liability to SW whether in contract, delict (including negligence) or otherwise.

12. SUPPLIER'S WARRANTIES AND LIMITATION OF LIABILITY

- 12.1 The Supplier warrants that the Goods shall be of the best available design and be of the best quality, material and workmanship.
- 12.2 The Supplier warrants that the design, quality, material and workmanship of the Goods will comply with all the requirements set out in the Contract.
- 12.3 The Supplier warrants that all reasonable skill and care will be taken in the provision of Services and that the Services shall comply with all the requirements set out in the Contract.
- 12.4 The Supplier warrants that the Goods and Services will be of satisfactory quality and fit for SW's intended purpose including, in particular, in respect of the Goods' design and functionality.
- 12.5 The warranties given under this clause 12 shall be in effect for a period of two (2) years after date of Acceptance of the Goods by SW and this and any additional warranties and guarantees given to SW by the Supplier shall survive inspection, test, Acceptance and payment, and shall benefit SW, its successors, assignees and customers.
- 12.6 The Supplier warrants that the Goods shall be free from any liens and encumbrances.
- 12.7 Subject to clause 17.4, neither party will be liable to the other under or in connection with any Contract for any indirect or consequential loss or damage whether caused by breach of contract, negligence or breach of statutory or any other duty.
- 12.8 Neither party will in any event be liable to the other under or in connection with any Contract for any loss or damages in excess of (a) £5,000,000 Sterling in respect of damage to SW tangible property, and (b) 150% of the Price or £1,000,000 Sterling, whichever is the higher, for any other loss or damage, in each case per event or series of connected events and whether caused by breach of contract, negligence or breach of statutory or any other duty.
- 12.9 The foregoing limits and exclusions of liability shall not apply to any loss arising in respect of the death or personal injury of any person, loss caused by fraud, any other loss which by law cannot be excluded or limited or to any liability for breach of clauses 4.1, 8.8, 16.4, 17.1, 17.4, 18, 19, 29, 31 and 43.

13. FORCE MAJEURE

- 13.1 Neither SW nor the Supplier will be liable for any delay in performing its obligations under the Contract where such delay is directly caused by a Force Majeure Event, subject to the party who has been delayed:
 - 13.1.1 promptly telling the other party in writing of the reasons for the delay and the likely duration of the delay; and
 - 13.1.2 using its reasonable efforts to continue to perform its obligations under the Contract and to mitigate the effects of the delay.

The performance of that party's obligations will be suspended during the period of the Force Majeure Event so far as it affects the obligations in question and that party will be granted an extension of time for performance equal to the period of the delay.

- 13.2 Save where a delay is caused by the act or failure to act of the other party (in which event the rights, remedies and liabilities of the parties will be those conferred by the other terms of the Contract and by law):
- 13.2.1 any costs arising from that delay will be borne by the party incurring the same; and
- 13.2.2 SW may, if that delay continues for more than thirty (30) days, terminate the Contract immediately on giving notice in writing to the Supplier.

14. VARIATIONS

- 14.1 SW may, at any time, make non-material modifications to the Contract by written notice to the Supplier.
- 14.2 SW reserves the right at any time by written notice to the Supplier to materially modify the Contract and any alteration in the price or the completion date arising by reason of such material modification shall be agreed between the parties. A failure to agree shall not be a reason for the Supplier failing to undertake and complete the Contract. Failing agreement the matter shall be determined in accordance with the provisions of clause 25.

15. TERMINATION FOR CONVENIENCE

- 15.1 In addition to any other rights of termination under the Contract, SW shall be entitled to terminate or suspend the Contract for any reason in whole or in part at any time by giving written notice to the Supplier. SW shall pay a fair and reasonable price for Goods supplied satisfactorily at the time of termination or suspension, provided that SW has accepted and acquired title to such Goods.
- 15.2 Termination of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to SW.

16. TRANSFER OF RIGHTS

- 16.1 SW may assign or novate the Contract and/or its rights and obligations thereunder at any time without the approval or consent of the Supplier.
- 16.2 The Supplier shall not without the prior written consent of SW assign, novate or sub-contract any aspect of the Contract.
- 16.3 Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to it under the Contract.
- 16.4 In the event of SW agreeing to allow work to be done by a sub-contractor the Supplier shall ensure that such sub-contractor complies with all terms and conditions laid down by SW in relation to delivery and the Specification. The Supplier shall be responsible for all work done and Goods or parts thereof supplied or Services provided by all sub-contractors. The Supplier shall indemnify SW against all loss or damage incurred by SW as the result of any act or omission on the part of any sub-contractor, and against all loss or damage incurred by SW as the result of any claim made against it by any sub-contractor.
- 16.5 Where SW has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to SW within three (3) days of such a request being made in writing.

- 16.6 Where the Supplier enters into a sub-contract with a third party (including individuals) in connection with the Contract, it shall ensure that the terms of the sub-contract are consistent with the terms of the Contract.

17. INDEMNITIES AND INSURANCE

- 17.1 The Supplier shall indemnify and keep indemnified SW, its employees and agents in full against any and all actions, claims, proceedings, demands, liability, injury, loss, damages, charges, costs and/or expenses including legal and other professional expenses wherever awarded against or incurred or paid by SW, its employees or agents, which SW may suffer or incur as a result of or in connection with any loss or damage or injury (including death) which arises from any advice given or anything done or omitted to be done under the Contract (including but not limited to any defect in the Goods) to the extent that such loss, damage or injury is caused by the negligence, breach or other wrongful act or omission of the Supplier, its servants or agents.
- 17.2 The Supplier shall effect with an insurance company or companies acceptable to SW policies of insurance covering all the matters which are the subject of the indemnities or undertakings on the part of the Supplier contained in the Contract including Professional Indemnity Insurance to a minimum sum of £5,000,000, Public Liability insurance to a minimum sum of £10,000,000 and Employers Liability insurance to a minimum sum of £10,000,000 in respect of any one incident and unlimited to the number of incidents unless otherwise agreed by SW in writing. The sum insured shall continue in force for a period of six (6) years after conclusion or completion of the Contract. SW reserves the right to require adjustments to such insurance cover if it considers that to be necessary. Without prejudice to the generality of clause 16.6, where the Supplier enters into a sub-contract with a third party (including individuals) in connection with the Contract, the Supplier shall ensure that the sub-contractor takes out insurance cover consistent with the first sentence of this clause 17.2.
- 17.3 At the request of SW, the Supplier shall produce within forty-eight (48) hours, the policies required under clause 17.2 together with receipts or other evidence of payment of the latest premium due thereunder (evidence requested by SW may include but shall not be limited to a broker's verification).
- 17.4 Notwithstanding clause 12.7, the Supplier shall keep SW indemnified in full against any and all direct, indirect or consequential liability, loss, damages, injury, costs and expenses wherever awarded against or incurred or paid by SW as a result of or in connection with any claim made against SW in respect of any liability, loss, damage, injury, cost or expense sustained by SW's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods or Services.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 The Supplier warrants that none of the Goods will infringe any IPR of any third party and the Supplier shall indemnify and keep indemnified SW in full against all actions, claims, proceedings, demands, losses, damages, charges, costs and expenses (including legal and other professional fees) which SW may suffer or incur as a result of or in connection with any breach of this clause or allegation of IPR infringement by a third party.
- 18.2 All IPR and other rights (including ownership and copyright) in any specification, instruction, plan, drawing, pattern, model, design, information or any material similar to any of the

foregoing furnished to or commissioned by SW or made available to the Supplier by SW (including by any person acting on SW's behalf) shall remain vested in SW and the Supplier shall not (except to the extent necessary for the performance of the Contract) without the prior written consent of SW use or disclose any such specification, instruction, plan, drawing, pattern, model, design, information or any material similar to any of the foregoing (whether or not relevant to the Contract) which the Supplier may obtain in the performance of the Contract.

- 18.3 All inventions, designs, methods, processes, know how, materials, data and software discovered or generated as a result of or in the course of the Contract and all IPR arising therein or relating thereto and/or in anything produced in the course of the performance of the Contract shall with immediate effect from its or their creation vest in and belong to SW and the Supplier assigns to SW, by way of present assignation of future rights (and where required by SW, will assign on request), its entire right, title and interest in and to all copyright and other IPR which exists and/or which may hereafter exist or arise in the same which is capable of being assigned to the fullest extent permitted at law, without charge. The Supplier shall from time to time at the reasonable request of SW take such action and execute such documents, forms, deeds and authorisations as reasonably requested by SW to give effect to the rights granted to SW pursuant to the Contract.
- 18.4 The Supplier hereby irrevocably waives in favour of SW any moral rights it may have in terms of the Copyright, Designs and Patents Act 1988 and any similar rights available in any part of the world and shall procure that its employees or sub-contractors shall similarly waive such moral rights.
- 18.5 The Supplier shall provide all materials, documents or information required to allow SW to use or exploit the IPR generated from or arising as a result of the Contract.
- 18.6 The Supplier warrants that it is and will be the sole and absolute legal owner of IPR created independently to the Contract that is supplied under or used in connection with the Contract or that it is validly licensed to make such use of such IPR in terms of written licences.
- 18.7 The Supplier warrants that SW will be free to sub-license the IPR without any third party claims, liens, charges or encumbrances of any kind and that the Supplier is free of any duties or obligations or liabilities to third parties which may conflict with the terms of this clause 18.

19. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 19.1 The Contract and the subject matter thereof, including the items referred to in clause 18, any samples or information supplied by SW relating in any way to SW's business, operations, processes, research or property shall be used for the exclusive purpose of performing the Contract and be treated as and kept confidential by the Supplier who shall not use such for its own benefit or the benefit of any third party or disclose such or any details thereof for any purpose whatsoever (including advertisements, display or publication) without SW's prior consent in writing. Notwithstanding the foregoing, the Supplier shall be entitled to make any disclosure required by law, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure or by any regulatory authority, in each case provided that at least 5 working days' notice shall be given to SW before disclosure is made. SW shall be entitled to make any disclosure of any confidential information relating to the Supplier and/or the Contract, required by law or as a consequence of judicial order or order by any court or tribunal with the authority to order disclosure or by any regulatory authority.
- 19.2 SW may require to disclose information in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, (the

decisions of SW in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.

- 19.3 When disclosing such information it is recognised and agreed by both parties that SW is unable to impose any restriction upon the information that it provides. Such disclosure shall not be treated as a breach of the Contract.
- 19.4 The Supplier acknowledges that SW:
- 19.4.1 is subject to the requirements of the Freedom of Information (Scotland) Act 2002 ("FOISA") and the Environmental Information Regulations (Scotland) 2004 ("EIRS");
 - 19.4.2 may be obliged under FOISA or the EIRS to disclose information without consulting with the Supplier; and
 - 19.4.3 shall be responsible for determining at its absolute discretion whether any information held by it is exempt from disclosure in accordance with the provisions of the FOISA or the EIRS and/or is to be disclosed in response to a request for information.

20. INSOLVENCY

- 20.1 Without prejudice to any other rights or remedies of SW, SW shall have the right forthwith to terminate the Contract with immediate effect by written notice if the Supplier (if a company) shall have an administrator or administrative receiver or receiver or manager or trustee or provisional liquidator or similar officer appointed in respect of the Supplier or any part of its undertaking or assets or shall go into liquidation (other than for the purposes of solvent reconstruction or amalgamation) or shall enter into a composition or a voluntary arrangement with its creditors or shall be subject to any notice of intention to appoint or any application for the appointment of an administrator or (if an individual) shall be declared bankrupt or sequestrated or shall enter into a composition with his/her creditors or a trust deed for the benefit of creditors.
- 20.2 SW may terminate the Contract immediately or within such period of time as SW considers reasonably necessary by giving notice to the Supplier if Supplier suffers any event or series of events which, in the opinion of SW, has or could reasonably be expected to have an effect that could be materially adverse to the assets, business, financial condition or trading prospects of the Supplier such that it could reasonably be expected to be unlikely to be able to perform the Services or otherwise perform its obligations under the Contract.

21. DEFAULT

- 21.1 Failure by the Supplier to comply with any of the Contract conditions shall enable SW (at its option) to release itself from any obligation to accept and pay for the Goods and/or to terminate all or part of the Contract, in either case without prejudice to its other rights and remedies.
- 21.2 Where SW has so released itself and/or terminated all or part of the Contract under clause 21.1 SW shall be entitled to carry out the Contract or arrange for the carrying out of the Contract by a third party and to recover all costs from the Supplier.

22. RECOVERY OF SUMS DUE

- 22.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract between the Supplier and SW or any SW Group Company.
- 22.2 Any overpayment by SW to the Supplier, whether of the Contract Price or tax, shall be a sum of money recoverable by SW from the Supplier and the Supplier undertakes to repay any undisputed amounts within ten (10) working days of written notification by SW.

23. WAIVER

The failure of either party to seek redress for breach, or to insist upon strict performance of any term, condition or 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 thereof and shall not cause a diminution of the obligations established by the Contract. A waiver of any default shall not constitute a waiver of any subsequent default. No waiver of any of the terms, conditions or provisions of the Contract shall be effective unless it is expressly stated in writing, communicated to the other party and agreed by the parties.

24. SEVERABILITY

- 24.1 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 24.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

25. DISPUTE RESOLUTION

- 25.1 Subject to clause 25.2, any dispute between the parties to the Contract that is not resolved may be referred in writing by either party to the director of the other party. If upon expiry of fifteen (15) working days following the date of the referral letter to a director, the dispute remains unresolved and provided the dispute does not involve a question or interpretation of the law, the dispute may be referred to any form of alternative dispute resolution that the parties to the Contract agree. The procedures and availability of appeal in connection with the chosen alternative dispute resolution shall be agreed by the parties to the Contract.
- 25.2 Either party to the Contract may initiate proceedings in a Sheriff court in Scotland or the Court of Session in Edinburgh (at the sole discretion of the party initiating the court action) in respect of a dispute in order to avoid damage to its business or reputation or to protect or preserve its legal rights or where the parties to the Contract have not considered alternative dispute resolution or where under clause 25.1 the parties cannot agree to a form of alternative dispute resolution.
- 25.3 Pending resolution or determination of any matter in dispute, the parties to the Contract agree that the performance of the Contract shall not be suspended, ceased or delayed and the Supplier shall comply fully with its obligations under the Contract at all times, unless otherwise agreed by both parties.

26. NOTICES

- 26.1 Any notice given under or pursuant to the Contract shall be in writing and shall be sent by hand or by recorded or special delivery service.
- 26.2 For the purpose of sending notices under clause 26.1, the Supplier shall provide SW with an address in the UK and shall update SW of any change of address. Where the Supplier does not have a presence in the UK, it shall, whilst it has any continuing obligations under the Contract, maintain an agent in the UK whose address shall be notified to SW (in accordance with clause 26.1), for the purpose of sending notices under clause 26.1. This clause 26.2 does not affect the right to serve proceedings in any other manner permitted by law, or for the purpose of enforcement or execution of any judgment or other award obtained against the Supplier. Service upon the agent shall be deemed completed whether or not forwarded to or received by the Supplier.

27. AUDIT

The Supplier shall keep and maintain, until six (6) years after the Contract has been completed, records, to the satisfaction of SW, of all expenditures which are reimbursable by SW and, where applicable, of the hours worked and costs incurred in connection with any employees of the Supplier on a time charge basis. The Supplier shall on request afford SW or its representatives such access to those records as may be required by SW in connection with the Contract.

28. DISCRIMINATION

- 28.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex, sexual orientation, religion, belief or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and where applicable, other Applicable Laws in respect of the said grounds.
- 28.2 The Supplier shall not breach the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or the Data Protection Act 1998, in connection with any blacklisting activities.
- 28.3 The Supplier shall take all reasonable steps to procure the observance of clauses 28.1 and 28.2 by the Supplier's personnel, sub-contractors and agents involved in the Contract.
- 28.4 Failure by the Supplier to comply with clauses 28.1 or 28.2 shall entitle SW to terminate the Contract with immediate effect and without liability on SW whether in contract, delict (including negligence) or otherwise.

29. ANTI-BRIBERY AND CORRUPTION

- 29.1 SW shall be entitled to terminate the Contract with immediate effect and without liability on SW whether in contract, delict (including negligence) or otherwise and to recover from the Supplier all costs or losses resulting from such termination where the Supplier or any person acting on behalf of the Supplier:
- 29.1.1 has committed an offence under the Bribery Act 2010;
 - 29.1.2 is subject to an investigation involving compliance with the Bribery Act 2010 or reaches a settlement in connection with said investigation;

29.1.3 breaches any of the provisions of the Bribery Legislation; or

29.1.4 breaches clauses 29.2 or 29.3.

Without prejudice to the generality of the foregoing provisions, the Supplier acknowledges and agrees that SW can invoke the said right of termination where the Supplier breaches the Bribery Act 2010 in connection with other contracts between the Supplier and SW or a SW Group Company.

29.2 The Supplier undertakes to act in a way to uphold SW's good name and reputation at all times and not to do or attempt to do any act or thing which is intended or which in fact causes any damage to or brings discredit upon SW, its good name or reputation.

29.3 The Supplier shall:

29.3.1 take steps to ensure that neither it nor its employees, sub-contractors, agents and others performing the Contract has done (or agreed to do) or shall do (or agreed to do) anything which constitutes a breach of any Bribery Legislation;

29.3.2 procure that it, and each of its employees, agents, sub-contractors and others involved in performing the Contract has in place and monitors, adequate and effective procedures to prevent a breach of the Bribery Legislation;

29.3.3 have in place commitments from directors or other senior managers expressing the Supplier's anti-bribery stance and the involvement of directors or other senior managers in activities required to comply with the Bribery Act 2010;

29.3.4 carry out risk assessments to identify possible areas where any Bribery Legislation may be breached and carry out any steps required to prevent identified risks;

29.3.5 carry out due diligence firstly, where areas of risk in respect of breaching any Bribery Legislation are uncovered including as a result of carrying out risk assessments and secondly, where the possibility of a breach of Bribery Legislation is real, including based on historic practices or local customs;

29.3.6 issue communications explaining the Supplier's anti-bribery stance and circulate internally and where appropriate, externally to its agents, sub-contractors and others involved in performing the Contract;

29.3.7 provide training to its employees and all other workers in relation to Bribery Legislation;

29.3.8 notify SW immediately if any owner whether direct or beneficial, shareholder, officer, director, employee, third party representative, agent or any family relation of any such person, is or becomes a government official;

29.3.9 report to SW, any suspicion of any breach or alleged breach of any Bribery Legislation by the Supplier including each of its employees, agents, sub-contractors or others involved in performing the Contract and co-operate with SW or any regulator or prosecutor in any investigation relating to the same; and

29.3.10 to the extent permitted by law, confirm to SW, that there is no outstanding and within the last six years there has been no, (i) investigation into it or any of its

associated companies, (ii) it has not been convicted of any offence under any Bribery Legislation or reached any settlement in relation to any alleged breach of any Bribery Legislation, (iii) it has not self-reported any breach or suspected breach of any Bribery Legislation.

30. GOVERNING LAW

The Contract shall be governed by and construed in accordance with Scots law and any disputes arising shall be subject to the exclusive jurisdiction of the Scottish courts.

31. DATA PROTECTION

31.1 Subject to ensuring compliance with all applicable Data Protection Laws, either party may process business contact information ("**BCI**") relating to personnel of the other party (for example name, business telephone number, job title and business email address) for the purpose of providing the Goods or Services and to manage the general relationship between SW and the Supplier (which for clarity, shall in neither case include a right to carry out automated individual decision-making, including profiling nor marketing activities). For those purposes, both parties deem that they are acting as independent Controllers and shall at all times, ensure compliance with Data Protection Laws required of a Controller.

DATA SECURITY AND CYBER SECURITY

31A.1 The Supplier shall not disclose Data relating to the location, technical or organisational aspects of any part of the SW's business, including, without prejudice to the foregoing generality, its telemetry, Data collection, communication systems or all operational technology systems, to any third party other than:

- a) to third parties to whom such disclosure is reasonably necessary pursuant to an Order;
- b) to the extent required under a court order; provided that disclosure is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this sub-clause 31A.1 (unless requiring such written terms would contravene the relevant court order under (b)), and that the Supplier shall give notice to the SW of any disclosure of Data it is required to make prior to making such disclosure or, if that is not practicable, as soon as reasonably possible after it is aware of such a requirement.

31A.2 The Supplier shall bring into effect and maintain all technical and organisational measures, in accordance with Good Industry Practice, to prevent unauthorised or unlawful access to the SW's technical, operational or organisational systems and/or the SW's Data, held by or accessible to the Supplier, and to prevent the accidental loss or destruction of, or damage to such Data or technical, operational or organisational systems including taking reasonable steps to ensure the reliability of staff having access to such Data, technical, operational or organisational systems.

31A.3 The SW may request a written description of the technical, operational and organisational methods referred to in Sub-Clause 31A.2 and this clause 31A generally, employed by or on behalf of the Supplier, in such a manner as to enable the SW to carry out an effective security audit of the Supplier's compliance with this Clause 31A. Within 21 days of such request, the Supplier shall supply or procure the supply of written particulars of all such measures sufficient to determine whether in connection with the Data, the Supplier is compliant with its obligations under this Clause 31A.

31A.4 The Supplier notifies the SW immediately if:

- it becomes aware of unauthorised or illegal access being gained to the SW's technical, operational or organisational systems and/or the SW's Data, or
- any other incident occurs (or is known to the Supplier to be at risk of occurring) which relates to the SW's technical, operational or organisational systems and/or the SW's Data and which could have an impact on the continuity of the essential services provided by the SW, being provision of fresh water supply and treatment of waste water.

31A.5 The Supplier shall indemnify and keep indemnified the SW against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the SW in respect of a breach of Clause 31A by the Supplier.

31A.6 The SW shall be entitled to treat any breach by the Supplier of this clause 31A as reasonable grounds to invoke the remedies set out in sub-clause 21.1 and 21.2.

31A.7 The Supplier shall not replace or substantially change the technology and/or systems used for the delivery of the Goods and Services under this Contract from those technologies and/or systems disclosed to the SW during the tendering process, without the prior written approval of the SW.

31A.8 The Supplier shall implement measures to ensure the upload and storage in safe custody of the data, materials and documentation in accordance with Good Industry Practice, and Scottish Water's Standards and Specifications.

32. CUMULATIVE REMEDIES

32.1 All rights or remedies available to a party under the Contract or at law are cumulative and may be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed an election of such right or remedy to the exclusion of other rights or remedies.

32.2 The provisions of this clause 32 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

33. SURVIVAL

Without prejudice to the other provisions providing for survivability elsewhere in the Contract (including these Terms and Conditions), the terms contained in clauses 7 (Property Provided by SW), 15 (Termination for Convenience), 17 (Indemnities and Insurance), 18 (Intellectual Property Rights), 19 (Confidentiality and Freedom of Information), 20 (Insolvency), 21 (Default), 22 (Recovery of Sums Due), 27 (Audit), 30 (Governing Law), 31 (Data Protection), 32 (Cumulative Remedies), 33 (Survival), and 43 (TUPE) shall survive the expiry or termination of the Contract howsoever caused.

34. MODERN SLAVERY

The Buyer shall be entitled to terminate the Contract with immediate effect and without liability on the Buyer whether in contract, delict (including negligence) or otherwise and to recover from the Supplier all costs or losses resulting from such termination where the Supplier or any person acting on behalf of the Supplier, has committed an offence under the Modern Slavery Act 2015 or the Human Trafficking and Exploitation (Scotland) Act 2015 or under equivalent modern slavery and human trafficking legislation applicable in jurisdictions outside the UK, or where applicable, the Supplier, or any person acting on behalf of the Supplier, fails to comply with its duty to prepare a slavery and human trafficking statement, as prescribed in Part 6, Section 54 of the Modern Slavery Act 2015.

SCHEDULE 1: ADDITIONAL CONDITIONS FOR THE PURCHASE OF SERVICES

Where the Contract comprises or includes for the purchase of services the following additional conditions shall also apply:

35. RESPONSIBILITY FOR INFORMATION

The Supplier shall be responsible for any errors or omissions in any drawings, calculations, and information supplied by it whether approved by SW or not provided that such errors or omissions are not due to inaccurate information furnished in writing by SW.

36. QUALITY OF SERVICES

36.1 The Services and the Supplier shall comply in all respects with the Contract including the Specification and any authorised modification thereto that may have been agreed and confirmed in writing by SW, and with all Applicable Laws.

36.2 The Services shall be completed in a proper manner to the standards of best technical and commercial practices using competent and appropriately trained staff taking due and diligent care, skill and attention at all times. The Supplier acknowledges that SW has relied and shall rely upon the said care, skill and attention of the Supplier in performing the Services.

36.3 All materials and workmanship shall be to the entire satisfaction of SW and shall conform in all respects with the Contract, be of satisfactory quality, fitness for purpose and any other particulars specified in the Contract.

36.4 If SW informs the Supplier that any part of the Services does not meet the requirements of the Contract, the Supplier shall, at its own expense, re-schedule and re-perform the Services as directed by SW within such timescale as SW prescribes.

37. MANNER OF CARRYING OUT THE SERVICES

37.1 The Supplier shall comply with SW's then current "Site Regulations" and all safety and security requirements applicable to the Premises and shall ensure that its employees and sub-contractors so comply.

37.2 When required by SW a "Permit to Work" duly approved by SW shall be obtained by the Supplier prior to the commencement of the Contract. Such approval shall not relieve the Supplier from any of its obligations under the Contract and Applicable Laws.

37.3 The Supplier shall not unreasonably interfere with or interrupt the normal day to day activities of SW in the performance of the Contract.

37.4 The Supplier shall not interfere with the operation of any plant or equipment (apart from as expressly set out in the Contract) without the prior approval in writing of SW.

37.5 The Services shall be performed in accordance with the timescales specified in the Contract or as otherwise directed by SW from time to time.

38. ACCESS TO THE PREMISES

38.1 SW shall have the right to require the removal from the Premises of any of the Supplier's personnel and as required by SW, the Supplier shall immediately remove any of its personnel

from the Premises. The decision of SW as to whether any of the Supplier's personnel are to be admitted to the Premises shall be final and conclusive.

- 38.2 The Supplier shall have access (but not exclusive access) only to such parts of the Premises as are reasonably necessary for the purpose of carrying out the Contract and to such other parts as SW may from time to time authorise. The Supplier shall be responsible for ensuring that its employees do not enter any other part of the Premises and that they make use only of such roads, routes and facilities as SW may authorise. The Supplier shall not use the Premises for any purpose or activity other than performance of the Service.

39. SUPPLIER'S PERSONNEL

- 39.1 When requested by SW, the Supplier shall provide a list of the names of all persons who are or may be at any time concerned with the Contract or any part thereof. That list shall specify the capacities in which they are so concerned and shall give such other particulars, evidence of identity or information as SW may require.
- 39.2 The Supplier's personnel shall in no sense be regarded as employees of SW, and the Supplier shall be liable for all necessary arrangements and the payment of income tax, National Insurance contributions and other expenses associated with their employment (or, in the case of a contract for services, their engagement) that may become due as a result of the Contract. The Supplier (if an individual) warrants that he is regarded by Her Majesty's Revenue and Customs, the Pensions Regulator and the Department of Work and Pensions as self-employed.
- 39.3 In the event that SW requires the Services to be carried out by particular individuals, such individuals shall not be released from performing the Services without the prior written agreement of SW (not to be unreasonably withheld) except by reason of long term sick leave, maternity or paternity leave, termination of employment or other extenuating circumstances resulting in the individual not working for the Supplier. In the event of an individual being released from performing the Services, the Supplier shall offer a replacement for approval by SW (not to be unreasonably withheld) provided that the Supplier shall only propose someone of at least equal skill, experience, status and suitable for holding the responsibilities in relation to the Services.
- 39.4 In all instances where passes are required for admission of the Supplier's personnel to the Premises, SW shall arrange for their issue. The Supplier shall submit to SW a list of all the names of the Supplier's personnel and produce evidence to SW's reasonable satisfaction as to the identity of the Supplier's personnel and where requested by SW, other relevant details reasonably required by SW. All passes shall be returned either on demand by SW or in any case, on the completion of the Contract.
- 39.5 SW reserves the right to deny access to the Premises or to require the removal from involvement in the Contract, of any of the Supplier's personnel. SW's decision shall be final and conclusive and there shall be no appeal against such decision. The Supplier shall bear the cost of any notice, instruction or decision of SW under this clause 39.5.
- 39.6 The Supplier's personnel shall be under the control of the Supplier who accepts full responsibility and liability for successful completion of the Contract except to the extent that completion is prevented by an act or omission of SW.

40. THE SUPPLIER

- 40.1.1 warrants and undertakes that all Supplier Personnel that are, or will be made available to SW under this Agreement where SW could be considered as the End User of Services provided by the Supplier Personnel, are engaged as employees on a Pay-As-You-Earn (PAYE) basis, either directly by the Supplier, or by an umbrella company engaged by the Supplier and properly accredited by the FCSA (Freelancer & Contractor Services Association);
- 40.1.2 warrants and undertakes that, at all times throughout the duration of this Agreement, none of the Supplier Personnel that are made available to SW under this Agreement where SW could be considered as the End User of Services provided by the Supplier Personnel, will provide their Services through an intermediary, (where IR35 applies) (as defined in the off-payroll working rules contained in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (“**Off-Payroll Working Rules**”)).
- 40.2 During the term of this Agreement and following its expiry or termination, the Supplier will promptly notify SW in writing if the Supplier becomes aware that, or reasonably suspects that, any breach of its warranties and undertakings in Clause 40.1 has occurred.
- 40.3 If SW receives a notice pursuant to Clause 40.1.2, or otherwise reasonably suspects that the Supplier has breached any of the Supplier’s warranties and undertakings in Clause 40.1.1, SW may either (in its sole discretion):
- 40.3.1 withhold any monies due to the Supplier under the Agreement in whole or part satisfaction of amounts due under the indemnity at clause (40.4) below; or
- 40.3.2 instruct the Supplier to immediately remove any Supplier Personnel who are performing and completing the Services in breach of the Supplier’s warranties and undertakings at Clause (40.1.1) and, if requested by SW, to replace such worker with another worker who is engaged as an employee on a Pay-As-You-Earn (PAYE) basis, either directly by the Supplier, or by an umbrella company engaged by the Supplier and properly accredited by the FCSA (Freelancer & Contractor Services Association); or
- 40.3.3 both 40.3.1 and 40.3.2.
- 40.4 Notwithstanding any other provision of this Agreement, the Supplier shall free, relieve and indemnify SW against all liabilities for tax (including amounts payable under PAYE), employer and employee national insurance contributions, and apprenticeship levy, together with all interest, penalties, fines and costs incurred by SW (including all reasonable legal expenses on an indemnity basis) in the event that the Supplier breaches the warranties and undertakings in clause (40.1.1) or if HMRC otherwise successfully establishes, including where it is so established after the termination of this Agreement, that SW’s engagement with or utilisation of any Supplier Personnel pursuant to this Agreement constituted deemed employment for the purpose of the Off-Payroll Working Rules.

41. NOTIFICATION PROCEDURE

The Supplier shall give immediate notice to SW in the event of any accident or damage that is likely to form the subject of a claim under SW’s insurance. The Supplier shall give all the

information and assistance in respect thereof that SW's insurers may require and shall not negotiate, pay, settle, admit or repudiate any claim without their express written consent. The Supplier shall permit SW's insurers to take proceedings in the name of the Supplier to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

42. COMPLETION TESTS

- 42.1 Where applicable, completion tests, which shall be in accordance with the Contract, shall be made upon completion of the Services and at a time to be agreed with SW.
- 42.2 When the Services are complete and all tests to be carried out by the Supplier have been passed to the entire satisfaction of SW, SW shall accept the Services.
- 42.3 In the event of the Services or any part thereof failing to meet the tests specified in the Contract, SW may;
 - 42.3.1 require rectification at the Supplier's expense, or
 - 42.3.2 accept the Services, conditional upon the Supplier accepting a reduction in the Contract price, acceptable to SW, or
 - 42.3.3 reject the Services and recover from the Supplier all costs incurred directly or indirectly as a result of the Supplier's failure to complete the Services to SW's entire satisfaction.

43. TUPE

- 43.1 Both parties to the Contract agree that the Contract is predominantly for the supply of Goods, with provision of Services from time to time where required, and that the Transfer of Undertaking (Protection of Employment) Regulations 2006 ("TUPE") shall not apply on commencement, amendment, expiry or termination of the Contract. The Supplier agrees to perform the Contract (including performance of Services) in a manner so that no one of its employee or independent contractor will spend more than 50% of their (employment or working) time on performing the Contract and accordingly the parties to the Contract agree that TUPE shall not apply on amendment, expiry or termination of the Contract or in any case, that SW shall not be liable if TUPE is applicable.
- 43.2 SW may periodically require the Supplier to confirm in writing its compliance with clause 42.1 and failure by the Supplier to comply with clause 43.1 shall allow SW to terminate the Contract with immediate effect. Termination under this clause shall be without liability on SW whether in contract, delict (including negligence) or otherwise.
- 43.3 In the event that TUPE is applicable on amendment, expiry or termination of the Contract or otherwise a Relevant Transfer (as defined in TUPE) or where the Supplier breaches clause 42.1 (by allowing its employees or independent contractors to spend more than 50% of their employment or working time on the Contract), the Supplier shall indemnify and keep indemnified SW and at SW's option, a new supplier who is not a party to the Contract ("New

Supplier"), in each case, in full from and against all actions, claims (including for the avoidance of doubt, employment costs and employment liabilities), proceedings, liabilities, demands, losses, damages, charges, costs or expenses (including reasonable legal and other professional fees, costs or expenses) which SW or the New Supplier may suffer or incur as a result of TUPE being applicable or the said breach of clause 42.1 irrespective of whether the event giving rise to the indemnity being invoked takes place before or on the Relevant Transfer date (subsequent to which the New Supplier performs the Contract).

- 43.4 Where TUPE is reasonably alleged to apply by either party to the Contract or during the period of six months preceding the amendment or expiry of the Contract or after SW has given notice to terminate the Contract or the Supplier stops trading or within 20 working days of being so requested by SW or the New Supplier, the Supplier shall fully and accurately disclose to SW and at SW's option, the New Supplier, all information relating to its employees engaged in performing the Contract, in particular, but not necessarily restricted to, the following:
- 43.4.1 the total number of the Supplier's employees whose employment with the Supplier is liable to be terminated at the amendment, expiry or termination of the Contract but for any operation of law;
 - 43.4.2 for each person of the Supplier's employees, age, details of their salary and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements;
 - 43.4.3 information about the other terms and conditions on which the affected Supplier's employees are employed (including but not limited to their working arrangements);
 - 43.4.4 details of pension entitlements, if any;
 - 43.4.5 details of any disputes or grievances involving the affected Supplier's employees including "employee liability information" as defined in TUPE; and
 - 43.4.6 job titles of the members of the Supplier's employees (the names of individual persons of the Supplier's employees do not have to be given) affected and the qualifications required for each position.
- 43.5 The Supplier shall permit SW and at SW's option, the New Supplier, to use the information obtained under clause 43.4 for the purposes of TUPE or re-tendering (including disclosing such information to potential New Suppliers) or both (TUPE and re-tendering). The Supplier will co-operate with its obligations under TUPE by allowing SW and at SW's option, the New Supplier, to communicate with and meet the affected employees and/or their representatives.
- 43.6 The Supplier agrees to indemnify and keep indemnified SW and at SW's option, the New Supplier, in each case, in full from and against all actions, suits, proceedings, claims, judgements, demands, orders, expenses, awards, costs (including reasonable legal and other professional fees, costs or expenses) and all other liabilities whatsoever in any way connected with or arising from or relating to the inaccurate or late provision of information under clause 43.4.

- 43.7 In the event that the information provided by the Supplier under clause 43.4 becomes inaccurate for any reason or the Supplier becomes aware that the information originally given was inaccurate, the Supplier shall notify SW and the New Supplier, of the inaccuracies and provide the amended information.
- 43.8 The Supplier will not in the six month period preceding the amendment or expiry of the Contract or after SW has given notice to terminate the Contract or the Supplier stops trading, without the prior written consent of SW:
- 43.8.1 materially vary the terms and conditions of the Supplier's employees working on the Contract;
 - 43.8.2 materially increase or decrease the numbers of the Supplier's employees working on the Contract; and
 - 43.8.3 replace any of the Supplier's employees working on the Contract with any other members of the Supplier's employees.
- 43.9 Where TUPE is applicable, the Supplier shall maintain personnel records in the format normally adopted regarding the service of each of the employees affected by the Relevant Transfer including all personnel records required to be maintained by law and deliver such records to SW and SW shall have the right to provide the same to the New Supplier.
- 43.10 All remuneration of any kind due to the employees affected by the Relevant Transfer during the period up to the Relevant Transfer date applicable to them shall be paid or settled in full by the Supplier in each case no later than the date such remuneration is due to be paid.
- 43.11 The provisions of this clause 43 shall apply during the continuance of the Contract and indefinitely after its termination or expiry.