

[TO BE PRINTED ON GL OR CIC HEADED PAPER]

Comment [MG1]: This will depend on the contracting party.

Your ref:

Our ref: [INSERT]

[Supplier name]

[Supplier address]

[Supplier address]

[Supplier address]

FAO: [insert Supplier contact name]

Date: [insert date]

Dear Sirs,

Contract: Supply of [insert] (the "Services")

Following your proposal for the supply of [INSERT DESCRIPTION OF SERVICES] (the "Services"), we hereby accept your offer and are pleased to award this contract to [INSERT SUPPLIER NAME] subject to the terms of this letter.

This letter (the "Appointment Letter") and its Appendices set out the terms of the contract for the provision of the Services between:

- **CULTURE AND SPORT GLASGOW**, a Scottish Charity (number SC037844) which is a company limited by guarantee incorporated under the Companies Acts with company number SC313851 and having its registered office at 220 High Street, Glasgow, G4 0QW, operating under the name Glasgow Life, as the "Customer";
- you, [Supplier's name], (a [company registered in Scotland/England and Wales/[insert other country] with company number [insert]] / [sole trader] / [partnership] and having its [registered office] / [place of business at] [INSERT ADDRESS]) as the "Supplier".

Unless the context otherwise requires, capitalised expressions used in this Appointment Letter have the same meanings as in the terms and conditions of contract set out in Appendix 5 to this Appointment Letter (the "Standard Conditions"). This Appointment Letter and the Appendices and including the Standard Conditions is referred to as the "Agreement". In the event of any conflict between this Appointment Letter and the Standard Conditions, this Appointment Letter shall prevail. Please do not attach any Supplier terms and conditions to this Agreement as they will not be accepted by the Customer and may delay the process.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

1. Services:

1.1 The Services shall be performed at **[insert description of premises (including whether they are the Customer's premises, the Supplier's premises and/or a third party's premises and in each case the address)]**.

1.2 The "Fees" for the Services shall be as set out in Appendix 3.

1.3 The "Specification" of the Services to be supplied is as set out in Appendix 1.

1.4 The Supplier shall provide the Services for the "Term" which shall commence on **[insert the start date of the contract]** (the "Commencement Date") and shall continue until **[insert the date on which the contract will end]** (unless otherwise terminated in accordance with the Standard Conditions.

2. Supplier Additional Responsibilities

2.1 In addition to the responsibilities set out in clause 2 of the Standard Conditions, the Supplier shall

2.1.1 INSERT ANY ADDITIONAL RESPONSIBILITIES. IF NONE, DELETE THIS CLAUSE]

3. Customer Additional Obligations

3.1 In addition to the obligations set out in clause 3 of the Standard Conditions, the Customer shall:

3.1.1 [INSERT ANY ADDITIONAL GL OBLIGATIONS. IF NONE, DELETE THIS CLAUSE]

4. Notices

4.1 The addresses of the Parties for the purposes of notices are:

Customer

[insert name and address of Customer]

Attention: **[insert title]**

Email: **[insert email address]**

Supplier

[insert name and address of Supplier]

Attention: **[insert title]**

Email: **[insert email address]**

5. Key Personnel

5.1 The following persons are "Key Personnel" for the purposes of the Agreement:

Name

[INSERT]

Title

[INSERT]

Comment [MG2]: Insert the names of the Supplier's personnel who are key in the delivery of the services.

5.2 Key Personnel shall not be changed without the prior written agreement of the Customer, such agreement not to be unreasonably withheld. Any replacements to Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services

6. Insurance

6.1 The Supplier shall effect and maintain throughout the Term (and, in the case of professional indemnity insurance, for a period of five years thereafter) (the “**Period**”) and shall, upon receipt of the Customer’s written request, provide documentary evidence of, the following insurances **[DELETE AS APPROPRIATE]**

6.1.1 Employer’s Liability Insurance to Ten Million Pounds (£10,000,000) Sterling for any one claim or series of occurrences arising out of any one event and unlimited in the Period

6.1.2 Public Liability Insurance to Five Million Pounds (£5,000,000) Sterling for any one claim or series of occurrences arising out of any one event and unlimited in the Period;

6.1.3 Professional Indemnity Insurance to Five Million Pounds (£5,000,000) Sterling for any one claim or series of occurrences arising out of any one event and unlimited in the Period; and

6.1.4 Products Liability Insurance to Five Million Pounds (£5,000,000) Sterling for any one claim or series of occurrences arising out of any one event and unlimited in the Period, which cover may be provided under the Supplier’s public liability insurance or as a discrete policy.

Comment [MG3]: Standard requirement for suppliers providing services to the company. If the contractor does not have and will not obtain such insurance then insurance section needs to confirm the amount can be amended.

Comment [MG4]: Is this appropriate or not? Delete depending on whether products.

7. Liaison

7.1 For general liaison your contact will continue to be **[insert Contract Manager name and contact details]** (the “**Supplier’s Representative**”) or, in their absence, **[insert secondary name and contact details]**.

8. Termination

8.1 The Customer may terminate this Agreement at any time by giving at least one (1) month’s notice in writing to the Supplier (or if the Agreement is less than three (3) months in duration, at least ten (10) Business Days’ notice).

Comment [MG5]: This provides for no fault termination – you can delete this and rely on standard provision where it terminates if supplier at fault or insolvent.

9. The Arena and the Velodrome

9.1 If the Supplier, in the course of its business or performance of its duties, has cause to refer to the Arena or the Velodrome in any form of external communication, it shall refer

Comment [MG6]: This clause should be deleted unless you are dealing with a supplier whose work will refer or deal with remit of the Arena or the Velodrome.

to the Arena using only the Arena Name and the Velodrome using only the Velodrome Name (as applicable).

9.2 The Supplier warrants and undertakes that it shall not, and shall procure that its employees, personnel, suppliers, agents or contractors (as applicable) shall not, without the prior written consent of the Naming Rights Partner or SCH (as applicable):

9.2.1 make use of any intellectual property rights of the Naming Rights Partner or SCH (including, without limitation, the SCH Image Rights);

9.2.2 represent, promote or advertise, directly or indirectly, that it or its products or services (or any products or services which it endorses or is associated with) are in any way associated with the Naming Rights Partner or SCH or that any product or service provided has been endorsed or approved by the Naming Rights Partner or SCH; and

9.2.3 use or otherwise make any reference to the Naming Rights Partner's and/or SCH's names, logos or designations in any materials or communications otherwise than in the circumstances set out in clause **Error! Reference source not found.**, above.

9.3 The Supplier warrants and undertakes that it shall not, and shall procure that its employees, Personnel, suppliers, agents or contractors (as applicable) shall not, cause to be done, or permit anyone reasonably within its control to do anything which, in the reasonable opinion of the Customer or Glasgow City Council (as owner of the Arena):

9.3.1 could bring the Naming Rights Partner or SCH into disrepute, or which could otherwise cause detriment to the good standing and reputation of the Naming Rights Partner or SCH (including, without limitation, defamatory comments about the Naming Rights Partner or SCH); or

9.3.2 is prejudicial to the good standing, reputation or image of the Arena.

9.4 The Supplier shall indemnify and keep indemnified the Customer and Glasgow City Council against all claims, actions and proceedings which may be brought or established against the Customer or Glasgow City Council and all costs, losses, damages, liabilities, and expenses of any nature (including but not limited to legal expenses on a solicitor and client basis) both during the continuance of this Agreement and after its termination which arise out of, or in connection with, a breach of this clause 9.

Definitions for clause 9:

"Arena" means the multi-purpose sports complex located at 1000 London Road, Glasgow which also comprises the Velodrome;

“Arena Name” means ‘Emirates Arena’ or any other such name as the Customer may notify the Supplier of from time to time;

“Naming Rights Partner” means any party granted the exclusive right to name the Arena during the Term;

“SCH” means Sir Chris Hoy;

“SCH Image Rights” means the signature, autograph, likeness, still or moving image, picture, logo and statements of SCH, recordings of SCH’s voice and/or any other endorsement (express or implied) of SCH;

“Velodrome” means the velodrome currently known as ‘The Sir Chris Hoy Velodrome’, which forms part of the Arena; and

“Velodrome Name” means ‘The Sir Chris Hoy Velodrome’ or any other such name as the Customer may notify the Supplier of from time to time.

Please ensure that you sign and return the enclosed copy of this letter to **[insert name]** at the above address **within 7** days from the date of this letter. By signing and returning this letter you hereby agree to be bound by the terms of the Agreement. Until the signed copy of this letter has been received by us, it will not be binding upon Glasgow Life. Please remember to quote the reference number above in any future communications relating to this contract.

Any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland. Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Yours faithfully,

Signed for and on behalf of Glasgow Life at

Name:
Director

Witness Name:

Signature:

Signature:

Date:

Date:

We accept the terms set out in this letter and its Appendices including the Standard Conditions.

Signed for and on behalf of **[insert name of Supplier]** at

Name:
Job Title:

Witness Name

Signature

Signature

Date:

Date:

APPENDIX 1

Specification

[DESCRIPTION OF THE SERVICES (INCLUDING ANY DELIVERABLES) TO BE PROVIDED UNDER THE AGREEMENT AND ANY VENUES TO WHICH THE SERVICES RELATE][THIS SHOULD BE TAKEN FROM THE ITT OR QUOTATION AND AMENDED IF REQUIRED FROM ANY DIFFERENT OR ADDITIONAL INFORMATION CONTAINED IN THE SUPPLIER'S RESPONSE TO THE ITT OR QUOTATION]

- Services

Insert detail of work that supplier will do. Be specific. If it is not inserted in this document then it cannot subsequently be enforced. For example: if it is consultancy services you need to explain what investigations you require and how they must deliver this.

- Venues (if any)

- Deliverables (if any)

Be specific about what they must deliver. For example: If you require only a report to be produced then you have no comeback if it is not of the correct size or does not deal with the correct area. If it was a design then what format, how many copies?

Please see the Guidance Note on how to draft a specification if you need help.

APPENDIX 2

Timetable

[INSERT THE TIMETABLE FOR PERFORMANCE OF THE SERVICES INCLUDING ANY PROJECT MILESTONES AGREED.]

APPENDIX 3

Fees

[IF FIXED PRICE]

The Supplier shall be entitled to a Fee of [INSERT FEE IN WORDS IN CAPITALS] POUNDS (£[INSERT FEE IN NUMBERS]) STERLING

[IF RATE]

The Supplier shall be entitled to charge the following Fees in relation to the Services:

- A daily rate of [INSERT FEE IN WORDS] (£[INSERT FEE IN NUMBERS]);

APPENDIX 4

Payment Schedule

[THE PAYMENT SCHEDULE, WHICH SHOULD INCLUDE THE DATES OR EVENTS ON WHICH INSTALMENTS ARE TO BE INVOICED AND THE AMOUNT OF EACH INSTALMENT.]

[Where Services are provided on a daily rate basis:

- 4.1 the Fees shall be calculated in accordance with the Supplier's standard daily fee rates for the Supplier's Personnel, details of which are set out in Appendix 3;
- 4.2 the Supplier's standard daily fee rates for each individual person are calculated on the basis of a [seven]-hour day, worked between [9.00 am] and [5.00 pm] **[AMEND THESE TIMES AS APPROPRIATE]** on Business Days;
- 4.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's Personnel unless it has the Customer's prior written consent to do so;
- 4.4 the Supplier shall ensure that the members of the Supplier's Personnel complete time sheets recording time spent on the Services and, subject to the written approval of them by the Customer's Representative, the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in paragraph 4.5; and
- 4.5 the Supplier shall invoice the Customer monthly in arrears for the Fees (together with VAT where appropriate) for the month concerned, calculated as provided in paragraph 4.4. Each invoice shall set out the time spent by each member of the Supplier's Personnel and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

OR

[For fixed Fee]

- 4.1 **[List payment dates, linked to any milestones, and how much will be paid on each]**
- 4.2 Each instalment shall be conditional on the Supplier adhering to the Timetable. [At the end of a period specified in Appendix 2 in respect of which an instalment is due, the

Supplier shall invoice the Customer for the charges that are then payable (and VAT, where appropriate).]

APPENDIX 5

STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions.

2004 Regulations: has the meaning given to it in clause 13.4;

Agreement: means this Agreement comprising these Standard Conditions and the Appointment Letter (including the Appendices);

Applicable Laws: means all applicable laws, statutes, regulations, directives, decisions, rulings, decrees, government policies, enactments or instruments including national, regional, local or municipal laws, regulations or by-laws of any kind whatsoever (including where made by any government, quasi-governmental entity or by any entity which has the same or similar authority thereas), and requirements, regulations, safety standards, ethical norms or industry practices applicable;

Appendix means an appendix to the Appointment Letter and "Appendices" shall be construed accordingly;

Appointment Letter means the letter in respect of the Services, including the Appendices, from the Customer to the Supplier to which these Standard Conditions are appended;

Business Day: means any day (other than a Saturday, Sunday, public or bank holidays) when banks in Glasgow are open for business;

Commencement Date: has the meaning set out in the Appointment Letter;

Confidential Information: in relation to either Party means information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to that Party, its business affairs or activities which (a) either Party has marked as confidential or proprietary, or (b) either Party, orally or in writing has advised the other Party is of a confidential nature, or (c) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential;

Controller has the meaning set out in clause 14.4;

Customer: has the meaning given to it in the Appointment Letter;

Customer's Equipment: means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services;

Customer Materials: means any and all Documents, information and materials provided by the Customer relating to the Services;

Customer's Representative: means the Customer's representative for Term, appointed in accordance with clause 3;

Data Protection Law has the meaning set out in clause 14.5.1;

Deliverables: all Documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Document: means includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

Fees: means the fees payable in accordance with clause 5.1 as set out in Appendix 3 of the Appointment Letter;

FOISA: means the Freedom of Information (Scotland) Act 2002;

Force Majeure: means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) government regulations, fire, flood or any disaster or an industrial dispute for which (in the case of an industrial dispute affecting a Third Party) a substitute Third Party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party;

Foreground IPR: means all Intellectual Property Rights or other proprietary rights created by the Supplier, any Supplier Personnel, any sub-contractor or any sub-contractor personnel if permission is granted to sub-contract in accordance with clause 24.1 or indirectly connected with the in the performance of, or for the purposes of providing, the Services but excluding the Supplier Background IPR;

GDPR has the meaning set out in clause 14.5.2;

Glasgow City Council: is a local authority constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its principal offices at City

Chambers, George Square, Glasgow G2 1DU and includes any incorporated body of which the Customer and/or Glasgow City Council are members;

Intellectual Property Rights or **IPR**: means all patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Key Personnel: means any member of the Supplier's Personnel who is identified as being key in the Appointment Letter;

Law has the meaning set out in clause 14.5.3;

Parties: means the Customer and the Supplier together and "**Party**" shall be construed accordingly;

Payment Schedule: means the schedule for payment of the Fees as set out in Appendix 4 of the Appointment Letter;

Period: has the meaning set out in the Appointment Letter;

Processor has the meaning set out in clause 14.4;

Relevant Conviction: has the meaning set out in clause 7.3;

Request for Information: has the meaning set out in FOISA or the 2004 Regulations as relevant;

Services: the services, including any Deliverables, to be provided by the Supplier under this Agreement, as set out in the Specification;

Specification: means the specification for the Services as set out in Appendix 1 of the Appointment Letter;

Staff Vetting Procedure: means the Customer's vetting procedures as provided to the Supplier from time to time;

Standard Conditions: means these terms and conditions which govern the supply of the Services to the Customer by the Supplier;

Supplier: means the supplier of the Services as detailed in the Appointment Letter;

Supplier Background IPR: means all Intellectual Property Rights or other proprietary rights:

- a) in existence prior to the Commencement Date owned by the Supplier, any sub-contractor or any Third Party;
- b) utilised by the Supplier in the performance, or required to enable the Customer to gain the benefit, of the Services; and
- c) which are capable of reuse for purposes unconnected with the Services;

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer;

Supplier's Personnel: the Supplier's Representative and all employees, consultants, agents and subcontractors which it engages in relation to the Services;

Supplier's Representative: means the individual named as such in the Appointment Letter;

Term: has the meaning given to it in the Appointment Letter;

Third Party: means any party other than the Supplier and/or the Customer and the term "Third Parties" shall be construed accordingly;

Timetable: means the timetable for delivery of the Services as set out in Appendix 2 of the Appointment Letter;

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (as amended, re-enacted or extended from time to time); and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive 77/187 as amended by Council Directive 98/50 EEC and consolidated in Council Directive 2001/23/EEC (and as further amended, re-enacted or extended from time to time) into UK law;

VAT: value added tax chargeable under the Value Added Tax Act 1994;

Venue: means the venue or venues under the control of Customer at which the Services are to be performed as set out in the Appointment Letter (if any); and

Works: means all information, materials or other items (whether tangible or intangible) created, developed or conceived by or on behalf of the Supplier, any sub-contractor or any of its or their personnel in the course of performing the Services and/or other obligations under this Agreement, including written materials, reports, designs, data and information, artworks, copyright works, plans, concepts, ideas or other subject matter, preliminary and final drafts, texts, drawings, sketches, performances, slides, photographs, negatives, videos, films, banners, signs, music, computer programming, computer software and multimedia materials or other associated materials, and any Footage; and any other works developed as part of the Services.

- 1.2 In this Agreement, except where the context requires otherwise:
- 1.2.1 Words denoting the singular shall include the plural and words denoting the masculine shall include the feminine and vice versa;
 - 1.2.2 A reference to any clause, sub-clause, or paragraph or Appendix, except where expressly stated to the contrary, a reference to such clause, sub-clause or paragraph or appendix of and to this Agreement;
 - 1.2.3 Save where expressly stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such document;
 - 1.2.4 Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including EU instrument) as amended, replaced, consolidated or re-enacted;
 - 1.2.5 Headings are for convenience of reference only and do not affect the interpretation of the Agreement,
 - 1.2.6 The words “include”, “including” and “included” shall be construed without limitation by the words which follow those words:

2 SUPPLIER'S RESPONSIBILITIES

2.1 The Supplier shall provide the Services, and deliver the Deliverables (if any) to the Customer and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

2.2 The Supplier shall meet, and time is of the essence as to, any performance dates specified in the Timetable. If the Supplier fails to do so, the Customer may (without prejudice to any other rights it may have):

- 2.2.1 terminate this Agreement in whole or in part without liability to the Supplier;
- 2.2.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 2.2.3 purchase substitute services from elsewhere;
- 2.2.4 hold the Supplier accountable for any loss and additional costs incurred.; and
- 2.2.5 be entitled to withhold payment to the Supplier of the whole or any part of the Fee..

2.3 The Supplier shall:

- 2.3.1 co-operate with the Customer in all matters relating to the Services;
- 2.3.2 procure the availability of the Supplier's Representative and Key Personnel to provide the Services during the Term;
- 2.3.3 promptly inform the Customer of the absence (or anticipated absence) of the Supplier's Representative, or any Key Personnel. If the Customer requires, the Supplier shall provide a suitably qualified replacement;
- 2.3.4 not make any changes to the Supplier's Representative or the Key Personnel without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed); and
- 2.3.5 ensure that the Supplier's Personnel use reasonable skill and care in the performance of the Services;
- 2.3.6 observe, and ensure that the Supplier's Personnel, including Key Personnel, observe, all health and safety rules and regulations and any other reasonable security requirements that apply at any Venue to which

the Supplier is given access in order to carry out the Services, and that have been communicated to the Supplier from time to time. The Customer reserves the right to refuse the Supplier's Personnel access to the Venue(s), which shall only be given to the extent necessary for the performance of the Services;

- 2.3.7 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- 2.3.8 before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all Applicable Laws in relation to:
 - 2.3.8.1 the Services;
 - 2.3.8.2 the installation and use of the Supplier's Equipment (if any);
 - 2.3.8.3 the use of Customer Materials;
 - 2.3.8.4 the use of all Documents, information and materials provided by the Supplier or the Supplier Personnel relating to the Services which existed prior to the commencement of this Agreement; and
 - 2.3.8.5 the use of the Customer's Equipment (if any); and
- 2.3.9 any other responsibilities as set out in the Appointment Letter.

3 THE CUSTOMER'S OBLIGATIONS

3.1 the Customer shall:

- 3.1.1 co-operate with the Supplier in all matters relating to the Services and appoint (and, as it thinks fit, replace) the Customer's Representative in relation to the Services;
- 3.1.2 provide such access to the Venue(s) (if required in accordance with the Specification) and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;
- 3.1.3 provide such information as the Supplier may reasonably request and the Customer considers necessary, in order to carry out the Services, in a timely manner, and ensure that it is accurate in all material respects;

3.1.4 without prejudice to the Supplier's duties under clause 2.3.8, inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Venues (if relevant); and

3.1.5 fulfil any additional obligation set out in the Appointment Letter.

4 CHANGE CONTROL

4.1 If either Party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than five (5) Business Days after receipt of the Customer's request), provide a written estimate to the Customer of:

4.1.1 the likely time required to implement the change;

4.1.2 any necessary variations to the Supplier's charges arising from the change;

4.1.3 any other impact of the change on this Agreement.

4.2 Unless both parties consent to a proposed change, there shall be no change to this Agreement.

4.3 If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, to the Services and any other relevant terms of this Agreement to take account of the change that has been reached and this Agreement has been varied in accordance with clause 25.

4.4 If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Neither the Fees nor any other terms of this Agreement shall vary as a result of such change.

5 CHARGES AND PAYMENT

5.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Fees in accordance with the Payment Schedule.

5.2 Any figures shown are exclusive of VAT (unless otherwise provided) and whenever VAT is due on a payment made under this Agreement it will be added at the then current rate and the Supplier shall provide a valid VAT invoice to the Customer in respect of said payment.

- 5.3 Unless otherwise agreed in writing by the Customer, the obligations of the Supplier under this Agreement are to be performed at the Supplier's own expense and the Supplier shall not be entitled to any sums other than the Fees.
- 5.4 The Customer shall pay each invoice which is properly due and submitted to it by the Supplier, within thirty (30) days of receipt, to a bank account nominated in writing by the Supplier.
- 5.5 If a Party fails to make any payment due to the other Party under this Agreement by the due date for payment, then, without limiting the other Party's remedies under this Agreement, the defaulting Party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount.
- 5.6 If there is a dispute between the Parties as to the Fees invoiced, the Customer shall pay any undisputed sums. The Supplier shall not suspend the supply of Services unless the Supplier is entitled to terminate the Agreement for a failure to pay an undisputed sum in accordance with clause 19. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 34.
- 5.7 In relation to payments disputed in good faith, interest under clause 5.5 is payable only after the dispute is resolved, on sums found or agreed to be due, from the date the dispute is resolved until payment.
- 5.8 Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the Customer only if agreed in writing in advance by the Customer and accompanied by relevant receipts.
- 5.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Customer shall approve. The Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 5.10 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

6 PREMISES AND EQUIPMENT

- 6.1 If required in accordance with the Specification, the Customer shall provide the Supplier with reasonable access at reasonable times to the Venue(s). All equipment, tools, and vehicles brought onto the Venue(s) by the Supplier or the Supplier's Personnel shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Venue(s), on completion of the Services or termination or expiry of the Agreement (whichever is the earlier), the Supplier shall vacate the Venue(s), remove all the Supplier's equipment, tools, plant, unused materials and all rubbish arising out of the provision of the Services and leave the Venue(s) in a clean, safe and tidy condition.
- 6.3 The Supplier shall be solely responsible for making good any damage to the Venue(s) or any objects contained within the Venue(s) which is caused by the Supplier and/or the Supplier's Personnel under the exception of fair wear and tear.
- 6.4 Whilst at the Venue(s), the Supplier shall and shall procure that the Supplier's Personnel shall comply with all the Customer's security requirements.
- 6.5 All Customer Materials, the Customer's Equipment (if any supplied) and all other materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier shall be used only for the purpose of carrying out the Services and shall, at all times, be and remain the exclusive property of the Customer, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer. They shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation
- 6.6 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than fair wear and tear) caused by the Supplier and/or the Supplier's Personnel. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier.
- 6.7 The Supplier acknowledges that the Customer may at any time require to ensure that any of its Venues are free from any form of third party promotional material, equipment, goods or signage for the purposes of an event and accordingly the Supplier agrees to cover up any of the Supplier's marks or logos which may be present at the Venue as a result of the Services.

7 SUPPLIER'S PERSONNEL

7.1 If the Customer reasonably believes that any of the Supplier's Personnel are unsuitable to undertake the work in respect of the Services, it may, by giving written notice to the Supplier:

7.1.1 refuse admission to the relevant person(s) to any Venue(s); and/or

7.1.2 require that the Supplier replace the relevant person(s) with another suitably qualified person and return any security pass issued to the relevant person(s).

7.2 The Supplier shall:

7.2.1 ensure that all Personnel are suitable for the delivery of the Services and, where appropriate, the delivery of the Services at the Venues;

7.2.2 ensure that all Personnel are vetted in accordance with any Staff Vetting Procedures;

7.2.3 if requested by the Customer, provide the Customer with a list of names and addresses (and any other relevant information) of all Supplier's Personnel who may require admission to the Venue(s) in connection with the Services (where the Services are to be supplied from any Venue(s)).

7.3 Without prejudice to clause 7.2.1 the Customer may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure check or otherwise) is employed or engaged in the provision of any part of the Services.

7.4 The Supplier shall indemnify the Customer against any Losses arising from any claim by any individual employed or engaged by the Supplier in connection with the delivery of the Services (the "**Individual**") that TUPE applies in respect of the delivery of the Services such as to transfer the contract of employment of, or any collective agreement relating to, the Individual to the Customer (including, without limitation, claims for or in relation to protective awards, compensation for unfair dismissal, damages for wrongful dismissal or breach of contract, redundancy pay and delict) and any other losses which may be suffered or incurred by the Customer in connection with or arising out of any such claim by the Individual.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Foreground IPR shall vest in the Customer on creation. The Supplier hereby assigns to the Customer free from all encumbrances the Foreground IPR together with the right to sue for and recover damages or other relief in respect of the infringement of any Foreground IPR.
- 8.2 In relation to future Intellectual Property Rights, the assignment under clause 8.1 shall take effect as a present assignment of future Intellectual Property Rights.
- 8.3 To the extent that any Foreground IPR may not be assigned in any jurisdiction, the Supplier shall: (a) hold such Foreground IPR in trust and always for the benefit of the Customer or its licensors (as appropriate); and (b) grant, or procure the grant of, a licence to exploit the relevant Foreground IPR for any and all uses by the Customer or its licensors (as appropriate) on an exclusive, worldwide, royalty-free basis, in perpetuity, such licence to be capable of sub-licensing or assignment at the discretion of the Customer or its licensors.
- 8.4 The Customer grants to the Supplier a non-exclusive, non-transferable licence during the Term to use the Foreground IPR only to the extent necessary and for the purpose of:
- 8.4.1 providing the Services to the Customer; and
 - 8.4.2 performing the Supplier's other obligations under this Agreement;
- and for no other purpose whatsoever.
- 8.5 The licence to the Foreground IPR granted by the Customer under clause 8.3 will take effect from the date of assignment of the relevant Foreground IPR to the Customer pursuant to clause 8.1.
- 8.6 The Customer and its licensors shall retain all right, title and interest in and to the Customer Background IPR.
- 8.7 The Supplier shall inform the Customer in writing of its intention to use any Supplier Background IPR in the performance of its obligations hereunder, including the type and nature thereof and the intended use to which it will be put, and obtain the prior written consent of the Customer to any such use.
- 8.8 Subject to its compliance with clause 8.7, the Supplier and its licensors shall retain all right, title and interest in and to the Supplier Background IPR.

- 8.9 The Supplier grants to the Customer a worldwide, fully paid-up, non-exclusive, irrevocable, perpetual, royalty-free and transferable right to:
- 8.9.1 use, copy and modify the Supplier Background IPR (and to sub-license Third Parties to use, copy and modify the Supplier's Background IPR) for the purpose of enabling receipt of the Services by the Customer and to enable the Customer to obtain the full benefit of the Services; and
 - 8.9.2 sub-license Third Parties to use, copy and modify the Supplier's Background IPR insofar as may be reasonably required to conduct the Supplier's business.
- 8.10 The Supplier shall procure (as appropriate) from the Supplier's Personnel or any sub-contractor:
- 8.10.1 an undertaking to waive and not to assert any and all moral rights that those persons may have, presently or in the future, in relation to any Intellectual Property Rights as conferred to them under the Copyright, Designs and Patents Act 1988 or any similar legislation; and
 - 8.10.2 consent from such persons that the Customer (or their licensees or assignees) may carry out any and all acts which would infringe their moral rights but for the waiver in clause 8.10.1 above.
- 8.11 The Supplier warrants that use of the Supplier Background IPR, Foreground IPR and/or any item provided by the Supplier to the Customer and its licensees, assignees, successors and any other person authorised by any of them shall not infringe the rights (including the Intellectual Property Rights) of any Third Party.
- 8.12 The Supplier shall not and shall procure that all sub-contractors (and its and their personnel) do not infringe the rights (including any Intellectual Property Rights) of the Customer or any Third Party through or in connection with providing the Services and/or the performance of obligations hereunder.
- 8.13 If, during the Term, the Supplier becomes aware of any threatened or actual unauthorised use or any misuse of the Works, the Supplier shall notify the Customer in writing without delay and include all of the facts in reasonable detail.
- 8.14 The Supplier acknowledges and agrees that the Customer and its licensors (as appropriate) have the exclusive right to take action against Third Parties in respect of any unauthorised use or misuse of the Works, and that the Supplier shall not be entitled to call upon the Customer or the relevant licensor to take any action in respect of any infringement of the rights provided by or forming part of the Works,

whether pursuant to section 30 of the Trade Marks Act 1994 or otherwise. The Supplier will, at the request of the Customer, provide all reasonable co-operation to the Customer or the relevant licensor (including the provision of documentation and making relevant Personnel available) in any action, claim or proceedings brought or threatened in respect of the Works. The Customer will be responsible for the Supplier's reasonable costs incurred in connection therewith, provided always that the Customer has consented in advance to their incurrence (including as to the anticipated amount thereof).

- 8.15 The Supplier acknowledges and agrees that, subject to clauses 8.3 and 8.4 nothing in this Agreement shall confer upon the Supplier, any sub-contractor and/or any of their Personnel any right, title or interest in the Works.
- 8.16 The Supplier must not and must ensure that any sub-contractors (and any of the Supplier's Personnel) do not use the Works in any manner without the written consent of the Customer.

9 GOVERNANCE AND RECORDS

9.1 The Supplier shall:

- 9.1.1 attend meetings with the Customer at the frequency and times specified by the Customer;
- 9.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer; and
- 9.1.3 keep and maintain for a period of six (6) years following termination or expiry of this Agreement, full and accurate records of the Services supplied and the Fees paid under this Agreement. The Supplier shall, on request, afford the Customer or the Customer's authorised representatives, such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

9.2 The Customer may from time to time audit or require the audit of the activities and operations of the Supplier or of any sub-contractor engaged by the Supplier in respect of this Agreement and the Supplier must cooperate and assist the Customer in good faith in this regard, including by way of providing or procuring the provision of access to all information, documentation, materials, software, data and systems, persons or other items required by the Customer.

10 WARRANTIES AND UNDERTAKINGS

10.1 Each Party hereby represents, warrants and undertakes that:

10.1.1 it has full power and authority to execute this Agreement and to perform its obligations hereunder and that the execution of this Agreement by that Party will constitute lawful, valid and legally binding obligations upon it in accordance with these terms; and

10.1.2 the performance by that Party of its obligations hereunder does not and will not interfere with or breach the rights of Third Parties and will not constitute a breach of any agreement to which that Party is a party.

10.2 The Supplier hereby represents, warrants and undertakes to the Customer that:

10.2.1 the Supplier will, and will ensure that all Supplier's Personnel will, do nothing to cause the Customer to be in breach of any Applicable Laws or rights of any Third Party;

10.2.2 the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;

10.2.3 the Supplier will co-operate with the Customer in all matters relating to the Services and comply with the Customer's reasonable instructions;

10.2.4 the Services will conform with all descriptions and specifications provided to the Customer by the Supplier;

10.2.5 the Supplier will perform the Services in accordance with the terms of this Agreement;

10.2.6 the Services and Deliverables will be provided in accordance with all Applicable Laws from time to time in force, and the Supplier will inform the Customer as soon as it becomes aware of any changes in that legislation;

10.2.7 as at the Commencement Date all information provided by the Supplier to the Customer in respect of its provision of the Services remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Agreement; and

- 10.2.8 shall promptly notify the Customer in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Customer during such due diligence which materially and adversely affects its ability to perform the Services or meet any deadlines contained within the Timetable.
- 10.3 The provisions of this clause 10 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by the Supplier.

11 INDEMNITY

- 11.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:
- 11.1.1 any alleged or actual infringement of any Third Party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or
- 11.1.2 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer'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 provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.

12 INSURANCE

- 12.1 The Supplier shall effect and maintain throughout the Term and (in relation to professional indemnity insurance for a period of five (5) years thereafter) (the "Period") and shall, upon receipt of the Customer's written request, provide documentary evidence of the insurances set out in the Appointment Letter.
- 12.2 If the Customer becomes aware that the Supplier has failed to maintain adequate insurance as required then:
- 12.2.1 the Customer may effect such insurance (with the Customer as the sole named payee thereunder); and

12.2.2 the Supplier shall, on written demand, reimburse the Customer for the reasonable cost of effecting and maintaining such insurance cover.

13 CONFIDENTIALITY AND FREEDOM OF INFORMATION

13.1 The Supplier undertakes that it shall not at any time disclose to any person any of the Customer's Confidential Information which shall include without limitation, any Customer Material, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer, its employees, agents, consultants or subcontractors, or any other confidential information concerning the Customer's business or its products which the Supplier may obtain, except as permitted by clause 13.2.

13.2 The Supplier may disclose the Customer's Confidential Information:

13.2.1 to the Supplier's Personnel and to such of its other employees, agents, consultants or subcontractors as need to know it for the purpose of discharging the Supplier's obligations to the Customer. The Supplier shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Customer's Confidential Information comply with this clause 13; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 The Supplier shall not use the Customer's Confidential Information for any purpose other than to perform its obligations under this Agreement.

13.4 The Supplier acknowledges that the Customer is subject to the provisions of the Freedom of Information (Scotland) Act 2002 ("**FOISA**") and the Environmental Information (Scotland) Regulations 2001 ("**2004 Regulations**") and shall:

13.4.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under FOISA and/or the 2004 Regulations; and

13.4.2 provide the Customer with a copy of all information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably require) of the Customer's request for such information;

13.5 If the Customer receives a request under Section 1 of the FOISA (or if applicable, a request under the 2004 Regulations, or any statutory amendment or re-enactment thereof, which includes the Supplier's Confidential Information, the Customer may seek the consent of the Supplier to release some or all of the Supplier's Confidential Information in response to said request and shall do so if the Customer is minded to disclose such items, whether in terms of public interest or otherwise. If the Supplier shall fail to respond to such a request for consent within seven (7) days of the request being made, it shall be deemed to have consented to the release of the Supplier's Confidential Information as requested by the Customer. In all cases the Customer may, without the consent of the Supplier, disclose any of the Supplier's Confidential Information if the Customer (acting reasonably) is satisfied that it is in the public interest to do so. In reaching this conclusion, the Customer shall take into account any representation made in connection with this by the Supplier but the decision of the Customer as to what constitutes public interest shall be final and conclusive in any dispute, difference or question arising in respect thereof.

14 PROTECTION OF DATA AND DATA SECURITY

14.1 Both Parties will comply with the applicable requirements of Data Protection Law to the extent they apply to any activities under this Agreement.

14.2 The Parties agree that it is their mutual expectation that they will not share personal data with each other under this Agreement. In the event that, contrary to this mutual expectation, personal data is shared then the following provisions of this clause shall apply in the event that the Parties do not agree in writing any express provisions regulating such processing.

14.3 To the extent that either Party discloses personal data to other Party it will ensure that such disclosure is fair, lawful and transparent in the context of the purposes for which the personal data is to be processed by the receiving Party and otherwise complies with the requirements of Data Protection Law.

14.4 Without prejudice to clause 14.3, if either Party ("**Processor**") acts as a processor of personal data for the other Party ("**Controller**") in relation to any activities under this Agreement then

14.4.1 the Processor shall process such personal data only for the purposes of this Agreement and subject to any express written instructions of the Controller from time to time, and otherwise on such terms relating to the processing as the Controller may reasonably specify in writing;

14.4.2 the Processor shall assist the Controller in complying with its obligations under Data Protection Law and in demonstrating such compliance, including by documenting and agreeing in writing any particular aspects of the processing and

providing such information in relation to the processing, to the extent reasonably required to do so by the Controller; and

14.4.3 the provisions of Articles 28.2, 28.3 (a) to (h) and 28.4 of GDPR shall be incorporated into this Agreement *mutatis mutandis* by way of direct contractual obligation on the part of the Processor to the Controller.

14.5 In this clause:

14.5.1 "**Data Protection Law**" means Law relating to data protection, the processing of personal data and privacy from time to time;

14.5.2 "**GDPR**" means the General Data Protection Regulations (EU) 2016/679 which will come into effect on 25 May 2018;

14.5.3 "**Law**" means any statute, directive, other legislation, law or regulation in whatever form, delegated act (under any of the foregoing), rule, order of any court having valid jurisdiction or other binding restriction, decision or guidance in force from time to time; and

14.5.4 words and expressions defined in Data Protection Law shall have the same meanings when used in this clause.

15 PREVENTION OF FRAUD AND CORRUPTION

15.1 The Supplier shall:

15.1.1 comply with all Applicable Laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

15.1.2 notwithstanding the foregoing generality, not offer, give or agree to give anything, to any person as an inducement or reward for doing, refraining from doing, or for having done, or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement;

15.1.3 take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Supplier (including its shareholders, members and directors) and/or the Supplier's Personnel in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

15.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 15. The Supplier shall be responsible for the observance and performance by such persons of the terms contained in this clause 15, and shall be directly liable to the Customer for any breach by such persons of any of the these terms.

16 BLACKLISTS ETC

16.1 The Supplier must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 or the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of Data Protection Law by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Customer to terminate the Agreement with immediate effect, notwithstanding any other provision contained within this Agreement

17 DISCRIMINATION

17.1 The Supplier shall not during the Term of this Agreement unlawfully discriminate within the meaning and scope of the law, enactment, order or regulation relating to discrimination including, without limitation the Equality Act 2010 and relevant Employment Legislation and/or any statutory modifications or re-enactments thereof.

17.2 The Supplier shall take all reasonable steps to ensure the observance of the provisions of clause 17.1 by all servants, employees, agents and consultants of the Supplier and all sub-contractors.

18 LIVING WAGE

18.1 The Supplier acknowledges that the Customer is a major supporter of the Glasgow Living Wage scheme. The Glasgow Living Wage can be viewed at www.glasgowlivingwage.co.uk. The Supplier will bear the Customer's commitment to the Glasgow Living Wage in mind for the duration of the Agreement.

19 TERMINATION

19.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

19.1.1 the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy

that breach within a period of five (5) days after being notified in writing to do so;

- 19.1.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 19.1.3 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (other than (being a company) for the sole purpose of a voluntary scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party);
- 19.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party (being a company) (other than for the sole purpose of a voluntary scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party);
- 19.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);
- 19.1.6 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- 19.1.7 the other Party (being an individual) is the subject of a bankruptcy petition or order;
- 19.1.8 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 19.1.2 to clause 19.1.6 (inclusive);
- 19.1.9 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 19.1.10 there is a change of control of the other Party; or
- 19.1.11 any warranty given by the other Party in clause 10 of this Agreement is found to be untrue or misleading.

19.2 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 19.1.9 or any potential change of control.

20 CONSEQUENCES OF TERMINATION

20.1 Termination of this Agreement shall be without prejudice to any right or remedy that either Party may have against the other as of the date of termination, and shall not affect any rights or liabilities accrued as at termination.

20.2 On termination of this Agreement for any reason, the Supplier shall immediately deliver to the Customer:

20.1.1 all Customer Material all copies of information and data provided by the Customer, to the Supplier for the purposes of this Agreement. The Supplier shall certify to the Customer that it has not retained any copies of any Customer Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 13; and

20.1.2 all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Customer (to the extent that they have not already done so by virtue of clause 8.1), who shall be entitled to enter the premises of the Supplier to take possession of them.

20.3 If the Supplier fails to fulfil its obligations under clause 20.1, then the Customer may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

20.4 On termination or expiry of this Agreement, clauses 8, 11, 13, 19 and 35 shall continue in force along with any other provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement.

20.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

21 REMEDIES

- 21.1 If any Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of this Agreement, the Customer shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:
- 21.1.1 to rescind this Agreement; or
 - 21.1.2 to refuse to accept the provision of any further Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by the Customer to the Supplier under this Agreement; or
 - 21.1.3 to require the Supplier, without charge to the Customer, to carry out such additional work as is necessary to correct the Supplier's failure; and
 - 21.1.4 in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of this Agreement not otherwise covered by the provisions of this clause 21.

22 LIABILITY

- 22.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer
- 22.2 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury, fraud, fraudulent misrepresentation, or any other matter which by law may not be excluded or limited.
- 22.3 Subject to clause 22.2, the liability of the Customer to the Supplier under or in respect of matters arising pursuant to this Agreement shall be limited to an amount equivalent to the Fees.

23 FORCE MAJEURE

- 23.1 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including, but not limited, to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to an event of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

23.2 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such a failure or delay shall continue.

23.3 If any event of Force Majeure continues for a period of ten (10) Business Days or more, the Party unaffected by the event may terminate this Agreement by notice in writing to the other.

23.4 In the event that the Agreement is terminated by the Customer in accordance with clause 23.3, the Supplier shall not be entitled to any payment from the Customer and shall repay to the Customer any element of the Fee previously paid to the Supplier.

24 ASSIGNATION AND OTHER DEALINGS

24.1 The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, subcontract, or deal in any other manner with any of its rights and obligations under this Agreement.

24.2 The Customer may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that the Customer gives prior written notice to the Supplier.

25 VARIATION

25.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

26 WAIVER

26.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

26.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

27 RIGHTS AND REMEDIES

27.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28 SEVERANCE

28.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

28.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29 ENTIRE AGREEMENT

29.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

29.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

30 EXCLUSIVE SERVICE

30.1 The Customer acknowledges that the Supplier is an independent contractor and therefore permitted to work for Third Parties during the Term. Notwithstanding the foregoing, in the event that the Supplier is requested to undertake work of a kind which is or could be in conflict or competition with the Services then the Supplier shall disclose the details of said work and shall obtain the Customer's prior written approval to undertaking the work for the Third Party.

31 NO PARTNERSHIP OR AGENCY

31.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent

of another party, or authorise any Party to make or enter into any commitments for or on behalf of any other party.

- 31.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

32 THIRD PARTY RIGHTS

- 32.1 No one other than a Party to this Agreement shall have any right to enforce any of its terms.

33 NOTICES

- 33.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

- 33.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post or by recorded or special delivery service), or by facsimile transmission or electronic mail. Such letters shall be addressed to the other party in the manner referred to in clause 33.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the date on which the letter was posted, or four (4) hours after electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letter, facsimile transmission or item of electronic mail.

- 33.3 For the purposes of clause 33.2, the address of each Party shall be as set out in the Appointment Letter.

- 33.4 Either Party may change its address for service by serving a notice in accordance with this clause

34 DISPUTE RESOLUTION PROCEDURE

- 34.1 Any dispute which arises under this Agreement shall be referred in writing to the Finance Director of the Customer and a senior officer of the Contractor who shall discuss the matter with each other within two (2) Business Days of receiving such notice and work diligently together to resolve the dispute.

- 34.2 If the Finance Director and senior officer fail to resolve the dispute within three (3) Business Days of their first discussion either Party may refer the dispute for adjudication and the adjudicator's decision on the matter and any award of expenses relating to such adjudication shall be final and binding on all the Parties.

34.3 Notwithstanding any dispute or disagreement the Parties shall, as far as is reasonably practicable, continue to comply with their obligations under this Agreement.

35 GOVERNING LAW AND JURISDICTION

35.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

35.2 Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).