



**Scottish
Water**

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SCOTTISH WATER

FRAMEWORK TERMS & CONDITIONS OF CONTRACT

FOR THE PROVISION OF 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	Gillian Nolan	15/01/15	Update Water Supplies Regs: Clause 15.1.2
V3	Gillian Nolan	19/10/15	Updated 17.3 to include references to clauses 33 & 37
V4	Gillian Nolan	11/11/15	Inclusion of Modern Slavery clause
V5	Iain Masterson	20/09/16	Updates to 16.3 and 17.3
V6	Iain Masterson	14/04/17	Update to insurance requirements
V7	CMS	25/01/18	Addition of Cyber Security Legislation

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1. DEFINITIONS

1.1 The following terms shall have the following meanings:

1.2 “**Applicable Laws**” means any of the following:

1.2.1 any statute, directive, order, enactment, regulation, by-law, ordinance or subordinate legislation in force;

1.2.2 any binding court order, judgment or decree;

1.2.3 any applicable industry code, policy or standard enforceable by law; and

1.2.4 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.

1.3 “**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.

1.4 “**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.

1.5 “**Contract**” means the contract between the Buyer and the Supplier that is called-off under the Framework Agreement 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.

1.6 “**Data**” means Data means for the purposes of Clause 34A 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.

1.6A “**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.

1.7 “**Framework Agreement**” means the framework agreement between SW and the Supplier.

1.8 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 European Union Cyber Security Directive (EU 2016/1148) 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 Services relate under the same or similar circumstances.

1.8A “**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.

- 1.9 **"Order"** means an order for Services made by the Buyer using a standard order form or a verbal or written instruction from the Buyer.
- 1.10 **"Premises"** means the Buyer's premises where the Services are to be performed, as may be specified in the Contract.
- 1.11 **"Price"** means the price to be paid by the Buyer to the Supplier in consideration for the Services as set out in the Contract and described more fully in clause 12.
- 1.12 **"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.
- 1.13A **"Scottish Water's Standards and Specifications"** means the standards and specifications issued by Scottish Water and updated from time to time which can be found at the following website: [\[insert link\]](#).
- 1.13 **"Services"** means the services or minor works to be provided as specified in the Contract and shall where the content so specifies, include any materials, components and equipment to be supplied thereunder.
- 1.14 **"Specification"** means the description (if any) of the Services contained in or referred to in the Contract.
- 1.15 **"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.
- 1.16 **"SW"** means Scottish Water established in terms of the Water Industry (Scotland) Act 2002 and having its principal place of business at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline KY11 8GG and, to the extent specified in the Contract, a SW Group Company.
- 1.17 **"SW Group Company"** means SW's subsidiaries, affiliates or holding companies and its subsidiaries including without limitation (i) Scottish Water Horizons Limited (SC264806), (ii) Scottish Water Solutions 2 Limited (SC365084).
- 1.18 **"Terms and Conditions"** means the terms and conditions contained in this document.
- 1.19 **"Water Byelaws"** means SW's byelaws that are in force at the time of creation of the Contract (available from SW's website).
- 1.20 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.
- 1.21 In these Terms and Conditions the masculine includes the feminine and the singular includes the plural and vice versa unless the context otherwise requires.
- 1.22 Any reference to "include" or "including", including before this term, is to be construed as meaning without limitation.
- 2. ORDERING PROCESS AND RESPONSIBILITY FOR INFORMATION**
- 2.1 The Buyer may place Orders from time to time.
- 2.2 No request for a quotation by the Buyer shall constitute an Order.

- 2.3 The Buyer's purchase order number must be clearly stated by the Supplier on all acceptances (if issued), advices, invoices and correspondence.
- 2.4 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.
- 2.5 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.
- 2.6 No previous correspondence, writings, facsimiles, emails, telegrams or verbal communications between the Supplier and the Buyer regarding the 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.
- 2.7 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.
- 2.8 The Supplier shall be responsible for any errors or omissions in any drawings, calculations, and information supplied by it whether approved by the Buyer or not provided that such errors or omissions are not due to inaccurate information furnished in writing by the Buyer.

3. QUALITY OF SERVICES

- 3.1 The Services and the Supplier shall comply in all respects with the Contract including the Specification, any authorised modification thereto that may have been agreed and confirmed in writing by the Buyer, and with all Applicable Laws.
- 3.2 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 the Buyer has relied and shall rely upon the said care, skill and attention of the Supplier in performing the Services.
- 3.3 All materials and workmanship shall be to the entire satisfaction of the Buyer and shall conform in all respects with the Contract, be of satisfactory quality, fitness for purpose and any other particulars specified in the Contract including the Specification.
- 3.4 If the Buyer 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 the Buyer within such timescale as the Buyer prescribes.

4. MANNER OF CARRYING OUT THE SERVICES

- 4.1 The Supplier shall comply with the Buyer'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.
- 4.2 When required by the Buyer a "Permit to Work" duly approved by the Buyer 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.
- 4.3 The Supplier shall not unreasonably interfere with or interrupt the normal day to day activities of the Buyer in the performance of the Contract.
- 4.4 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 the Buyer.

5. COMPLETION DATE

- 5.1 Time is of the essence and the date of completion for the Services or in the case of the Services being performed at regular or defined times shall be as specified in the Contract or as otherwise directed by the Buyer from time to time.
- 5.2 Where the Contract includes tests, the Contract shall not be deemed to be completed until such tests have been passed to the entire satisfaction of the Buyer.

6. ACCESS TO THE PREMISES

- 6.1 The Buyer shall have the right to require the removal from the Premises of any of the Supplier's personnel and as required by the Buyer, the Supplier shall immediately remove any of its personnel from the Premises and shall bear the cost of any notice or decision of the Buyer under this clause. The decision of the Buyer as to whether any of the Supplier's personnel are to be admitted to the Premises shall be final and conclusive.
- 6.2 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 the Buyer may from time to time authorise. The Supplier shall be responsible for ensuring that his employees do not enter any other part of the Premises and that they make use only of such roads, routes and facilities as the Buyer may authorise. The Supplier shall not use the Premises for any purpose or activity other than performance of the Services.
- 6.3 Other than fair wear and tear, 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 the Buyer of said damage within 3 working days.
- 6.4 Any access to the Premises or any labour or property or equipment provided by the Buyer shall be provided without liability on the Buyer except to the extent of a breach of health and safety laws by the Buyer.

7. SUPPLIER'S PERSONNEL

- 7.1 When requested by the Buyer, 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 the Buyer may require.
- 7.2 The Supplier's personnel shall in no sense be regarded as employees of the Buyer, 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 the HM Revenue and Customs, the Pensions Regulator and the Department of Work and Pensions as self-employed.
- 7.3 In the event that the Buyer 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 the Buyer (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 the Buyer (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.

- 7.4 In all instances where passes are required for admission of the Supplier's personnel to the Premises, the Buyer shall arrange for their issue. The Supplier shall submit to the Buyer a list of all the names of the Supplier's personnel and produce evidence to the Buyer's reasonable satisfaction as to the identity of the Supplier's personnel and where requested by the Buyer, other relevant details reasonably required by the Buyer. All passes shall be returned either on demand by the Buyer or in any case, on the completion of the Contract.
- 7.5 The Buyer 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. The Buyer'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 the Buyer under this clause 7.5.
- 7.6 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 the Buyer.

8. NOTIFICATION PROCEDURE

The Supplier shall give immediate notice to the Buyer in the event of any accident or damage that is likely to form the subject of a claim under the Buyer's insurance. The Supplier shall give all the information and assistance in respect thereof that the Buyer's insurers may require and shall not negotiate, pay, settle, admit or repudiate any claim without their express written consent. The Supplier shall permit the Buyer'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.

9. PROPERTY PROVIDED BY THE BUYER

- 9.1 Any equipment, documentation, information (however stored) or any other assets of the Buyer in the possession of the Supplier shall remain at all times the property of the Buyer and shall be identified, kept separate and clearly marked by the Supplier. The Supplier shall maintain all such articles in good condition and shall use such articles solely in connection with the Contract. The Supplier shall notify the Buyer of any surplus materials remaining after completion of the Services and shall dispose of them as the Buyer may direct.
- 9.2 Without prejudice to any other rights of the Buyer, the Supplier shall deliver up such equipment, documentation, information and assets in whatever form stored as it may have acquired in connection with the Contract on demand.
- 9.3 In the event of expiry, termination or cancellation of the Contract for any reason, all equipment, documentation, information and assets as the Supplier may have acquired in connection with the Contract shall be returned immediately to the Buyer (or destroyed at the Buyer's direction) at the Supplier's expense. The Buyer shall be granted unencumbered free rights of access and inspection to the Supplier's premises for such purposes as the Buyer may decide are appropriate.
- 9.4 In the event that the said equipment, documentation information and assets articles are held at a third party's premises, the Supplier shall procure access to said premises for such purposes as the Buyer may decide are required.
- 9.5 The Supplier shall notify the Buyer in respect of any equipment, documentation, information (including information generated by the Supplier under the Contract) and assets referred to in this clause 9 held by it and shall dispose of it as the Buyer may direct. Waste of any equipment,

documentation, information and assets referred to in this clause 11 arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense.

10. INSPECTION

- 10.1 The Supplier is deemed to have inspected the Premises before tendering or accepting the Order so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.
- 10.2 The Buyer shall have the right to inspect the Services at all times and to reject any part thereof that does not comply with the terms of the Contract. Any inspection, checking, approval or acceptance given by or on behalf of the Buyer shall not relieve the Supplier from any obligations or liabilities set forth in the Contract nor constitute a waiver by the Buyer of any rights or remedies in respect of the Services.

11. COMPLETION TESTS

- 11.1 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 the Buyer.
- 11.2 When the Services are complete and all tests to be carried out by the Supplier have been passed to the entire satisfaction of the Buyer, the Buyer shall accept the Services.
- 11.3 In the event of the Services or any part of it failing to meet the tests specified in the Contract or otherwise is not in conformance with the Contract including defective or damaged materials, components and equipment to be provided to the Buyer as part of the Services, the Buyer may;
- 11.3.1 require rectification at the Supplier's expense, or
 - 11.3.2 accept the Services, conditional upon the Supplier accepting a reduction in the Contract price, acceptable to the Buyer, or
 - 11.3.3 reject the Services and recover from the Supplier all costs incurred directly and indirectly as a result of the Supplier's failure to complete the Services including the cost of instructing a third party to provide the Services to the Buyer's entire satisfaction.

12. PRICE AND PAYMENT

- 12.1 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 the Buyer shall only be liable to pay for the amount stated in the Order. No variation to the Price shall be payable by the Buyer unless the Order is revised by the Buyer prior to the Supplier incurring any change to the Price.
- 12.2 All prices shall be in Pounds Sterling.
- 12.3 Unless otherwise agreed in writing by the Buyer, the Supplier shall render an invoice following completion of the Services to the Buyer's satisfaction. Value Added Tax where applicable will be shown separately as a strictly net extra. The Buyer's purchase order number must be quoted on all invoices and the Buyer will accept no liability whatsoever for invoices which do not comply with this condition.
- 12.4 Payment shall be made within thirty (30) days following the receipt of an invoice with which the Buyer has no dispute.

- 12.5 All invoices clearly marked with the purchase order number shall where the Buyer is SW be sent to Scottish Water Accounts Payable, Juniper House, Heriott Watt Research Park, Avenue North, Edinburgh, EH14 4AP or where the Buyer is not SW, to the address notified by or used by the Buyer in connection with the Contract.
- 12.6 Where the Supplier enters into a sub-contract in connection with the Contract, the Supplier shall cause a term to be included in such a sub-contract:
- 12.6.1 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 the Buyer 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 the Buyer 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;
- 12.6.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Buyer and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to the Buyer's procurement department; and
- 12.6.3 in the same terms as that set out in this clause 12.6 (including for the avoidance of doubt this clause 12.6.3) 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.
- 12.7 The Supplier shall indemnify and keep indemnified the Buyer 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 the Buyer may suffer or incur as a result of or in connection with any breach of clause 12.6.
- 12.8 For the avoidance of doubt, in respect of the delivery of the Services, the Buyer 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.

13. TITLE

- 13.1 Title in any materials, components and equipment to be provided as part of the Services shall pass to the Buyer either;
- 13.1.1 upon delivery or incorporation in accordance with the Contract, or
- 13.1.2 when payment or part payment in respect thereof is made to the Supplier,
- whichever is the earlier.
- 13.2 Where title to the materials, components and equipment to be provided to the Buyer as part of the Services passes to the Buyer upon acceptance at the Supplier's premises or under clause 13.1.2, the materials, components and equipment so far or to be, incorporated therein shall be separated, identified and clearly marked by the Supplier as being the property of the Buyer and recorded as such in all documentation. Title in any materials, components and equipment to be used in the performance of the Services but which shall not be provided to the Buyer shall remain with the Supplier.

14. RISK

- 14.1 The risk in any materials, components and equipment to be provided to the Buyer as part of the Services shall pass to the Buyer upon receipt by the Buyer at the Premises or completion of the Services, whichever is the earlier.
- 14.2 Any defective or damaged materials, components and equipment to be provided to the Buyer as part of the Services shall be returned to the Supplier at the Supplier's risk and expense.
- 14.3 The Supplier shall at its expense take all steps required to fulfil the Contract in respect of damaged, defective or lost materials, components and equipment to be provided to the Buyer as part of the Services.

15. COMPLIANCE

15.1 The Supplier shall comply with and perform the Contract in strict accordance with:

- 15.1.1 the requirements of the Health and Safety at Work etc Act 1974 and in accordance with any regulations made under the said Act;
- 15.1.2 the Public Water Supplies (Scotland) Regulations 2014as amended from time to time, the Water Byelaws and all water supply hygiene and site working requirements, and other relevant policies of the Buyer; and
- 15.1.3 all other Applicable Laws,

and the Supplier warrants that the Services shall be performed so as to be safe and without risks to health and safety and all necessary information and instructions for the safe performance or use of the Services shall be supplied to the Buyer at the time of or prior to, performance of the Services.

- 15.2 As soon as identified, the Supplier must inform the Buyer of any operational or health risk which may arise in connection with the performance or use of the Services.
- 15.3 The Supplier's attention is brought to the existence of the Water Byelaws which are available on SW's website (www.scottishwater.co.uk) or alternatively, by contacting SW's Water Byelaws.
- 15.4 The Supplier acknowledges and agrees that a breach of this clause 15 shall entitle the Buyer to terminate the Contract with immediate effect and without liability to the Buyer whether in contract, delict (including negligence) or otherwise.

16. INDEMNITIES

- 16.1 The Supplier shall indemnify and keep indemnified the Buyer, 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 the Buyer, its employees or agents, which the Buyer 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 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.
- 16.2 The indemnity in clause 16.1 shall apply whether the claim, proceedings or judgement is grounded on without limitation, breach of contract, warranty, negligence or strict liability.

- 16.3 The Supplier shall keep the Buyer 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 the Buyer as a result of or in connection with any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer'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 Services.

17. LIMITATION OF LIABILITY

- 17.1 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.
- 17.2 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 the Buyer's 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.
- 17.3 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 7, 12.7, 16.1, 16.3, 21.4, 24, 25.1, 30, 34 & 38.

18. FORCE MAJEURE

- 18.1 Neither the Buyer 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:
- 18.1.1 promptly telling the other party in writing of the reasons for the delay and the likely duration of the delay; and
- 18.1.2 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.

- 18.2 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):
- 18.2.1 any costs arising from that delay will be borne by the party incurring the same; and
- 18.2.2 the Buyer may, if that delay continues for more than thirty (30) days, terminate the Contract immediately on giving notice in writing to the Supplier.

19. VARIATIONS

- 19.1 The Buyer may, at any time, make non-material modifications to the Contract by written notice to the Supplier.
- 19.2 The Buyer 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 32.

20. TERMINATION FOR CONVENIENCE

- 20.1 In addition to any other rights of termination under the Contract, the Buyer 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. The Buyer shall pay a fair and reasonable price for Services including materials, components and equipment supplied satisfactorily at the time of termination or suspension provided that the Buyer has accepted the Services and where applicable, accepted and acquired title to said materials, components and equipment.
- 20.2 Termination of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Buyer.

21. TRANSFER OF RIGHTS

- 21.1 The Buyer may assign or novate the Contract and/or its rights and obligations thereunder at any time without the approval or consent of the Supplier.
- 21.2 The Supplier shall not without the prior written consent of the Buyer assign, novate or sub-contract any aspect of the Contract.
- 21.3 Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to it under the Contract.
- 21.4 In the event of the Buyer 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 the Buyer in relation to delivery and the Specification. The Supplier shall be responsible for all Services provided or work done and materials, components and equipment supplied by all sub-contractors. The Supplier shall indemnify the Buyer against all loss or damage incurred by the Buyer as the result of any act or omission on the part of any sub-contractor, and against all loss or damage incurred by the Buyer as the result of any claim made against it by any sub-contractor.
- 21.5 Where the Buyer has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Buyer within three (3) days of such a request being made in writing.
- 21.6 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.

22. INSURANCE

- 22.1 The Supplier shall effect with an insurance company or companies acceptable to the Buyer policies of insurance covering all the matters which are the subject of 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 the Buyer in writing. The sum insured shall continue in force for a period of six (6) years after conclusion or completion of the Contract. The Buyer reserves the right to require adjustments to such insurance cover if it considers that to be necessary. Without prejudice to the generality of clause 21.6, where the Supplier enters into a sub-contract with a third party (including individuals) in connection with the Contract, the Supplier shall ensure that such sub-contractor takes out insurance cover consistent with the first sentence of this clause 22.1.

22.2 At the request of the Buyer, the Supplier shall produce within forty-eight (48) hours, the policies required under clause 22.1 together with receipts or other evidence of payment of the latest premiums due thereunder (evidence requested by the Buyer may include but shall not be limited to a broker's verification).

23. WARRANTIES

23.1 In addition to the warranties provided elsewhere in the Contract, the Supplier warrants that:

23.1.1 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;

23.1.2 it has the experience and capability to execute the Contract in accordance with generally accepted industry standards for the type of Services concerned; and

23.1.3 by virtue of entering into the Contract the Supplier is not and will not be in breach of any express or implied obligation to any third party that is binding upon it.

24. INTELLECTUAL PROPERTY RIGHTS

24.1 The Supplier warrants that no part of the Services will infringe any IPR of any third party and the Supplier shall indemnify and keep indemnified the Buyer and SW in full against all actions, claims, proceedings, demands, losses, damages, charges, costs and expenses (including legal and other professional fees) which the Buyer or SW or both (Buyer and 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.

24.2 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 the Buyer or made available to the Supplier by the Buyer (including by any person acting on the Buyer's behalf) shall remain vested in the Buyer and the Supplier shall not (except to the extent necessary for the performance of the Contract) without the prior written consent of the Buyer 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.

24.3 All inventions, designs, methods, processes, know how, materials, data and software discovered or generated as a result of the Contract and all IPR arising therein or relating thereto and/or in anything produced in the course of performance of the Contract shall with immediate effect from its or their creation vest in and belong to the Buyer and the Supplier assigns to the Buyer, by way of present assignment of future rights (and where required by the Buyer, 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 the Buyer take such action and execute such documents, forms, deeds and authorisations as requested by the Buyer to give effect to the rights granted to the Buyer pursuant to the Contract.

24.4 The Supplier hereby irrevocably waives in favour of the Buyer 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.

24.5 The Supplier shall provide all materials, documents or information required to allow the Buyer and SW to use or exploit the IPR generated from or arising as a result of the Contract.

24.6 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.

- 24.7 The Supplier warrants that the Buyer and 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 24.

25. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 25.1 The Contract and the subject matter thereof, including the items referred to in clause 24, any samples or information supplied by the Buyer relating in any way to the Buyer'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 the Buyer'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 the Buyer before disclosure is made. The Buyer 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.
- 25.2 The Buyer or 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 the Buyer or 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.
- 25.3 When disclosing such information it is recognised and agreed by both parties that Buyer or 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.
- 25.4 The Supplier acknowledges that the Buyer or SW:
- 25.4.1 is subject to the requirements of the Freedom of Information (Scotland) Act 2002 ("FOISA") and the Environmental Information Regulations (Scotland) 2004 ("EIRS");
 - 25.4.2 may be obliged under FOISA or the EIRS to disclose Information without consulting with the Supplier; and
 - 25.4.3 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.

26. INSOLVENCY

- 26.1 Without prejudice to any other rights or remedies of the Buyer, the Buyer 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.
- 26.2 The Buyer may terminate the Contract immediately or within such period of time as the Buyer considers reasonably necessary by giving notice to the Supplier if Supplier suffers any event or

series of events which, in the opinion of the Buyer, 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.

27. DEFAULT

- 27.1 Failure by the Supplier to comply with any of the Contract conditions shall enable the Buyer (at its option) to release itself from any obligation to accept and pay for the Services and/or to terminate all or part of the Contract, in either case without prejudice to its other rights and remedies.
- 27.2 Where the Buyer has so released itself and/or terminated all or part of the Contract under clause 27.1, the Buyer 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.

28. RECOVERY OF SUMS DUE

- 28.1 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 the Buyer or SW or any SW Group Company.
- 28.2 Any overpayment by the Buyer or SW or a SW Group Company to the Supplier, whether of the Contract price or tax, shall be a sum of money recoverable by the Buyer or SW or SW Group Company from the Supplier and the Supplier undertakes to repay any undisputed amounts within ten (10) working days of written notification by the Buyer or SW or SW Group Company.

29. 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.

30. ANTI-BRIBERY AND CORRUPTION

- 30.1 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:
- 30.1.1 has committed an offence under the Bribery Act 2010;
- 30.1.2 is subject to an investigation involving compliance with the Bribery Act 2010 or reaches a settlement in connection with said investigation;
- 30.1.3 breaches any of the provisions of the Bribery Legislation; or
- 30.1.4 breaches clauses 30.2 or 30.3.

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

- 30.2 The Supplier undertakes to act in a way to uphold the Buyer'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 the Buyer, its good name or reputation.
- 30.3 The Supplier shall:
- 30.3.1 take steps to ensure that neither it nor its employees, subcontractors, 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;
 - 30.3.2 procure that it, and each of its employees, agents, subcontractors and others involved in performing the Contract has in place and monitors, adequate and effective procedures to prevent a breach of the Bribery Legislation;
 - 30.3.3 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;
 - 30.3.4 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;
 - 30.3.5 carry out due diligence firstly, where areas of risk in respect of breaching any Bribery Legislation is 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;
 - 30.3.6 issue communications explaining the Supplier's anti-bribery stance and circulate internally and where appropriate, externally to its agents, subcontractors and others involved in performing the Contract;
 - 30.3.7 provide training to its employees and all other workers in relation to Bribery Legislation;
 - 30.3.8 notify the Buyer 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;
 - 30.3.9 report to the Buyer, any suspicion of any breach or alleged breach of any Bribery Legislation by the Supplier including each of its employees, agents, subcontractors or others involved in performing the Contract and co-operate with the Buyer or any regulator or prosecutor in any investigation relating to the same; and
 - 30.3.10 to the extent permitted by law, confirm to the Buyer, 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.

31. 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 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 Act.

32. SEVERABILITY

- 32.1 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.

32.2 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.

33. DISPUTE RESOLUTION

33.1 Subject to clause 33.2, 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.

33.2 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 33.1 the parties cannot agree to a form of alternative dispute resolution.

33.3 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.

34. DATA PROTECTION

34.1 For the purposes of this clause 34, the terms “Personal Data”, “Processing” and “Data Subject” shall have the meaning as prescribed in the Data Protection Act 1998 (“DPA”).

34.2 Where applicable, the Supplier shall, and shall procure that the Supplier’s Personnel involved in the provision of the Contract shall, comply with the DPA including its notification requirements.

34.3 Notwithstanding the generality of clause 34.2, the Supplier shall:

34.3.1 Process the Personal Data only to the extent and in such manner as is necessary for performing the Supplier’s obligations under the Contract;

34.3.2 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing, and against accidental loss, destruction, damage or alteration and the said measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction, damage or alteration;

34.3.3 take reasonable steps to ensure the reliability of the Supplier’s personnel who will have access to Personal Data;

34.3.4 obtain the prior written consent of the Buyer in order to transfer the Personal Data to any sub-contractor, in which case references to “Supplier’s personnel” in this clause 34 shall be deemed to include said sub-contractor’s personnel;

34.3.5 not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written consent of the Buyer;

- 34.3.6 ensure that all of the Supplier's personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and the need to comply with the obligations of clauses 34.1 to 34.7 inclusive;
- 34.3.7 ensure that none of the Supplier's personnel publish disclose or divulge any of the Personal Data to third parties unless directed to do so by the Buyer; and
- 34.3.8 notify the Buyer within five working days if it receives:
 - 34.3.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 34.3.8.2 a complaint or request relating to the Buyer's obligations under the DPA.
- 34.4 The Supplier shall provide the Buyer with such information and cooperation as the Buyer may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA or clause 34.3.
- 34.5 The Supplier shall promptly notify the Buyer of any breach of the security measures required to be put in place pursuant to sub-clause 34.3.2.
- 34.6 The Supplier shall ensure that it does nothing knowingly or negligently which places the Buyer in breach of the Buyer's obligations under the DPA.
- 34.7 The provisions of this clause (34) shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

34A DATA SECURITY AND CYBER SECURITY

- 34A.1 The Supplier shall not disclose Data relating to the location, technical or organisational aspects of any part of the Buyer'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 34A.1 (unless requiring such written terms would contravene the relevant court order under (b)), and that the Supplier shall give notice to the Buyer 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.
- 34A.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 Buyer's technical, operational or organisational systems and/or the Buyer'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.
- 34A.3 The Buyer may request a written description of the technical, operational and organisational methods referred to in Sub-Clause 34A.2 and this clause 34A generally, employed by or on behalf

of the Supplier, in such a manner as to enable the Buyer to carry out an effective security audit of the Supplier's compliance with this Clause 34A. 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 34A.

34A.4 The Supplier notifies the Buyer immediately if:

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

34A.5 The Supplier shall indemnify and keep indemnified the Buyer against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the Buyer in respect of a breach of Clause 34A by the Supplier.

34A.6 The Buyer shall be entitled to treat any breach by the Supplier of this clause 34A as reasonable grounds to invoke the remedies set out in sub-clause 27.1 and 27.2.

34A.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 Buyer during the tendering process, without the prior written approval of the Buyer.

34A.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.

35. NOTICES

35.1 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 or transmitted by facsimile transmission (provided the faxed communication is sent by first class post within 24 hours of the transmission) and if so sent or transmitted to, the address or facsimile number of the party shown in the Contract or to such other address or facsimile number as a party may by notice (in accordance with this clause 35) have substituted, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours (which for the purposes of this clause 35 shall mean Monday to Friday, 0900 hours to 1700 hours) or in the case of facsimile transmission only, when confirmation of transmission has been printed by the facsimile machine from which the transmission was made during normal business hours. Where the facsimile transmission was made outside normal business hours, the transmission shall be deemed effectively given on the commencement of normal business hours on the next business day immediately following the day of transmission.

35.2 For the purpose of sending notices under clause 35.1, the Supplier shall provide the Buyer with an address in the UK and shall update the Buyer 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 the Buyer (in accordance with clause 35.1), for the purpose of sending notices under clause 35.1. This clause 35.2 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.

36. 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 the Buyer 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 the Buyer or their representative such access to those records as may be required by the Buyer in connection with the Contract.

37. DISCRIMINATION

- 37.1 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.
- 37.2 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.
- 37.3 The Supplier shall take all reasonable steps to procure the observance of clauses 37.1 and 37.2 by the Supplier's personnel, sub-contractors and agents involved in the Contract.
- 37.4 Failure by the Supplier to comply with clauses 37.1 or 37.2 shall entitle the Buyer to terminate the Contract with immediate effect and without liability on the Buyer whether in contract, delict (including negligence) or otherwise.

38. TUPE

- 38.1 Both parties to the Contract agree that the Contract is for the performance of the Services for a limited duration 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 the Buyer and SW shall not be liable if TUPE is applicable.
- 38.2 The Buyer may periodically require the Supplier to confirm in writing its compliance with clause 38.1 and failure by the Supplier to comply with clause 38.1 shall allow the Buyer to terminate the Contract with immediate effect. Termination under this clause shall be without liability on the Buyer whether in contract, delict (including negligence) or otherwise.
- 38.3 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 38.1 (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 the Buyer and SW and at the Buyer'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 the Buyer or SW or the New Supplier may suffer or incur as a result of TUPE being applicable or the said breach of clause 38.1 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 provides the Services).

- 38.4 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 the Buyer 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 the Buyer and SW and at the Buyer'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:
- 38.4.1 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;
 - 38.4.2 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;
 - 38.4.3 information about the other terms and conditions on which the affected Supplier's employees are employed (including but not limited to their working arrangements);
 - 38.4.4 details of pension entitlements, if any;
 - 38.4.5 details of any disputes or grievances involving the affected Supplier's employees including "employee liability information" as defined in TUPE; and
 - 38.4.6 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.
- 38.5 The Supplier shall permit the Buyer and SW and at the Buyer's option, the New Supplier, to use the information obtained under clause 38.4 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 the Buyer and SW and at the Buyer's option, the New Supplier, to communicate with and meet the affected employees and/or their representatives.
- 38.6 The Supplier agrees to indemnify and keep indemnified the Buyer and SW and at the Buyer'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 38.4.
- 38.7 In the event that the information provided by the Supplier under clause 38.4 becomes inaccurate for any reason or the Supplier becomes aware that the information originally given was inaccurate, the Supplier shall notify the Buyer and SW and the New Supplier, of the inaccuracies and provide the amended information.

- 38.8 The Supplier will not in the six month period preceding the amendment or expiry of the Contract or after the Buyer has given notice to terminate the Contract or the Supplier stops trading, without the prior written consent of the Buyer:
- 38.8.1 materially vary the terms and conditions of the Supplier's employees working on the Contract;
 - 38.8.2 materially increase or decrease the numbers of the Supplier's employees working on the Contract;
 - 38.8.3 replace any of the Supplier's employees working on the Contract with any other members of the Supplier's employees.
- 38.9 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 the Buyer and the Buyer shall have the right to provide the same to the New Supplier.
- 38.10 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.
- 38.11 The provisions of this clause (38) shall apply during the continuance of the Contract and indefinitely after its termination or expiry.

39. CUMULATIVE REMEDIES

- 39.1 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.
- 39.2 The provisions of this clause 39 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

40. SURVIVAL

Without prejudice to the other provisions providing for survivability elsewhere in the Contract (including these Terms and Conditions), the terms contained in clauses 9 (Property provided by SW), 16 (Indemnities), 20 (Termination for Convenience), 22 (Insurance), 24 (Intellectual Property Rights), 25 (Confidentiality and Freedom of Information), 26 (Insolvency), 27 (Default), 28 (Recovery of Sums Due), 34 (Data Protection), 36 (Audit), 38 (TUPE), 39 (Cumulative Remedies), 40 (Survival) and 41 (Governing Law) shall survive the expiry or termination of the Contract howsoever caused.

41. 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.