

# FLEET MANAGEMENT TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

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## 1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires in these conditions of purchase, the following terms shall have the following meanings:

**"Additional Appendices"** means any additional contract documents of the Buyer referred to in the Contract Award Letter.

**"Applicable Law"** means any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law and any applicable codes of conduct, guidance, directions and/or determinations with which the Buyer, any relevant member of the Buyer Group or the Supplier (as applicable) is bound to comply.

**"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday throughout Scotland.

**"Buyer"** means the company specified in the Contract Initiation Document (being a member of the Buyer Group) or, in the event that no company is specified in the Contract Initiation Document CalMac Ferries Limited, a company incorporated in Scotland with registration number SC302282 and having its registered office at Ferry Terminal, Gourock, PA19 1QP.

**"Buyer Group"** means David MacBrayne Limited (registration number SC015304), David MacBrayne HR (UK) Limited (registration number SC282760), CalMac Ferries Limited (registration number SC302282), and Argyll Ferries Limited (registration number SC391762) and any company that is from time to time:

(a) a holding company,

(b) a subsidiary, or

a subsidiary of a holding company, of any of the above named companies. For the purposes of this definition, the expressions "**holding company**" and "**subsidiary**" have the meanings given to them in section 1159 of the Companies Act 2006. In these Conditions, each company within the Buyer Group is called a "member" of the Buyer Group.

**"Buyer Materials"** means all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Supplier.

**"Change of Control"** means a change in the management, ownership or control of the Supplier whereby the ultimate power to control or determine the direction of the management policies of the

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Supplier, either directly or indirectly and whether through the ownership of voting securities, by contract or otherwise (including that meaning as provided in section 574 of the Capital Allowances Act 2001) is transferred.

<b>"Commencement Date"</b>	means the date of the Supplier's countersignature of the Contract Initiation Document.
<b>"Conditions"</b>	means these terms and conditions for the provision of goods and services for fleet management.
<b>"Confidential Information"</b>	<p>means in relation to each party, all information not publicly known and which is used in or otherwise relates to that party's business, customers or financial or other affairs, including without limitation information relating to:</p> <ul style="list-style-type: none"><li>(c) the marketing of products or services including without limitation customer names and lists and other details of customers, financial information, sales targets, sales statistics, market share statistics, prices, market research reports and surveys, and advertising and other promotional materials;</li><li>(d) trade secrets and know-how;</li><li>(e) personnel, agents, third party intermediaries and suppliers; and</li></ul> <p>future projects, business development or planning, commercial relationships and negotiations; in each case existing in any form, whether or not marked "confidential information", and all other information clearly designated by the disclosing party as "Confidential".</p>
<b>"Contract"</b>	means these Conditions, the Contract Initiation Document and, if applicable, the Invitation to Tender, and Response to Tender and any associated Purchase Order.
<b>"Contract Award Letter"</b>	means a letter issued by the Buyer and countersigned by the Supplier, confirming certain contractual arrangements that are to apply between the parties.
<b>"Contract Emissions"</b>	means the sum of the Supplier's annual Scope 1, 2 and 3 Emissions, in each case arising out of the provision of the Services and the meeting of its obligations under the Contract more generally.
<b>"Contract Initiation Document"</b>	means in relation to any given Contract, the [Purchase Order and/or] Contract Award Letter specific to that Contract.
<b>"Deliverables"</b>	means all goods, products and materials developed by the Supplier or its agents, contractors and employees as part of

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or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

<b>"Delivery Location"</b>	as set out in the Contract Award Letter.
<b>"Goods"</b>	as set out in the Contract Award Letter.
<b>"Goods Specification"</b>	means any specification for the Goods, including any related plans and drawings, that is referred to in the Purchase Order or is otherwise agreed in writing by the Buyer and the Supplier.
<b>"Information Security Management System" or "ISMS"</b>	means a set of policies and procedures for managing information security.
<b>"Intellectual Property Rights"</b>	means any and all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, trade, business and domain names, rights in get-up and trade dress, rights in goodwill or to sue for passing off or unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets), and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world.
<b>"Invitation to Tender"</b>	means the Buyer's specification of the required services and/or goods and request for information from the Supplier (together with any other documents (or parts thereof) referred to in such documentation) issued in anticipation of the creation of the Contract.
<b>"Owner"</b>	means, in relation to any individual vessel, the legal entity which at the relevant time, is the legal owner of that vessel.
<b>"Price"</b>	means the sum stated in the Contract Initiation Document (exclusive of VAT) to be paid by the Buyer to the Supplier for the supply of the Goods or performance of the Services.
<b>"Purchase Order"</b>	means an order issued by the Buyer to the Supplier for the supply of Goods and/or Services in accordance with these Conditions (together with any other documents (or parts thereof) referred to in such an order).
<b>"Purchase Order Number"</b>	As set out in the Purchase Order.

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<b>"Reporting Standard"</b>	means: <ul style="list-style-type: none"><li>(a) in relation to Scope 1, 2 and 3 Emissions of organisations and supply chains, The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2015 (including the Scope 2 Guidance and Scope 3 Supplement), as updated from time to time; and</li><li>(b) in relation to the Scope 1, 2 and 3 Emissions of projects, products and services, the GHG Protocol Product Life Cycle Accounting and Reporting Standard, as updated from time to time; or</li></ul> such other standard as may be agreed by the parties from time to time in writing.
<b>"Response to Tender"</b>	means the Supplier's response to the Invitation to Tender.
<b>"Scope 1, 2 and 3 Emissions"</b>	means the three classifications of emissions of GHGs in the Reporting Standard.
<b>"Service Level"</b>	means any service level or standard of performance specified in the Contract Initiation Document.
<b>"Services"</b>	as set out in the Contract Award Letter.
<b>"Service Specification"</b>	means the description or specification for Services that is referred to in the Purchase Order or is otherwise agreed in writing by the Buyer and the Supplier.
<b>"Statement of Applicability"</b>	means the statement of applicability in respect of the Supplier's compliance with the ISO27001 control framework.
<b>"Supplier"</b>	means the person, firm or company to whom the Contract Initiation Document is issued.
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.
<b>"VAT"</b>	means Value Added Tax.
<b>"Warranty Period"</b>	means from delivery, the period of [1 year] for the Goods and/or Services (as applicable) unless a different period is set out in the Contract Award Letter in which case that period shall apply.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

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- 1.3 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any consolidating or subordinate legislation made under that statute or statutory provision, as amended or re enacted, or case law which has effect from time to time in the relevant jurisdiction.
- 1.4 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.5 A reference to "**writing**" or "**written**" includes email.

## 2. GENERAL

- 2.1 The Contract between the Buyer and the Supplier is made up of the following:
  - 2.1.1 the Purchase Order issued by the Buyer to the Supplier (subject to Condition 2.4);
  - 2.1.2 Contract Award Letter;
  - 2.1.3 these Conditions;
  - 2.1.4 Response to Tender;
  - 2.1.5 Invitation to Tender; and
  - 2.1.6 any Additional Appendices specified in the Contract Award Letter.
- 2.2 Terms defined in the Purchase Order shall have the meanings given to them in that document.
- 2.3 If there is any conflict or ambiguity between the terms of the documents listed in Condition 2.1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list. The content of the Purchase Order shall take precedence over any document listed in the Purchase Order.
- 2.4 Any published or notified terms and conditions of the Supplier and any terms and conditions which are implied by law, trade custom, practice or course of dealing shall not form part of the Contract. Any terms and conditions of the Supplier which are included or referenced in any document listed in the Purchase Order shall not form part of the Contract.
- 2.5 The Contract will commence when the Buyer issues to the Supplier the Contract Award Letter, or the Supplier undertakes any act consistent with fulfilling the Purchase Order (if any).
- 2.6 If a Purchase Order (or Purchase Order Number) is provided to the Supplier by the Buyer, the Supplier shall ensure that it specifies that Purchase Order Number on all further correspondence with the Buyer.

## 3. SUPPLY OF GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
  - 3.1.1 correspond with their description and any applicable Goods Specification;

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- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose made expressly known in the Goods Specification to the Supplier by the Buyer;
- 3.1.3 be free from defects in design, materials and workmanship and remain so for the Warranty Period (fair wear and tear excepted); and
- 3.1.4 comply with all applicable statutory and regulatory requirements (and / or approvals) relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods including those of the flag state and classification society of any vessel operated by the Buyer in relation to which Goods and Services are to be provided.

3.2 The Buyer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.3 If following such inspection or testing the Buyer considers that the Goods do not comply or are unlikely to comply with the Supplier's obligations in this Contract, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. The Buyer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

## 4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2 each delivery of the Goods is accompanied by a delivery note which details the Purchase Order Number, the type and quantity of the Goods (including the code number of the Goods, where applicable), a customs package (comprising: commercial invoice; packing list; export declaration; VAT/EORI number; HS codes and country of origin), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.3 it states clearly on the delivery note any requirement for the Buyer to return any packaging material for the Goods to the Supplier. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- 4.2.1 on the date specified in the Purchase Order or, if no such date is specified, then the Supplier shall confirm to the Buyer a delivery date for the Goods at the point of receipt of the Purchase Order;
- 4.2.2 to the Delivery Location at a time agreed with Buyer; and
- 4.2.3 during the Buyer's normal hours of business on a Business Day or as instructed by the Buyer.

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- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location unless otherwise specified in the Purchase Order, the countersignature by an appropriate representative of the Buyer of a delivery note or equivalent, and delivery otherwise in accordance with the Buyer's reasonable instructions. Title and risk in the Goods shall pass to the Buyer on completion of such delivery.
- 4.4 The Supplier shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, the instalments delivered may be invoiced and paid for separately.
5. **SUPPLY OF SERVICES**
- 5.1 The Supplier shall from the date set out in the Service Specification and for the duration of the Contract supply the Services to the Buyer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Service Specification or that the Buyer reasonably notifies to the Supplier.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;
  - 5.3.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
  - 5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification;
  - 5.3.5 provide all equipment, tools, vehicles and such other items (including site access for the Buyer as necessary) as are required to provide the Services;
  - 5.3.6 ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design for the Warranty Period (fair wear and tear excepted); and
  - 5.3.7 hold all Buyer Materials in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation.
  - 5.3.8 comply with all applicable statutory and regulatory requirements (and / or approvals) including those of the flag state and classification society of any vessel operated by the Buyer in relation to which Deliverables and Services are to be provided.
- 5.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

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- 5.5 The Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at or on any of the Buyer's premises or vessels if access to such premises or vessels is required to fulfil its obligations under the Contract.
- 5.6 The Supplier shall:
- 5.6.1 perform the Services from those locations, regions or countries listed within the Contract Award Letter (and/or the relevant Purchase Order) as being approved for that purpose and not provide Services from any additional location, region or country without the Buyer's prior written approval;
  - 5.6.2 not do anything to bring the name or reputation of the Buyer or any member of the Buyer's Group into disrepute or prejudice the interests of the business of the whole or any part of the Buyer Group;
  - 5.6.3 keep the Buyer informed of the progress of the Services on a regular basis and, in any event, as and when reasonably required by the Buyer; and
  - 5.6.4 notify the Buyer of any development that may have a material or adverse impact on the Supplier's ability to effectively perform the Services in accordance with the Contract, (including applicable Service Levels) and in compliance with Applicable Law and regulatory requirements.
- 5.7 The Supplier warrants that the Producer of any New EEE is a member of a Scheme and shall at all times comply with its obligations under the Waste Electrical and Electronic Equipment Regulations 2013 (Statutory Instrument 2013 No. 3113) ("**WEEE Regulations**").
- 5.8 In respect of each Producer of any New EEE, the Supplier shall promptly provide the Buyer with the Producer's producer registration number under any such Scheme and such other information and documentation about the Producer's compliance with the WEEE Regulations as the Buyer reasonably requests from time to time.
- 5.9 For the purposes of Conditions 5.7 and 5.8, "New EEE", "Producer" and "Scheme" has the meaning given to them in the WEEE Regulations.

## 6. BUYER REMEDIES

- 6.1 **Failure to deliver.** If the Supplier fails to deliver the Goods and/or to perform the Services by the applicable date, or delivers Goods or supplies Services that do not comply with the requirements of the Contract, the Buyer shall, without limiting or affecting other rights or remedies available to it, have the following rights and remedies:
- 6.1.1 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;
  - 6.1.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.1.3 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - 6.1.4 to recover from the Supplier any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party; and/or



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6.1.5 to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure.

6.2 **Rejection of Goods.** If the Supplier fails to deliver Goods that comply with the requirements of the Contract, the Buyer shall, without limiting or affecting other rights or remedies available to it, have the following rights and remedies:

6.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier which shall uplift them as soon as reasonably practicable at the Supplier's risk and expense;

6.2.2 to require the Supplier to repair or replace the rejected Goods at no additional cost to Buyer; or

6.2.3 to require the Supplier to provide a full refund of the price of the rejected Goods including any related costs (such as transportation for said Goods) (if paid).

6.3 Condition 6.2 shall apply if any Goods do not remain free from defects in performance, design, materials and workmanship for the Warranty Period. The Contract shall apply to any Goods repaired and/or replaced by the Supplier and the Warranty Period shall apply from the time of completion of repair or delivery of replacement Goods.

6.4 Incomplete deliveries of Goods ordered or deliveries which constitute over-supply may be rejected by the Buyer.

6.5 Title and risk in rejected Goods shall pass to the Supplier on rejection.

6.6 The Buyer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## 7. BUYER'S OBLIGATIONS

7.1 The Buyer shall:

7.1.1 provide the Supplier with reasonable access at reasonable times (subject to operational constraints and requirements) to the Buyer's premises for the purpose of delivering the Goods and providing the Services; and

7.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## 8. CHARGES AND PAYMENT

8.1 The Price of the Goods shall be inclusive of the costs of packaging and any insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the parties or their authorised representatives.

8.2 The Price of the Services shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Buyer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and shall constitute the Buyer's entire payment liability to the Supplier for the performance of the Supplier's obligations.

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- 8.3 In respect of the Goods, the Supplier shall invoice the Buyer on or within seven (7) days after completion of delivery. In respect of Services, the Supplier shall invoice the Buyer within seven (7) days after completion of the Services and receipt of any applicable services reports is confirmed by the Buyer. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice, including the Purchase Order Number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Buyer shall pay any undisputed invoiced amounts within twenty-eight (28) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Buyer to inspect such records at all reasonable times on request.
- 8.7 The Buyer may at any time, without notice to the Supplier, set off any present or future liability of the Supplier to the Buyer against any liability of the Buyer to the Supplier.
- 8.8 The Supplier shall not be entitled to increase the Price without the prior written consent of the Buyer.
- 8.9 If any payment is subject by Applicable Law to any withholding tax, the Buyer shall make payment of the amount owing, less a deduction for such withholding tax, and shall account to the relevant tax authority for the withholding tax. Provided that the Supplier has provided the Buyer with current and accurate declarations of tax residence on the prescribed forms and certification of the relevant taxation authorities to confirm the applicability and availability of any reduced rate of withholding tax under the provisions of any applicable double taxation convention and/or treaty, the amount of withholding tax deducted will be calculated by the payer in accordance with such convention or treaty. Payment of the net sum to the Supplier and to the relevant tax authority of the withholding tax shall constitute full settlement of the sums owing under the relevant invoice. The Buyer shall use reasonable endeavours to obtain and provide the Supplier with evidence from the relevant local tax authority of the payment of the withholding tax (including, where available, tax deduction certificates or the equivalent thereof).
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1 The Supplier warrants to the Buyer that neither the Goods or Services, whether by importation, use or resale, will infringe any third party's Intellectual Property Rights.
- 9.2 The Supplier shall indemnify the Buyer and all members of the Buyer's Group against all actions, costs, claims, demands, expenses and liabilities arising from any claim that the Goods or Services infringe, whether by importation, use, resale, supply or otherwise, the Intellectual Property Rights of any third party.

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- 9.3 If the Buyer is restrained from using and/or selling the Goods and/or Services by order of a competent court, the Supplier shall immediately take steps to minimise any loss to be suffered by the Buyer as a result of such restraint. The Supplier shall at its expense and at the Buyer's option without prejudice to any other rights which the Buyer may have against the Supplier:
- 9.3.1 obtain for the Buyer the right to continue to use the Goods and/or Services;
  - 9.3.2 modify the Goods and/or Services so as to render them non-infringing Goods, or otherwise replace them with non infringing Goods; or
  - 9.3.3 refund the purchase price of the Goods and/or Services and the cost of the Goods and/or Services and the cost of disposal of them to the Supplier's instructions.
- 9.4 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Buyer.
- 9.5 All Intellectual Property Rights in or arising out of or in connection with the Goods (other than Intellectual Property Rights in any Buyer Materials) shall be owned by the Supplier save to the extent the Supplier has provided design work as part of the Services in which case the Intellectual Property Rights in that design shall be owned by the Buyer.
- 9.6 The Supplier grants to the Buyer a worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables and the Goods for the purpose of receiving and using the Goods and the Services and the Deliverables.
- 9.7 Where Deliverables include or require the development, licensing or other supply of software or technology ("**Software**") then:
- 9.7.1 unless otherwise specified in the Goods Specification, the Supplier shall provide the Buyer free of charge with all releases of the Software or updates to it that correct faults, add functionality or otherwise amends or, upgrades the Software, in perpetuity, to the extent required for the Deliverables to meet the requirements of the Contract;
  - 9.7.2 the Supplier agrees that: all data is the sole property of the Buyer; any functionality of Software allowing data interrogation (including any extraction) by the Supplier shall be conducted only at such times agreed with the Buyer in advance and subject to the Supplier providing the Buyer, free of charge, with a copy of any data obtained by the Supplier as part of the interrogation. The Supplier will provide copies of data obtained by it to the Buyer on request.
- 9.8 All Buyer Materials shall remain the property of the Buyer.
10. **INDEMNITY**
- 10.1 The Supplier shall keep the Buyer and all members of the Buyer's Group fully indemnified against all liabilities, costs, expenses, damages and losses suffered or incurred by the Buyer arising out of or in connection with:
- 10.1.1 any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the

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manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Buyer Materials); and

10.1.2 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables to the extent caused by the act or omission of the Supplier; and

10.1.3 any breach by the Supplier of Condition 15 (Data Protection); and

10.1.4 any breach by the Supplier of Condition 12 (Confidentiality).

10.2 Nothing in the Contract will exclude, limit or restrict either party's liability for death or personal injury resulting from negligence of that party (or its officers, agents or employees), fraud or fraudulent misrepresentation, or any other matter in respect of which liability cannot by Applicable Law be limited.

10.3 The parties agree that nothing in the Contract shall render the Supplier or any employees of the Supplier as an employee, worker, agent or partner of the Buyer or any member of the Buyer Group. The Supplier agrees that all pay, tax, pension contributions and National Insurance due in relation to the Supplier and any of its employees will be met by the Supplier. The Supplier shall reimburse the Buyer immediately on demand for any costs, losses, expenses (including legal fees), awards or orders made by a tribunal or court or otherwise paid that the Buyer or any member of the Buyer Group is subject to because of the Supplier's failure to make such payments.

10.4 The Supplier shall procure that any payment made to or in respect of any personnel who perform any of the services supplied under the terms of the Contract is fully taxable and subjected to tax and National Insurance deductions under PAYE as earnings from the Supplier's employment of such personnel. The Supplier shall indemnify the Buyer and keep the Buyer indemnified in full against any liability to account for deductions of income tax and/or employee National Insurance Contributions, or payment of employer National Insurance Contributions and/or Apprenticeship Levy (together in each case with any associated interest and/or penalties), in respect of any such personnel.

10.5 This Condition 10 shall survive termination of the Contract.

## 11. **INSURANCE**

During the term of the Contract and until the expiry of the Warranty Period (and in the case of Services, for two (2) years after the end of the term of the Contract) the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, travel insurance, vehicle insurance, and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance (and/or if the Buyer requests confirmation of insurance in the form of a letter from the Supplier's broker).

## 12. **CONFIDENTIALITY**

12.1 The Supplier shall hold as confidential all Confidential Information and any other matter relating to the Goods and/or Service and shall not disclose the same to any other person except such of its employees and permitted subcontractors and suppliers as may be

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necessary for the performance of its obligations under the Contract. All documents and drawings containing such Confidential Information and any copies thereof shall upon completion of the Contract, or its termination for any reason, be returned to the Buyer or (at the Buyer's option) destroyed.

- 12.2 The Buyer as a company falls within the terms of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and therefore the details of any Contract entered into may be subject to disclosure in order to comply with those statutes or the demands of the Scottish Information Commissioner. The Supplier consents to such disclosure as required by the provisions of these statutes. In the event the Buyer has to comply with any such request, the Supplier will assist and provide any relevant information requested by the Buyer within five (5) days of receipt of any such request.
- 12.3 Sections 31 and 32 of the Public Services Reform (Scotland) Act 2010 require listed public bodies, to publish information on expenditure and certain other matters after the end of each financial year. The Buyer has an obligation under this legislation to publish details of all paid invoices with a value in excess of twenty-five thousand pounds sterling (£25,000). The Supplier consents to the Buyer publishing details of any paid invoices regarding the Contract pursuant to this legislation.
- 12.4 The Supplier acknowledges that, due to the confidential nature of the Confidential Information, damages may not be an adequate remedy for breach of this Condition 12 and the Buyer would therefore be entitled (without prejudice to other rights and remedies available) to seek specific performance or other equitable relief to enforce the undertakings of the Contract.
- 12.5 The Supplier shall not advertise or announce publicly any details regarding the Contract whatsoever (including, without limitation, its existence or any details of the name or brand of the Buyer) without the prior written consent of the Buyer. If such consent is granted by the Buyer pursuant to this Condition 12.5, the form of advertisement or announcement shall be subject to receipt of prior written approval from the Buyer.

## 13. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

- 13.1 In performing its obligations under the Contract, the Supplier shall:
- 13.1.1 comply with all Applicable Laws including, without limitation, those of the flag state and classification society of any vessel operated by the Buyer in relation to which Goods and Services are to be provided, from time to time in force;
- 13.1.2 comply at all times with the Equality Act 2010 and any other equal opportunities legislation applicable in the jurisdiction in which the Supplier provides the Goods and/or Services and shall ensure that its employees, agents, and subcontractors (if any) do not discriminate against any person on the grounds of sex, gender reassignment, marital or civil partnership status, pregnancy, race including ethnic or national origin, nationality or colour, disability, sexual orientation, religion or belief or age; and
- 13.1.3 comply (and shall procure that any subcontractors shall comply) with all applicable policies and procedures as may be notified to the Supplier by the Buyer from time to time, including but not limited to:
- (a) any health and safety policies and procedures;

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- (b) any upgrade policies; and
- (c) any other policies and procedures of the Buyer.

## 14. DATA SECURITY

- 14.1 All information or data provided by the Buyer to the Supplier in connection with the Contract shall remain at all times the property of the Buyer.
- 14.2 The Supplier shall take all reasonable precautions and implement appropriate technical and organisational measures to preserve the integrity and prevent any corruption, loss, damage or destruction of the Buyer's information and data and to protect against any unauthorised or unlawful processing of such information and data. The Supplier shall also ensure it has entered into appropriate contractually binding confidentiality undertakings in order to protect the Personal Data.
- 14.3 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer's information or data.
- 14.4 The Buyer shall ensure that any system on which it holds any of the Buyer's information or data is a secure system. To the extent that the Buyer's information or data is held by, and/or processed by, the Supplier; the Supplier shall supply that data to the Buyer as requested and in the format specified. If requested by the Buyer, the Supplier shall perform secure back ups of information and data and shall ensure that up to date back ups are stored off site. The Supplier shall ensure that such back ups are available to the Buyer at all times and are delivered to the Buyer on request.
- 14.5 The Supplier shall preserve the integrity of the Buyer's information and data and prevent the corruption or loss of the same. If the Supplier suspects or has reason to believe that the Buyer's information or data has or may become corrupted, lost or degraded in any way, the Supplier shall notify the Buyer immediately.
- 14.6 If the Buyer's information or data is corrupted, lost or degraded as a result of any act or omission by the Supplier, the Buyer may require (at its sole discretion and at the Supplier's expense) that the Supplier restores, or procures the restoration, of such information or data as soon as possible. On receipt of any such request from the Buyer, the Supplier shall promptly comply with that request.
- 14.7 The Supplier shall during the term of the Contract either:
  - 14.7.1 be certified, and at all times maintain such certification, against the latest version of the ISO 27001 control framework; or
  - 14.7.2 operate an Information Security Management System which is aligned against and compliant with the latest version of the ISO 27001 control framework.
- 14.8 The Statement of Applicability shall be relevant to the processes and infrastructure used for the Services delivered to the Buyer.
- 14.9 The Supplier shall regularly review and update their ISMS in line with Good Industry Practice.

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## 15. DATA PROTECTION

The Supplier undertakes to the Buyer that, in relation to its performance of the Contract and/or as required for the proper and lawful operation of the Contract, it will comply with all Applicable Law for the time being in force relating to data protection, and adhere to Appendix A: Data Processing Appendix included within the Contract.

## 16. TERMINATION

16.1 The Buyer may terminate, without cost, the Contract at any time within the period of delivery of the Goods or scheduled Services by providing the Supplier with fourteen (14) days' written notice to that effect.

16.2 The Buyer shall be entitled to terminate the Contract with immediate effect by notice in writing to the Supplier if:

16.2.1 the Supplier commits a material or persistent breach of the Contract and, if such a breach is remediable, fails to remedy that breach within ten (10) days of receipt of notice in writing of the breach;

16.2.2 any corporate action, legal proceedings or other proposal, procedure or step is taken in relation to:

(a) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Supplier or any of its assets; or

(b) any voluntary arrangement, scheme of arrangement or re organisation of the Supplier; or

(c) any analogous procedure or step is taken in any jurisdiction;

16.2.3 the Supplier is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts, proposes any composition, assignment or arrangement or, by reason of actual or anticipated financial difficulties, commences negotiations with, one or more of its creditors with a view to re-scheduling any of its indebtedness or any analogous procedure, step, event or circumstance is taken or occurs in relation to it in any jurisdiction;

16.2.4 the value of the Supplier's assets at any time is less than its liabilities (taking into account contingent and prospective liabilities);

16.2.5 a moratorium is declared or comes into force in respect of the Supplier or any of its indebtedness;

16.2.6 the Supplier ceases or threatens to cease to carry on business;

16.2.7 the Supplier does something, omits to do something, or is alleged to have done something which could weaken damage or be detrimental to the reputation or goodwill of any brand of the Buyer Group;

16.2.8 the Supplier breaches any of the provisions of Condition 14 (Data Security);

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16.2.9 the Supplier breaches any of the provisions of Condition 12 (Confidentiality); or

16.2.10 the Supplier is the subject of a Change of Control.

16.3 It is the intention of the parties that TUPE will not apply on termination of the Contract and the Supplier will keep the Buyer and all members of the Buyer's Group fully and effectively indemnified against any costs, losses, expenses (including legal expenses), awards or orders made by a tribunal or court or otherwise paid which relate to:

16.3.1 the employment or termination of employment of any of the Supplier's employees;  
or

16.3.2 any failure to comply with TUPE in respect of any of the Supplier's employees.

## 17. CONSEQUENCES OF TERMINATION

17.1 On termination of the Contract, the Supplier shall immediately deliver to the Buyer all Deliverables whether or not then complete, and return all Buyer Materials. If the Supplier fails to do so, then the Buyer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

17.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry or to claim under any indemnity in the Contract.

17.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 18. ANTI-CORRUPTION

### Anti-Bribery

18.1 The Supplier undertakes to the Buyer that:

18.1.1 it will comply with, and that the Goods will be delivered and the Services will be performed, in accordance with, all Applicable Law, including without limitation all statutes, regulations and codes relating to taxation, exchange controls, customs matters, bribery, corruption, competition law, money laundering, trade sanctions, financial sanctions and criminal matters;

18.1.2 it and any "Associated Person" (as defined by the Bribery Act 2010 and, for the avoidance of doubt, including officers, employees, workers, contractors, agents, advisors and any other service providers) will not engage in any activity, practice or conduct which could contravene the Bribery Act 2010 if such activity, practice, or conduct had been carried out in the UK, or which could cause the Buyer to contravene the Bribery Act 2010;

18.1.3 it has in place and will maintain adequate procedures to prevent any act of bribery being committed by it and any Associated Person, to avoid the commission of an



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offence by the Supplier under the Bribery Act 2010 and to ensure compliance with any local or internationally Applicable Law relating to bribery and corruption; and

- 18.1.4 during the term of the Contract, it and any Associated Person performing services relating to the Contract will comply with any anti bribery policies, procedures or guidelines which the Buyer may provide to the Supplier from time to time.
- 18.2 During the term of the Contract, the Supplier shall keep books, accounts and records of all financial transactions relating to the Contract. The Supplier shall not make any off the books accounts, payments or expenditures. The Supplier shall retain such books, accounts and records for a period of six (6) years after the expiry or earlier termination of the Contract.
- 18.3 The Supplier shall co-operate with the Buyer and promptly provide the Buyer with any information or confirmation which the Buyer requires from time to time in connection with the obligations of the Supplier pursuant to Conditions 18.1 to 18.6. This may include enabling the Buyer, whether itself or through an agent, to conduct an audit of records and information held by the Supplier or any Associated Person. The Supplier acknowledges that the Buyer will place reliance upon the information provided. This obligation shall continue after the expiry or termination of the Contract.
- 18.4 The Supplier shall immediately notify the Buyer in writing if the Supplier becomes aware or has reasonable grounds to believe that any bribe or improper payment has been requested, demanded, offered, accepted, paid or received in relation to the Contract. In such a circumstance, the Supplier shall co-operate in good faith with any investigation by the Buyer into whether bribery has taken place. These obligations shall continue after the expiry or termination of the Contract.
- 18.5 If the Buyer suspects a breach of Conditions 18.1, 18.2, 18.3 or 18.4 it shall have the right to suspend the Contract. If the Buyer believes, on reasonable grounds, that Conditions 18.1.1, 18.1.2, 18.2, 18.3 or 18.4 has been breached, a material breach of the Contract will be deemed to have occurred. A failure to remedy a breach of Conditions 18.1.3 and 18.1.4 within thirty (30) days of receiving notification of a contravention from the Buyer will also be a material breach of the Contract. The Buyer shall have the right to suspend and/or terminate the Contract for material breach immediately, or on such other time specified by the Buyer, upon written notice to the Supplier. If the Buyer suspends or terminates the Contract for a suspected breach of any provisions contained within Conditions 18.1 to 18.6, the Supplier shall not be entitled to claim any compensation or any further remuneration, regardless of any activities or agreements with additional parties entered into before termination.
- 18.6 If the Supplier or any Associated Person is found to have breached any provisions contained within Conditions 18.1 to 18.6, the Buyer shall be entitled to recover from the Supplier the amount of any losses, damages, costs, claims, liabilities and expenses (including legal and investigation expenses) incurred by the Buyer resulting from or arising in respect of such breach, or the termination of the Contract pursuant to Condition 18.5.

## **Anti-Slavery**

- 18.7 The Supplier:
- 18.7.1 warrants and represents that:

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- (a) it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking ("Slavery and Human Trafficking");
- (b) its employees and agency workers are paid in compliance with all applicable employment laws and minimum wage requirements;
- (c) it will take reasonable steps to prevent Slavery and Human Trafficking in connection with the Supplier's business and supply chains; and
- (d) it will comply with all applicable anti-Slavery and human Trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;

18.7.2 acknowledges that any breach by the Supplier of this Condition 18.7 shall constitute a material breach of the Contract which is not capable of remedy.

## Anti-Tax Evasion

18.8 The Supplier hereby warrants and confirms to the Buyer that:

18.8.1 neither it nor its Relevant Associates are involved or have been involved in any contract, agreement or other arrangement of any kind which could or may result in tax evasion or the facilitation thereof; and

18.8.2 it shall notify the Buyer immediately in writing should it become aware at any time during the term of the Contract of any fact or circumstance which indicates that it or any of its Relevant Associates are or could be involved in tax evasion or the facilitation thereof in connection with the Services to be provided pursuant to the Contract.

18.9 For the purposes of this Condition, "**Relevant Associates**" means any employee, agent, supplier or any other person acting for or on behalf of the relevant person or entity.

## 19. BUSINESS CONTINUITY

19.1 The Supplier shall ensure that at all times it has in place and is able to implement (and procure that any subcontractors involved in the provision of the Goods and/or Services have in place, and are able to implement) a business continuity and disaster recovery plan. If required by the Buyer, the Supplier will explain to the Buyer how the features set out in the business continuity and disaster recovery plan will interface with any business continuity and disaster recovery plans and procedures of the Buyer as the Buyer may notify to the Supplier from time to time.

19.2 The Supplier shall develop, update and test its business continuity and disaster recovery plan on a regular basis and, in any event, not less than once in every twelve (12) month period, in accordance with Good Industry Practice.

19.3 The Supplier shall permit the Buyer to have sight of the business continuity and disaster recovery plan upon reasonable notice at any time. If the Buyer considers (on reasonable grounds) that the business continuity and disaster recovery plan is insufficient to ensure the continued performance and operational resilience of the Services or the provision of the

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Goods then the Buyer may require the Supplier to modify the business continuity and disaster recovery plan to remedy such insufficiency or failure and the Supplier will promptly make the modifications that the Buyer requires.

## 20. ENVIRONMENTAL

20.1 The Buyer Group operates to the environmental standards specified in the applicable ISO14001 standard. By agreeing to these Conditions, the Supplier agrees that it shall act in accordance with the relevant ISO14001 standard in force as at the Commencement Date and shall provide the Goods and/or Services in line with the applicable ISO14001 standard.

20.2 The Supplier confirms that it is aware of and understands the Buyer's published policies regarding the reduction of carbon emissions and achieving net zero. In order to support the Buyer's stated aims, the Supplier agrees to measure, manage and report all Contract Emissions and to develop and implement a plan of continual improvement with the objective of reducing Contract Emissions as rapidly as possible.

## 21. CONFLICT OF INTEREST

21.1 The Supplier confirms that there is no conflict of interest between the Buyer and any other client of the Supplier or any subcontractors used in the provision of the Goods and/or Services, which has not been disclosed to the Buyer before the Commencement Date. The Supplier shall not, without the prior written consent of the Buyer, accept work from any other person which would, or would reasonably be considered likely to, create a conflict of interest.

21.2 Subject to Condition 21.1, the Supplier shall ensure that no director, partner, member of staff or subcontractor is engaged on providing the Goods and/or Services if that engagement would constitute a conflict of interest in relation to the Buyer and any other client of the Supplier. The Supplier shall carry out conflict of interest checks on an ongoing basis.

21.3 No director, partner, staff or subcontractor of the Supplier shall be granted access to any Confidential Information of the Buyer if the Buyer has advised the Supplier that such director, partner, staff or subcontractor should be excluded from access to Confidential Information.

## 22. FORCE MAJEURE

22.1 If either party is prevented from or delayed in the performance of its obligations under the Contract by an event arising after the formation of the Contract which was beyond the reasonable control of the party concerned including (but without prejudice to the generality of the foregoing) any war, hostilities (whether war be declared or not), invasion, act of foreign enemies, ionizing radiations, contamination by radioactivity from any nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, rebellion, revolution, insurrection, military or usurped power or civil war, riot, civil commotion, or disorder, that party may notify the other of the existence of an event of force majeure and the contractual obligations of the parties shall be suspended.

22.2 If the event of force majeure continues for a period less than or equal to thirty (30) days then the contractual obligations of the parties shall be reinstated with such reasonable

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modifications that take into account the impact of the force majeure event as may be agreed between the parties.

22.3 If the event of force majeure continues for a period of more than thirty (30) days, then either party shall have the right to terminate the Contract by giving notice in writing to that effect.

## 23. ASSIGNATION & SUBCONTRACTING

23.1.1 The Supplier shall not, without the prior written consent of the Buyer, assign, transfer or sub contract or charge or deal in any other manner with either the benefit or the burden of the Contract or any of its rights or obligations under the Contract or purport to do any of the same.

23.1.2 The consent of the Buyer shall not be required for the subcontracting of materials or minor items or for any item for which the subcontractor is named in the Contract.

23.1.3 The Supplier shall be responsible for all work done and Goods and/or Services supplied by subcontractors as if the work had been done or the Goods and/or Services supplied or performed by the Supplier.

23.1.4 The Buyer may at any time assign, novate or otherwise transfer any and all of its rights and obligations under the Contract, including the benefit of any warranties, to any other member of the Buyer Group.

## 24. NOTICES

24.1.1 Any notice to be given under, or in connection with these Conditions shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by facsimile or pre-paid recorded delivery or registered post to the registered office or principal place of business of the relevant party (marked for the attention of the Managing Director), or as otherwise notified in writing by that party to the Contract. Any such notice shall be deemed to have been received:

- (i) if delivered personally, at the time of delivery;
- (ii) in the case of pre-paid recorded delivery or registered post, forty-eight (48) hours from the date of posting;
- (iii) in the case of registered airmail, five (5) days from the date of posting; and
- (iv) in the case of fax, at the time of transmission.

24.1.2 If receipt occurs before 9.00 am on a Business Day the notice shall be deemed to have been received at 9.00 am on that day and if receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day.

24.1.3 This Condition does not apply to the service of any proceedings or other documents in any legal action.

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## 25. SEVERABILITY

If any provision of these Conditions is found by any court of competent jurisdiction to be invalid or unenforceable, it shall not affect the validity of the rest of the provisions within the Conditions.

## 26. WAIVER

No failure or delay by any party in exercising any right, power or privilege under these Conditions shall operate as a waiver nor shall any single or partial exercise preclude any further exercise of any right, power or privilege under these Conditions.

## 27. SET OFF

The Buyer shall be entitled to set off the amount of any costs or other sums owed to the Buyer against any other sum owed by the Buyer to the Supplier from time to time under the Contract and any other agreement between the parties.

## 28. RELIANCE

The Supplier acknowledges that it is an expert fully competent in all phases of the work involved in providing Services or Goods provided under the Contract. The Supplier agrees that it shall not deny any responsibility or obligation to the Buyer on the grounds that the Buyer provided recommendations or assistance with regard to any aspect of the Contract. The Supplier acknowledges that the Buyer has relied and will rely on the Supplier's capacity as an expert.

## 29. NO PARTNERSHIP OR AGENCY

Nothing in the Contract shall be construed as constituting a partnership or joint venture between the parties or as constituting either party as the agent of the other for any purpose whatsoever. Each party confirms it is acting on its own behalf and not for the benefit of any other person save that the Buyer may make Goods or Services available to Buyer Group.

30. **THIRD PARTY RIGHTS.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third-Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.

## 31. OWNER RIGHTS

31.1 The parties acknowledge and agree that certain vessels used by the Buyer in the conduct of its business are the property of the Owner and that neither the Supplier nor the Buyer has:

31.1.1 any authority to contract on behalf of the Owner or to pledge the Owner's credit or to involve the Owner in any liability whatsoever; or

31.1.2 the right, power or authority to create, incur or permit to be imposed any lien upon any of the Owner's vessels.

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## 32. **BENEFIT OF CONTRACT**

32.1 In the event of any negligence or breach of the Contract by the Supplier which results in any loss, damage, costs or expense ("**Loss**") being suffered by a member of the Buyer Group, that Loss will be treated as if it had been suffered by the Buyer. The Buyer shall be entitled to recover any such Loss from the Supplier.

32.2 If and to the extent that the Buyer is unable to recover Loss suffered by other members of the Buyer Group under Condition 32.1, each member of the Buyer Group shall be entitled to recover such Loss directly from the Supplier and to enforce the Contract against the Supplier for this purpose under the Contracts (Rights of Third Parties) Act 1999. The parties agree that although these Conditions are made under Scots law, English law will apply to the extent needed to give effect to this Condition 32.2. The Buyer and the Supplier may withdraw from or vary the Contract or terminate it in accordance with its terms without the agreement of any other member of the Buyer Group.

## 33. **AMENDMENT OF CONDITIONS**

Neither party shall be bound by any variation (including any additional terms and conditions) waiver or amendment to these Conditions or the Contract unless agreed by the parties in writing and signed on their behalf by one of their duly authorised officers.

## 34. **LAW**

Subject to Condition 32.2, the Contract, 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 laws of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.

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## APPENDIX A: DATA PROCESSOR APPENDIX

### 1. DEFINITIONS

In this Appendix, the following terms shall have the following meanings:

- 1.1 "**Processing**", "**Data Subject**", "**Personal Data**" and "**Personal Data Breach**" shall have the same meaning as described in Data Protection Laws (and "**Process**" and "**Processed**" shall be construed accordingly). The terms "**Data Processor**" and "**Data Controller**" shall have the meaning given to "processor" and "controller" in the Data Protection Laws;
- 1.2 "**Administrative Purposes**" means the administration and management of the Main Agreement, resolution of disputes in connection with the Main Agreement, and compliance with obligations under Applicable Law;
- 1.3 "**Appendix**" means this Data Processor Appendix;
- 1.4 "**Appropriate Safeguard(s)**" means a safeguard which ensures that the Restricted Transfer may occur in accordance with the Data Protection Laws and applicable guidance issued by the ICO, including such requirements as are set out in section 11 below in relation to the transfers of data to a Third Party Provider and includes any one of the following:
  - (a) the execution of a Data Transfer Agreement;
  - (b) where the Third Party Provider is a member of the Data Processor's Group, relying on a valid set of binding corporate rules that have been approved by a Data Protection Supervisory Authority; or
  - (c) any other data transfer mechanism which is or may become available (including any standard clauses forming part of an applicable code of conduct or certification scheme);
- 1.5 "**Authorised Sub-Processors**" means (a) those Sub-Processors (if any) set out in ANNEX 2 (*Authorised Sub-Processors*); and (b) any additional Sub-Processors consented to in writing by the Data Controller in accordance with section 5.1;
- 1.6 "**Data Processor's Group**" means the Data Processor together with any subsidiaries or any holding companies (as defined in section 1159 of the Companies Act 2006) from time to time of the Data Processor, and any subsidiaries from time to time of a holding company of the Data Processor;
- 1.7 "**Data Importer**" means a Third Party Provider that Processes the Buyer's Personal Data in a Restricted Country, which it receives from, or is granted access to by, the Data Processor (whether directly from the Data Processor or indirectly from a Third Party Provider);
- 1.8 "**Data Protection Impact Assessment**" means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the UK GDPR;
- 1.9 "**Data Protection Laws**" means, in relation to any Personal Data which is Processed in the performance of the Main Agreement, the **UK GDPR**; the Data Protection Act 2018 ("**DPA 2018**"); the Privacy and Electronic Communications Regulations 2003 (as amended by SI

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2011 no. 6); and any applicable decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, the ICO and other applicable UK government departments; in each case together with all laws implementing, replacing, amending or supplementing the same and any other applicable data protection or privacy laws;

- 1.10 "**Data Transfer Agreement**" means an agreement between the Data Processor and the Data Importer (or between a Third Party Provider and a Data Importer, as applicable) which incorporates the relevant set of Standard Contractual Clauses;
- 1.11 "**Data Transfer Risk Assessment**" means an assessment of the transfer of Personal Data to a Restricted Country, which shall be carried out in accordance with guidance issued by the competent Supervisory Authority;
- 1.12 "**EU Standard Contractual Clauses**" means the standard contractual clauses contained in the annex to Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of Personal Data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council and any amendment or replacement pursuant to Article 46(5) of the GDPR;
- 1.13 "**GDPR**" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
- 1.14 "**ICO**" means the UK Information Commissioner's Office, or any successor body which replaces it;
- 1.15 "**Main Agreement**" means the Contract into which this Appendix is incorporated;
- 1.16 "**Personnel**" means, in relation to either party, all persons engaged or employed by that party from time to time, including its officers, directors, consultants, contractors, agents and/or Sub-Processors;
- 1.17 "**Personnel Personal Data**" means Personal Data relating to the Personnel;
- 1.18 "**Public Authority Access**" means a request for disclosure of, or direct access to, Personal Data by any government or public authority (or any body with delegated authority for any of them) under the laws of the relevant Restricted Country to which the Data Importer is subject;
- 1.19 "**Restricted Country**" means a country, territory or jurisdiction that is outside the UK or the European Economic Area which is not the subject of an adequacy determination by the UK Secretary of State or the European Commission (as applicable);
- 1.20 "**Restricted Transfer**" means the transfer, storing or Processing of Personal Data or storing the Buyer's Personal Data in a Restricted Country, either through:
- (a) direct transfer or remotely (e.g. via outsourcing, as part of business continuity arrangements, cloud arrangements, offshore models etc.);
  - (b) remotely accessing, or allowing remote access to, the Buyer's information systems;



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- (c) an onward transfer of the Buyer's Personal Data from a receiving Party under (a) or (b) above, to a further member of the Buyer Group or any Third Party Provider; and/or
  - (d) any other means;
- 1.21 "**Standard Contractual Clauses**" means EU Standard Contractual Clauses and, if applicable, as supplemented by the UK Addendum;
- 1.22 "**Sub-Processor**" means any Data Processor (including any member of the Data Processor's Group) appointed by the Data Processor to Process Personal Data on behalf of the Data Controller;
- 1.23 "**Supervisory Authority**" means: (a) the ICO pursuant to Article 51 of the UK GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws;
- 1.24 "**Third Party Controller**" means a third party with whom the Data Processor (or a Third Party Provider) wishes to share Personal Data, where that third party acts as a Data Controller;
- 1.25 "**Third Party Provider**" means a Sub-Processor or a Third Party Controller, as the context requires;
- 1.26 "**UK Addendum**" means the International Data Transfer Addendum to EU Standard Contractual Clauses issued by the ICO under section 119A(1) of the DPA 2018, version B1.0, in force 21 March 2022 and any updates or replacements as may be issued by the ICO from time to time in accordance with section 119A(1); and
- 1.27 "**UK GDPR**" has the meaning given to it in section 3 of the DPA 2018.

All capitalised terms used but not defined in this Appendix shall have the meanings given to such terms in the Main Agreement.

## 2. PROCESSING OF PERSONAL DATA

- 2.1 The parties agree that they may each Process Personal Data under the Main Agreement. Accordingly, they each acknowledge that the factual arrangement between them dictates the classification of each party in respect of the Data Protection Laws.
- 2.2 Notwithstanding section 2.1 and subject to section 2.3, the parties anticipate that the Buyer shall act as a Controller and the Supplier shall act as Processor. For the purpose of this Appendix, references to "**Data Controller**" shall mean the Buyer and "**Data Processor**" shall mean the Supplier.
- 2.3 Notwithstanding section 2.1, the parties anticipate that each shall act as independent Controller in relation to any Processing of Personnel Personal Data for the Administrative Purposes.
- 2.4 Each party will comply with its obligations under the Data Protection Laws in its performance of its obligations under the Main Agreement.
- 2.5 Each party shall at all times in relation to Processing connected with the Main Agreement comply with Data Protection Laws.

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- 2.6 The Data Processor shall only process the types of Personal Data relating to the categories of Data Subjects for the purposes of the Main Agreement and for the specific purposes in each case as set out in ANNEX 1 (*Details of Processing of Personal Data*) to this Appendix and shall not process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than in accordance with the Data Controller's documented instructions (whether in the Main Agreement or otherwise) unless Processing is required by Applicable Law to which the Data Processor is subject, in which case the Data Processor shall, to the extent permitted by such law, inform the Data Controller of that legal requirement before Processing that Personal Data.
- 2.7 The Data Processor shall immediately inform the Data Controller, if in its opinion, an instruction pursuant to the Main Agreement or this Appendix infringes Data Protection Laws.
- 2.8 The Data Controller warrants to and undertakes with the Data Processor that all Data Subjects of the Personal Data have been or will be provided with appropriate privacy notices and information to establish and maintain for the relevant term the necessary legal grounds under Data Protection Laws for transferring the Personal Data to the Data Processor to enable the Data Processor to process the Personal Data in accordance with this Appendix and the Main Agreement.

## 3. DATA PROCESSOR PERSONNEL

- 3.1 The Data Processor shall treat all Personal Data as strictly confidential and shall inform all its employees, agents, contractors and/or Authorised Sub-Processors engaged in Processing the Personal Data of the confidential nature of such Personal Data.
- 3.2 The Data Processor shall take reasonable steps to ensure the reliability of any employee, agent, contractor and/or Authorised Sub-Processor who may have access to the Personal Data, ensuring in each case that access is limited to those persons or parties who need to access the relevant Personal Data, as necessary for the purpose of performing its obligations under the Main Agreement.
- 3.3 The Data Processor shall ensure that all such persons or parties involved in the Processing of Personal Data are subject to:
- 3.3.1 confidentiality undertakings or are under an appropriate statutory obligation of confidentiality; and
  - 3.3.2 user authentication processes when accessing the Personal Data.

## 4. SECURITY

- 4.1 The Data Processor shall implement appropriate technical and organisational measures to ensure a level of security of the Personal Data appropriate to the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

## 5. SUB-PROCESSING

- 5.1 Subject to section 5.4, the Data Processor shall not engage any Sub-Processor to process Personal Data other than with the prior specific or general written authorisation of the Data Controller.

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- 5.2 In the case of general written authorisation, the Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of other Data Processors (Sub-Processors), thereby giving the Data Controller the opportunity to object to such changes.
- 5.3 With respect to each Sub-Processor, the Data Processor shall:
- 5.3.1 carry out adequate due diligence on each Sub-Processor to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Appendix including without limitation, sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of Data Protection Laws and this Appendix;
  - 5.3.2 include terms in the contract between the Data Processor and each Sub-Processor which are the same as those set out in this Appendix, and shall supervise compliance thereof;
  - 5.3.3 insofar as that contract involves the transfer of Personal Data outside of the UK, incorporate the Standard Contractual Clauses or such other mechanism as directed by the Data Controller into the contract between the Data Processor and each Sub- Processor to ensure the adequate protection of the transferred Personal Data, or such other arrangement as the Data Controller may approve, as providing an adequate protection in respect of the Processing of Personal Data in such third country(ies); and
  - 5.3.4 remain fully liable to the Data Controller for any failure by each Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data.
- 5.4 As at the date of the Main Agreement or (if later) implementation of this Appendix, the Data Controller hereby authorises the Data Processor to engage those Sub- Processors set out in ANNEX 2 (*Authorised Sub-Processors*).

## 6. DATA SUBJECT RIGHTS

- 6.1 The Data Processor shall without undue delay, and in any case within two (2) Business Days, notify the Data Controller if it receives a request from a Data Subject under any Data Protection Laws in respect of Personal Data, including requests by a Data Subject to exercise rights in chapter 3 of the UK GDPR, and shall provide full details of that request.
- 6.2 The Data Processor shall co-operate as reasonably requested by the Data Controller to enable the Data Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws in respect of Personal Data and to comply with any assessment, enquiry, notice or investigation under any Data Protection Laws in respect of Personal Data or the Main Agreement, which shall include:
- 6.2.1 the provision of all information reasonably requested by the Data Controller within any reasonable timescale specified by the Data Controller in each case, including full details and copies of the complaint, communication or request and any Personal Data it holds in relation to a Data Subject;
  - 6.2.2 where applicable, providing such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with the relevant request within the timescales prescribed by Data Protection Laws; and

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- 6.2.3 implementing any additional technical and organisational measures as may be reasonably required by the Data Controller to allow the Data Controller to respond effectively to relevant complaints, communications or requests.

## 7. PERSONAL DATA BREACH MANAGEMENT

- 7.1 In the case of a Personal Data Breach, the Data Processor shall, without undue delay, notify the Personal Data Breach to the Data Controller providing the Data Controller with sufficient information which allows the Data Controller to meet any obligations to report a Personal Data Breach under Data Protection Laws. Such notification shall as a minimum:

- 7.1.1 describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

- 7.1.2 communicate the name and contact details of the Data Processor's data protection officer or other relevant contact from whom more information may be obtained;

- 7.1.3 describe the likely consequences of the Personal Data Breach; and

- 7.1.4 describe the measures taken or proposed to be taken to address the data breach, including, where appropriate, measures to mitigate its possible adverse effects.

- 7.2 The Data Processor shall fully co-operate with the Data Controller and take such reasonable steps as are directed by the Data Controller to assist in the investigation, mitigation and remediation of each Personal Data Breach, in order to enable the Data Controller to:

- 7.2.1 perform a thorough investigation into the Personal Data Breach; and

- 7.2.2 formulate a correct response and to take suitable further steps in respect of the Personal Data Breach in order to meet any requirement under Data Protection Laws.

- 7.3 The parties agree to coordinate and cooperate in good faith on developing the content of any related public statements or any required notices for the affected persons. The Data Processor shall not inform any third party without first obtaining the Data Controller's prior written consent, unless notification is required by law to which the Data Processor is subject, in which case the Data Processor shall, to the extent permitted by such law, inform the Data Controller of that legal requirement, provide a copy of the proposed notification and consider any comments made by the Data Controller before notifying the Personal Data Breach.

## 8. DATA PROTECTION IMPACT ASSESSMENTS AND CONSULTATION

- 8.1 The Data Processor shall, at the Data Controller's request, provide reasonable assistance to the Data Controller with any Data Protection Impact Assessments and any consultations with any Supervisory Authority of the Data Controller as may be required in relation to the Processing of Personal Data by the Data Processor on behalf of the Data Controller.

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## 9. DELETION OR RETURN OF DATA CONTROLLER PERSONAL DATA

9.1 The Data Processor shall promptly and in any event within ninety (90) calendar days of the earlier of:

9.1.1 cessation of Processing of Personal Data by the Data Processor; or

9.1.2 termination of the Main Agreement, at the choice of the Data Controller either return all Personal Data to the Data Controller or securely dispose of Personal Data (and thereafter promptly delete all existing copies of it),

except to the extent that any Applicable Law requires the Data Processor to store such Personal Data.

## 10. AUDIT RIGHTS

10.1 The Data Processor shall make available to the Data Controller on request all information necessary to demonstrate compliance with this Appendix and Data Protection Laws and allow for and contribute to audits, including inspections by the Data Controller or another auditor mandated by the Data Controller of any premises where the Processing of Personal Data takes place.

10.2 The Data Processor shall permit the Data Controller or another auditor mandated by the Data Controller during normal working hours and on reasonable prior notice to inspect, audit and copy any relevant records, processes and systems in order that the Data Controller may satisfy itself that the provisions of Data Protection Laws and this Appendix are being complied with.

10.3 The Data Processor shall provide full co-operation to the Data Controller in respect of any such audit and shall at the request of the Data Controller, provide the Data Controller with evidence of compliance with its obligations under this Appendix and Data Protection Laws.

## 11. INTERNATIONAL TRANSFERS OF DATA CONTROLLER PERSONAL DATA

11.1 The Data Processor shall not (and shall procure that any Third Party Provider shall not) make a Restricted Transfer to a Data Importer without notifying the Data Controller at least thirty (30) days prior to the date of the Restricted Transfer. The Data Controller shall be entitled to object to any Restricted Transfer.

11.2 The Data Processor warrants that it shall have conducted a Data Transfer Risk Assessment prior to making (or authorising a Third Party Provider to make) a Restricted Transfer. The Data Processor shall provide further information to the Data Controller about the Data Transfer Risk Assessment promptly upon the Data Controller's request. The Data Processor shall review and update the Data Transfer Risk Assessment at appropriate intervals, unless otherwise requested by the Data Controller (acting reasonably).

11.3 The Data Processor warrants that it has no reason to believe that the applicable law and practices in the Restricted Country prevent the Data Processor from fulfilling its obligations under the Main Agreement or the Data Importer fulfilling its obligations under the relevant Appropriate Safeguard.

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- 11.4 If the Data Processor (or a Third Party Provider) makes a Restricted Transfer, the Data Processor shall notify the Data Controller within five (5) Business Days if it suspects that:
- 11.4.1 it or the Data Importer has become subject to laws which negatively affect the conclusions set out in the Data Transfer Risk Assessment such that they invalidate or materially undermine the effectiveness and sufficiency of the Appropriate Safeguard; and/or
  - 11.4.2 the applicable law or practices of the Restricted Country will prevent the Data Processor from complying with, or cause it to breach, its obligations under the Main Agreement (or prevent the Data Importer from complying with, or causing it to breach, its obligations under or in connection with the relevant Appropriate Safeguard).

## The Appropriate Safeguard

- 11.5 The Data Processor hereby warrants that it has put in place (or has procured that the relevant Third Party Provider has put in place) an Appropriate Safeguard.
- 11.6 Promptly upon the Data Controller's request, the Data Processor shall provide such copy of the Appropriate Safeguard within five (5) Business Days of the Data Controller making that request.

## Public Authority Requests

- 11.7 Where, in any circumstances the Data Processor or any Third Party Provider (as applicable) receives, or becomes aware of, Public Authority Access, the Data Processor shall (and shall procure that the relevant Third Party Provider shall):
- 11.7.1 not disclose or provide access to the Personal Data pursuant to such Public Authority Access, unless it is required to do so by Applicable Law;
  - 11.7.2 use every reasonable effort to redirect the requester to the Data Controller. The Data Processor may share relevant contact details of the Data Controller for this purpose;
  - 11.7.3 promptly notify the Data Controller unless legally prohibited from doing so and, if prohibited from notifying the Data Controller, use all reasonable and lawful efforts to obtain a waiver to such prohibition; and
  - 11.7.4 use all reasonable lawful efforts to challenge the Public Authority Access on the basis of any legal deficiencies under the laws that the requestor is subject to or any relevant conflicts with Data Protection Laws. Lawful efforts do not include actions that would result in civil or criminal breach or penalty such as contempt of court under the laws of the relevant jurisdiction.

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**ANNEX 1: DETAILS OF PROCESSING OF PERSONAL DATA**

This ANNEX 1 includes certain details of the Processing of Personal Data as required by Article 28(3) of the UK GDPR.

Subject matter and duration of the Processing of Personal Data
<b>[ENTER DETAILS]</b>
The nature and purpose of the Processing of Personal Data
<b>[ENTER DETAILS]</b>
The types of Personal Data to be Processed
<b>[ENTER DETAILS]</b>
The categories of Data Subject to whom the Personal Data relates
<b>[ENTER DETAILS]</b>

**ANNEX 2: AUTHORISED SUB-PROCESSORS**

**[ENTER DETAILS]**

**ANNEX 3: AUTHORISED INTERNATIONAL TRANSFERS OF DATA CONTROLLER PERSONAL DATA**

**[ENTER DETAILS]**