

**GENERAL CONDITIONS OF PURCHASE FOR GOODS AND SERVICES
May 2022**

1. DEFINITIONS AND INTERPRETATION

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

"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
- (c) 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;

"Commencement Date" means the date of acceptance of the Contract Initiation Document in accordance with Condition 2.4;

"Conditions" means these conditions of purchase, as amended from time to time in accordance with Condition 3;

"Confidential Information" 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:

- (a) 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

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statistics, prices, market research reports and surveys, and advertising and other promotional materials,

- (b) trade secrets and know-how,
- (c) personnel, agents, third party intermediaries and suppliers,
- (d) 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";

"Contract"	means these Conditions, the Contract Initiation Document and, if applicable, the Invitation to Tender, and Response to Tender;
"Contract Award Letter"	means a letter issued by the Buyer and countersigned by the Seller confirming certain contractual arrangements that are to apply between the parties;
"Contract Initiation Document"	means in relation to any given Contract, the Purchase Order and/or Contract Award Letter specific to that Contract;
"Delivery Date"	means the date of delivery of the Goods or performance of the Services specified in the Contract Initiation Document, or as otherwise agreed in writing between the parties;
"Good Industry Practice"	means the provision of the Goods and/or the performance of the Services in an efficient, effective, reliable, professional and safe manner, and with the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from an experienced person engaged in providing services or goods which are the same as, or similar to, the Goods or Services provided under the Contract;

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"Goods"	means the goods or materials (or any part or parts of them) to be supplied by the Seller under the Contract Initiation Document, and includes without limitation any labels, instructions or handbooks relating to such goods or materials or the performance of the Services in accordance with the Contract;
"Intellectual Property Rights"	means any and all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, 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;
"Invitation to Tender"	means the Buyer's specification of the required services and/or goods and request for information from the Seller (together with any other documents (or parts thereof) referred to in such documentation) issued in anticipation of the creation of this Contract;
"Loss"	has the meaning set out in Condition 32.1;
"Purchase Order"	means an order issued by the Buyer to the Seller 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);
"Response to Tender"	means the Seller's response to the Invitation to Tender;
"Seller"	means the person, firm or company to whom the Contract Initiation Document is issued;
"Security Requirements"	means the requirements regarding the security of the personal data, as set out in data protection legislation (including, in particular the measures set out in Article 32(1) of the UK General Data Protection Regulation ('UK GDPR') (taking due account of the matters described in Article 32(2) of the UK GDPR)) as applicable;

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"Service Level"	means any service level or standard of performance specified in the Contract Initiation Document;
"Services"	means the Services (if any) described in the Contract Initiation Document;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time and;
"VAT"	means Value Added Tax.

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

2. GENERAL

- 2.1 The Buyer will issue a Contract Initiation Document confirming the terms under which it will purchase Goods and/or Services from the Seller.
- 2.2 The issue of a Contract Initiation Document constitutes an offer by the Buyer to purchase Goods and/or Services from the Seller in accordance with these Conditions.
- 2.3 The relevant Contract Initiation Document, together with these Conditions, shall constitute the entire agreement between the Buyer and the Seller in relation to any given Contract. Any terms and conditions of sale submitted or referred to by the Seller in any quotation or tender or during the course of negotiations between the parties or prior to or subsequent to the completion of any relevant Contract Initiation Document (including those (if any) that accompany the Seller's acknowledgement of the Contract Initiation Document) shall not form part of the Contract and shall be null and void unless the Buyer specifically agrees in writing to their incorporation into the Contract and confirms such agreement in the Contract Initiation Document.
- 2.4 The Seller shall be deemed to have accepted the terms of the Contract upon:
 - (i) receipt by the Buyer of the Seller's written acknowledgement of a Contract Initiation Document; or

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- (ii) delivery of the Goods to and/or performance of the Services by the Seller to the Buyer; or
- (iii) any other act being carried out by the Seller which is consistent with fulfilling the Contract.

2.5 No request for a quotation by the Buyer shall constitute a Purchase Order. All Purchase Orders shall be on the Buyer's standard order form.

2.6 Where there is a conflict between the terms of any document that may form part of the Contract, that conflict shall be resolved by ranking the conflicting documents in the following decreasing order of precedence:

- 2.6.1 Purchase Order;
- 2.6.2 Contract Award Letter;
- 2.6.3 these Conditions;
- 2.6.4 Response to Tender; and
- 2.6.5 Invitation to Tender.

3. 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.

4. DOCUMENTATION

4.1 If a Purchase Order (or Purchase Order number) is provided to the Seller by the Buyer, the Seller shall ensure that it specifies that Purchase Order number on all correspondence with the Buyer.

4.2 The Seller shall acknowledge receipt of any Contract Initiation Document in writing to the Procurement Department at Head Office, Ferry Terminal, Gourock PA19 1QP or such other place as may be notified to the Seller by the Buyer from time to time.

4.3 The Seller shall address all invoices and statements to the Buyer or to such other member of the Buyer Group as may be specified in the Contract Initiation Document or notified to the Seller from time to time.

4.4 The Seller shall send all invoices and statements to the invoice address specified in the Contract Initiation Document, or to such other address as may be notified to the Seller from time to time together with any supporting documentation requested by the Buyer.

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- 4.5 The Seller shall display separately the VAT rate and the amount of VAT charged in respect of the Goods and/or Services and the Seller's VAT registration number on all invoices and statements.
- 4.6 During the term of the Contract, the Seller shall keep detailed books, accounts and records relating to the Contract and shall make such books, accounts and records available to the Buyer, promptly on request, for the purposes of verifying the invoices submitted by the Seller to the Buyer.
5. **GOODS/SERVICES**
- 5.1 The Seller warrants that the Goods and/or Services shall conform in all respects with:
- 5.1.1 the provisions of the Contract and in particular with any specification, drawings or descriptions contained in, or referred to in, the Contract;
 - 5.1.2 any standards specified in the Contract and where no standard is specified, with any relevant British Standard and in the absence of any such generic standard, with Good Industry Practice;
 - 5.1.3 the requirements of any and all applicable laws, including without limitation all applicable laws, statutes, regulations and codes applicable from time to time in relation to:
 - (a) the manufacture, packaging, storage, handling and delivery of any Goods, in force at the Delivery Date; and
 - (b) the provision of the Services; and
 - 5.1.4 the rules, regulations, guidance and codes of practice of any professional regulatory body to which the Seller is subject.
- 5.2 The Seller warrants that the Goods shall be of satisfactory quality and fit for purpose for which the Goods are normally used or held out by the Seller or made known to the Seller by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgment.
- 5.3 The Seller warrants that the Goods and Services shall conform with the provisions of the Contract and in particular be of the best available, and be free from defects in, design, quality, material and workmanship, and shall remain so for the duration of the relevant defects liability period as set out in Condition 13.
- 5.4 The Seller warrants that the Goods will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose for which the Goods are normally used or held out by the Seller or made known to the Seller by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgment.

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- 5.5 The Seller warrants that any Goods provided under the Contract do not contain harmful components and shall not be injurious to health or life.
- 5.6 The Seller warrants that the Goods are new and do not contain used or reconditioned parts (unless the Buyer agrees otherwise in writing).
- 5.7 If any key personnel are specified in the Contract, the Seller shall ensure that such key personnel carry out the relevant Services, unless the Buyer agrees otherwise in writing prior to the performance of the Services. Where the Seller charges different rates for different grades of its personnel to provide the Services, the Seller shall make use of personnel of the lowest grade, by whom the relevant Services can be carried out competently.
- 5.8 The Seller 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.
- 5.9 The Seller acknowledges that the Buyer seeks, at all times, to obtain best value for money in relation to its business operations and the Seller warrants that all information provided by the Seller in connection with the provision of the Goods and/or Services is true, accurate and not misleading.
- 5.10 The existence of any Contract does not preclude the Buyer from purchasing, receiving or using any alternative supplier to provide services that are similar to the Services.
- 5.11 The Seller shall comply (and shall procure that any subcontractors shall comply) with all applicable policies and procedures as may be notified to the Seller by the Buyer from time to time, including but not limited to:
- 5.11.1 any health and safety policies and procedures;
 - 5.11.2 any upgrade policies; and
 - 5.11.3 any other policies and procedures of the Buyer.
- 5.12 The Seller shall inform the Buyer as soon as reasonably practicable if any legal or regulatory action is instituted unless the action is not material in the context of the Contract and the Goods and/or Services.
- 5.13 If any equipment or materials are provided to the Seller by the Buyer in connection with the Services, title to such equipment or materials will remain with the Buyer and the Seller shall (at the Seller's risk) keep them in good condition, store them safely and securely and use them only for the purposes for which they were provided in relation to the Services. If the Buyer requests the return of such equipment or materials, and at the expiry or termination of the Contract, the Seller shall return such equipment or materials to the Buyer promptly and in good working order.

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5.14 The Seller shall be responsible at its own expense for making good (or procuring the making good of) any damage which occurs whilst any equipment, vessel or part thereof is in its possession and shall be responsible for the costs of any works necessary to rectify any such defect or damage.

5.15 The parties shall hold periodic review meetings in relation to the Services (if any), as specified in the Contract or as otherwise agreed from time to time.

6. CONTRACT PRICE

6.1 The Contract Price shall be specified in the Contract Initiation Document and shall include delivery and the cost of packing. All prices shall be fixed and shall be notified by the Seller to the Buyer, and agreed by the Buyer, prior to the commencement of the provision of the Goods and/or Services.

6.2 The Seller shall not quote variable prices or stipulate that any other particular prices will apply at the Delivery Date or otherwise.

7. PAYMENT TERMS

7.1 The Seller shall be entitled to submit an invoice for the Goods and/or the Services marked for the attention of the Buyer following the Delivery Date.

7.2 Invoices shall be submitted in the manner described in the Contract Initiation Document. Unless stated otherwise in the Contract, payment shall be made by the Buyer to the Seller within 28 days of receipt of a valid VAT invoice from the Seller unless by the time when payment is due the Buyer has rejected the Goods and/or the Services (in whole or in part) under Condition 11.

7.3 If the Buyer has rejected the Goods and/or Services (in whole or part) without having made payment and such rejected Goods and/or Services are thereafter replaced or re-performed by the Seller with Goods and/or Services which conform to the Contract then payment shall be made by the Buyer for the Goods and/or Services within 28 days of receipt of a valid VAT invoice for the same.

7.4 Payment by the Buyer in accordance with the stipulated payment terms shall not constitute any admission by the Buyer as to the performance by the Seller of its obligations.

8. DELIVERY

8.1 Time of delivery and/or performance shall be of the essence to the Contract and the Goods shall be delivered to the Buyer and/or the Services shall be performed by the Seller by any specified Delivery Date.

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- 8.2 The Seller shall supply the Buyer in good time with any instructions or other information required that would enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 8.3 The Seller shall supply the Buyer with such programme of manufacture and delivery or performance as the Buyer may reasonably require. The Seller shall give the Buyer notice immediately if such programme is or is likely to be delayed and the Buyer shall have the right to require the Seller to take such steps at the Seller's expense as may be required in order to deliver the Goods and/or perform the Services by the Delivery Date.
- 8.4 The Seller shall bear the cost of delivering the Goods to the Buyer at the delivery point specified in the Contract Initiation Document and, unless otherwise specified in the Contract Initiation Document, delivery shall include the off-loading of the Goods. If the Goods are incorrectly delivered then the Seller will be responsible for any additional expense incurred in delivering them correctly.
- 8.5 Without prejudice to any other rights the Buyer may have in respect of the Seller's breach of contract, where the Seller fails to deliver the Goods and/or perform the Services by the Delivery Date specified in the Contract Initiation Document , the Buyer may:
- 8.5.1 refuse to accept any subsequent attempts to deliver the Goods and terminate the Contract immediately by serving notice in writing on the Seller;
 - 8.5.2 purchase other goods or services of the same or similar description from an alternative supplier; and
 - 8.5.3 recover from the Seller all losses, damages, costs and expenses incurred by the Buyer arising from the Seller's default.
- 8.6 The Buyer shall have the right, at no cost to the Buyer, to postpone delivery of the Goods and/or performance of the Services and will inform the Seller by notice in writing within 14 days before the Delivery Date.
- 8.7 The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, if the Seller fails to deliver any one instalment on time or at all or if there is any defect in an instalment, the Buyer shall be entitled to terminate the Contract and purchase other goods of the same or similar description from elsewhere and recover from the Seller the amount by which the cost of purchasing such other goods exceeds the Contract Price, without prejudice to any other rights which the Buyer may have in respect of the Seller's breach of the Contract.
9. **INSPECTION**
- 9.1 The Buyer shall have the right to check progress, inspect and test the Goods, and inspect the Seller's premises or observe the performance of the Services, at any time before the

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Delivery Date, at the premises of the Seller or the Seller's subcontractors, as applicable. The Buyer shall give not less than 48 hours' notice in writing of any such visit.

- 9.2 Any inspection, checking or approval on behalf of the Buyer under this Condition 9, or any remedial action taken by the Seller under Condition 9.4, shall not relieve the Seller of any of its obligations under the Contract.
- 9.3 The Seller shall ensure that the terms of its subcontracts provide for the rights of the Buyer as stated in this Condition 9.
- 9.4 If, following any inspection or testing under this Condition 9, the Buyer considers that the Goods do not conform or are unlikely to comply with the Seller's obligations under the Contract, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance.
- 9.5 The Seller must at all times maintain information, documents, records and the like in the possession of, or available to the Seller relating to the Goods and/or Services including information, documents, and records of any material:
- 9.5.1 monitoring of the performance of the Seller's obligations under the Contract;
 - 9.5.2 financial records associated with the Provision of the Goods and/or Services, including books of account; and
 - 9.5.3 incidents relating to health and safety which occur during the provision of the Goods and/or Services.

10. PACKING

- 10.1 The Seller shall ensure that all Goods are properly packed to survive transit to destination and to resist damage, theft, distortion, corrosion or contamination and that all Goods are clearly and legibly labelled and addressed.
- 10.2 The Seller shall notify the Buyer in writing prior to delivery of the Goods of any hazard to health or safety to persons or risk of property damage which may arise in connection with the Goods, identifying any such hazards and risks in full and giving full details of any precaution to be taken by the Buyer on delivery and with regard to subsequent storage, handling or use.
- 10.3 The Seller shall ensure that all Goods to which Condition 10.2 applies are suitably packaged and appropriately and clearly marked on delivery to make clear any such hazard or risk.

11. REJECTION

- 11.1 If any of the Goods and/or Services do not comply strictly with any of the terms of the Contract the Buyer may reject them within a reasonable time after delivery or performance

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and irrespective of whether any such Goods and/or Services have been accepted or paid for.

- 11.2 The Seller shall immediately replace or re-perform any such rejected Goods and/or Services with Goods and/or Services which conform to the Contract.
- 11.3 If following a request to do so by the Buyer, the Seller does not replace the rejected Goods, or re-perform the Services immediately, the Buyer shall have the right to purchase elsewhere replacement goods or services of the same or similar description and, without prejudice to any other rights which the Buyer may have against the Seller, to recover from the Seller:
- 11.3.1 any payments made in respect of the rejected Goods or Services; and
- 11.3.2 the difference between the price of the rejected Goods and/or Services and the price of the replacement goods and/or services.
- 11.4 If the Seller fails to replace any rejected Goods or Services within 10 days of receiving notice of rejection, then without prejudice to any other rights or remedies the Buyer may have under the Contract, the Buyer shall have the right to terminate the Contract by written notice to the Seller.
- 11.5 The Seller will be obliged to remove, at its expense, any Goods rejected by the Buyer.

12. TITLE AND RISK OF LOSS

- 12.1 Subject to Condition 12.2, title to the Goods and the risk of loss shall pass to the Buyer on completion of delivery in accordance with Condition 8 provided that the risk in any Goods rejected by the Buyer under Condition 11 shall revert to the Seller immediately upon notice being given by the Buyer of such rejection.
- 12.2 In circumstances where the Buyer has paid for the Goods prior to delivery, title to the Goods will pass to the Buyer on the later of the Goods being ascertained or the Contract Price being paid but the Seller shall remain responsible for loss or damage to the Goods until they are delivered in accordance with Condition 8. Immediately on payment, and until delivery of the Goods is made to the Buyer in accordance with Condition 8, the Seller shall:
- 12.2.1 hold the Goods on a fiduciary basis and/or as the Buyer's bailee;
- 12.2.2 store the Goods separately from all other goods held by the Seller and ensure they are clearly labelled so that they remain readily identifiable as the Buyer's property; and
- 12.2.3 maintain the Goods in satisfactory condition and keep them insured on the Buyer's behalf for their full price against all risks with a reputable insurer.

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13. DEFECTS LIABILITY

- 13.1 Without prejudice to Condition 12, the Seller shall, without delay and without cost to the Buyer, repair or replace at the Buyer's option any of the Goods which are or become defective within a period of 18 months from delivery, or 12 months from putting into service, whichever shall be the shorter, due to faulty workmanship or materials or faulty design, errors in instructions, labels or handbooks or any other breach by the Seller of its obligations under the Contract or at law whether express or implied.
- 13.2 Any Goods so replaced or repaired shall be subject to the same obligations for a further defects liability period of 18 months from re-delivery or 12 months from putting into service, whichever is shorter.
- 13.3 If the Seller fails to repair or replace such defective Goods the Buyer shall have the right to have the work of repair or replacement undertaken by another supplier and to recover the costs of doing so from the Seller.
- 13.4 The Seller shall also be liable to the Buyer for all damages sustained by the Buyer arising out of the said defects in the Goods. Where the Seller provides Services to the Buyer which do not meet the agreed Service Level then the Seller shall immediately re-perform such Services to the agreed Service Level all at no cost to the Buyer.

14. CONFLICT OF INTEREST

- 14.1 The Seller confirms that there is no conflict of interest between the Buyer and any other client of the Seller or any sub-contractors used in the provision of the Goods and/or Services, which has not been disclosed to the Buyer before the Commencement Date. The Seller 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.
- 14.2 Subject to Condition 14.1, the Seller shall ensure that no director, partner, member of staff or sub-contractor 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 Seller. The Seller shall carry out conflict of interest checks on an ongoing basis.
- 14.3 No director, partner, staff or sub-contractor of the Seller shall be granted access to any Confidential Information of the Buyer if the Buyer has advised the Seller that such director, partner, staff or sub-contractor should be excluded from access to Confidential Information.

15. ENVIRONMENTAL

The Buyer Group operates to the environmental standards specified in the applicable ISO14001 standard. By agreeing to these Conditions, the Seller 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.

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16. INDEMNITY

16.1 The Seller shall keep the Buyer and all members of the Buyer's Group fully and effectively indemnified against:

16.1.1 any royalties payable by the Seller; and

16.1.2 any claim in contract or delict or otherwise for any direct or indirect losses, damages, expenses or costs relating to damage to property or injury or loss to any person, firm or company (including in particular any member of the Buyer Group), or for any loss of profit or production arising out of, or occasioned by:

(a) any error in design or drawings; or

(b) any defects in or failure of the Goods (or part thereof) provided; or

(c) the Services performed by the Seller; or

(d) otherwise occasioned by reason of any act or omission by the Seller or any of its subcontractors, including the death or personal injury of any person arising from any negligence by the Seller in respect of the provision of the Goods and/or Services.

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

16.3 The parties agree that nothing in the Contract shall render the Seller or any employees of the Seller as an employee, worker, agent or partner of the Buyer or any member of the Buyer Group. The Seller agrees that all pay, tax, pension contributions and national insurance due in relation to the Seller and any of its employees will be met by the Seller. The Seller 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 Seller's failure to make such payments.

17. INSURANCE

17.1 For the duration of the Contract (and for any period of time requested by the Buyer) the Seller shall maintain, at its own cost and with a reputable insurance company the following insurance policies:

17.1.1 public liability insurance with a limit of not less than £5,000,000 (or such greater sum as the Buyer may specify);

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17.1.2 product liability insurance with a limit of not less than £5,000,000 (or such greater sum as the Buyer may specify); and

17.1.3 employer's liability insurance with a limit of not less than £5,000,000 (or such greater sum as the Buyer may specify),

for any one occurrence or series of occurrences arising out of one event.

17.2 Without prejudice to Condition 17.1, the Seller shall purchase any other insurance deemed necessary by the Seller to protect its position in the performance of the Contract.

17.3 Within seven days of any request by the Buyer, the Seller shall provide the Buyer with a copy of the insurance policies specified in Condition 17.1 and a certificate from its insurers confirming that the insurance is in force. The Seller shall also provide information, if requested to do so, as to limits, coverage extensions and exclusions in relation to any relevant policy of insurance, together with evidence that any and all premiums payable in relation to any such insurance have been paid to date.

17.4 If, for whatever reason, the Seller fails to give effect to and maintain the insurances required under this Condition 17, the Buyer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Seller.

18. INTELLECTUAL PROPERTY

18.1 The Seller 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.

18.2 The Seller 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.

18.3 If the Buyer is restrained from using and/or selling the Goods and/or Services by order of a competent court, the Seller shall immediately take steps to minimise any loss to be suffered by the Buyer as a result of such restraint. The Seller shall at its expense and at the Buyer's option without prejudice to any other rights which the Buyer may have against the Seller:

18.3.1 obtain for the Buyer the right to continue to use the Goods and/or Services;

18.3.2 modify the Goods and/or Services so as to render them non-infringing Goods, or otherwise replace them with non-infringing Goods; or

18.3.3 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 Seller's instructions.

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- 18.4 To the extent that any Intellectual Property Rights are created by the Seller in connection with the provision of the Goods and/or Services, the Seller hereby assigns to the Buyer by way of present assignation of existing and future rights, absolutely and as beneficial and legal owner and free from all charges, encumbrances and liens:
- 18.4.1 any and all right, title and interest, past, present and future in and to any Intellectual Property Rights created by the Seller in connection with the Goods and/or Services or to the fullest extent permitted by law;
 - 18.4.2 any and all rights of action (whether actual or contingent) in respect or any past, present or future infringement of any Intellectual Property Rights created by the Seller in connection with the Goods and/or Services together with the right to retain any financial awards, settlement or other sums obtained as a result of such action; and
 - 18.4.3 the right to apply and claim priority for, prosecute and obtain protection anywhere in the world in respect of any Intellectual Property Rights created by the Seller in connection with the Goods and/or Services.
- 18.5 The Seller shall do all acts necessary to vest absolute title in the Intellectual Property Rights created by the Seller in connection with the Goods and/or Services in the Buyer.
- 18.6 If the Buyer requires permission to use Intellectual Property Rights owned by the Seller or a third party in order to use the Goods and/or Service, then:
- 18.6.1 in the case of Intellectual Property Rights owned by the Seller, the Seller hereby grants to the Buyer a non exclusive, irrevocable, worldwide, transferable and royalty free licence to use such Intellectual Property Rights for such purposes as the Buyer reasonably requires in connection with the receipt of the Goods and/or Services; and
 - 18.6.2 in respect of third party Intellectual Property Rights, the Seller shall procure any relevant licence or licences required by the Buyer to use such Intellectual Property Rights to the extent necessary to receive the benefit of the Goods and/or Services concerned.
19. **DATA PROTECTION**
- 19.1 The Seller 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 laws, regulations, orders and codes of practice for the time being in force relating to data protection, and adhere to Appendix A: Data Processing Addendum and / or Appendix B Data Sharing Appendix included within this agreement.

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20. DATA SECURITY

- 20.1 All information or data provided by the Buyer to the Seller in connection with the Contract shall remain at all times the property of the Buyer.
- 20.2 The Seller 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 Seller shall also ensure it has entered into appropriate contractually binding confidentiality undertakings in order to protect the Buyer Data.
- 20.3 The Seller shall not delete or remove any proprietary notices contained within or relating to the Buyer's information or data.
- 20.4 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 Seller; the Seller shall supply that data to the Buyer as requested and in the format specified. If requested by the Buyer, the Seller shall perform secure back-ups of information and data and shall ensure that up-to-date back-ups are stored off-site. The Seller shall ensure that such back-ups are available to the Buyer at all times and are delivered to the Buyer on request.
- 20.5 The Seller shall preserve the integrity of the Buyer's information and data and prevent the corruption or loss of the same. If the Seller 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 Seller shall notify the Buyer immediately.
- 20.6 If the Buyer's information or data is corrupted, lost or degraded as a result of any act or omission by the Seller, the Buyer may require (at its sole discretion and at the Seller's expense) that the Buyer 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.

21. ASSIGNATION & SUBCONTRACTING

- 21.1 The Seller 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.
- 21.2 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. The Seller shall

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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 Seller.

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

22. TERMINATION

- 22.1 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 Seller with fourteen (14) days' written notice to that effect.

- 22.2 The Buyer shall be entitled to terminate the Contract with immediate effect by notice in writing to the Seller if:

22.2.1 the Seller commits a material or persistent breach of the Contract and, if such a breach is remediable, fails to remedy that breach within 10 days of receipt of notice in writing of the breach;

22.2.2 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 Seller or any of its assets; or

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

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

22.2.3 the Seller 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;

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

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

22.2.6 the Seller ceases or threatens to cease to carry on business; or

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22.2.7 the Seller 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.

22.3 It is the intention of the parties that TUPE will not apply on termination of the Contract and the Seller 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:

22.3.1 the employment or termination of employment of any of the Seller's employees; or

22.3.2 any failure to comply with TUPE in respect of any of the Seller's employees.

23. FORCE MAJEURE

23.1 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 radio activity 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.

23.2 If the event of force majeure continues for a period less than or equal to 30 days then the contractual obligations of the parties shall be reinstated with such reasonable modifications that take into account of the force majeure event as may be agreed between the parties.

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

24. ANTI-CORRUPTION

24.1 The Seller undertakes to the Buyer that:

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

24.1.2 it and any "**Associated Person**" (as defined by the Bribery Act 2010 and, for the avoidance of doubt, including officers, employees, workers, contractors, agents,

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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;

- 24.1.3 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 offence by the Seller under the Bribery Act 2010 and to ensure compliance with any local or internationally applicable laws relating to bribery and corruption; and
- 24.1.4 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 Seller from time to time.
- 24.2 During the term of the Contract, the Seller shall keep books, accounts and records of all financial transactions relating to the Contract. The Seller shall not make any off the books accounts, payments or expenditures. The Seller shall retain such books, accounts and records for a period of six years after the expiry or earlier termination of the Contract.
- 24.3 The Seller 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 Seller pursuant to this Condition 24. This may include enabling the Buyer, whether itself or through an agent, to conduct an audit of records and information held by the Seller or any Associated Person. The Seller acknowledges that the Buyer will place reliance upon the information provided. This obligation shall continue after the expiry or termination of the Contract.
- 24.4 The Seller shall immediately notify the Buyer in writing if the Seller 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 Seller 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.
- 24.5 If the Buyer suspects a breach of Conditions 24.1, 24.2, 24.3 or 24.4 it shall have the right to suspend the Contract. If the Buyer believes, on reasonable grounds, that Conditions 24.1.1, 24.1.2, 24.2, 24.3 or 24.4 has been breached, a material breach of the Contract will be deemed to have occurred. A failure to remedy a breach of Conditions 24.1.3 and 24.1.4 within 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 Seller. If the Buyer suspends or terminates the Contract for a suspected breach of this Condition 24, the Seller 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.

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24.6 If the Seller or any Associated Person is found to have breached this Condition 24, the Buyer shall be entitled to recover from the Seller 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 24.5.

25. CONFIDENTIALITY

25.1 The Seller 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 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.

25.2 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 Seller 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 Seller will assist and provide any relevant information requested by the Buyer within five days of receipt of any such request.

25.3 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 £25,000. The Seller consents to the Buyer publishing details of any paid invoices regarding the Contract pursuant to this legislation.

25.4 The Seller 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 25.4, the form of advertisement or announcement shall be subject to receipt of prior written approval from the Buyer.

26. BUSINESS CONTINUITY

26.1 The Seller 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, the Seller 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 Seller from time to time.

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26.2 The Seller 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 12 month period, in accordance with Good Industry Practice.

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

27. **EQUALITY**

The Seller shall comply at all times with the Equality Act 2010 and any other equal opportunities legislation applicable in the jurisdiction in which the Seller provides the Goods and/or Services and shall ensure that none of its employees 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.

28. **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.

29. **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 Seller from time to time under this Contract and any other agreement between the parties.

30. **RELIANCE**

The Seller acknowledges that it is an expert fully competent in all phases of the work involved in providing Services or Goods provided under this Contract. The Seller 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 this Contract. The Seller acknowledges that the Buyer has relied and will rely on the Seller's capacity as an expert.

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31. 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.

32. BENEFIT OF CONTRACT

32.1 In the event of any negligence or breach of the Contract by the Seller 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 Seller.

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 Seller and to enforce the Contract against the Seller 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 Seller 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.

32.3 Except as expressly provided in this Condition 32, the parties confirm that it is not their intention to confer any rights on any person who is not a party to the Contract by virtue of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

33. 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.

34. NOTICES

34.1 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:

34.1.1 if delivered personally, at the time of delivery;

34.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;

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34.1.3 in the case of registered airmail, five days from the date of posting; and

34.1.4 in the case of email to procurement@calmac.co.uk, at the time of transmission.

34.2 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. For the purpose of this Condition 34, "**business day**" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

35. **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.

Appendix A: Data Processor Addendum

between

- (1) The Buyer, as defined in the General Conditions of Purchase, hereinafter referred to as **"Data Controller"**)

and

- (2) The Supplier, as defined in the General Conditions of Purchase, hereinafter referred to as **"Data Processor"**).

WHEREAS the Data Controller processes Personal Data in connection with its business activities; and whereas the Data Controller has engaged the services of the Data Processor to process Personal Data on its behalf, the parties do hereby agree as follows:-

1. Definitions

- 1.1 The terms **"process/processing"**, **"data subject"**, **"Data Processor"**, **"Data Controller"**, **"personal data"**, **"personal data breach"**, and **"data protection impact assessment"** shall have the same meaning as described in Data Protection Laws;
- 1.2 **"Addendum"** means this Data Processor Contract Addendum;
- 1.3 **"Authorised Sub-Data Processors"** means (a) those Sub-Processors (if any) set out in Schedule 2 (*Authorised Sub-Processors*); and (b) any additional Sub-Processors consented to in writing by the Data Controller in accordance with section 5.1;
- 1.4 **"Buyer"** means the Buyer under the Main Agreement.
- 1.5 **"Data Protection Laws"** means, in relation to any Personal Data which is Processed in the performance of the Main Agreement, the UK General Data Protection Regulation ("UK GDPR"); the UK Data Protection Act 2018; the EU Directive 2002/58/EC on privacy and electronic communications, as transposed into UK legislation; and any applicable decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, the Information Commissioner's Office 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;

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- 1.6 **“Personal Data”** means the data described in Schedule 1 (*Details of Processing of Personal Data*) and any other personal data processed by the Data Processor on behalf of the Data Controller pursuant to or in connection with the Main Agreement;
- 1.7 **“Main Agreement”** means the services agreement into which this Addendum is incorporated;
- 1.8 **“Services”** means the services described in the Main Agreement;
- 1.9 **“Standard Contractual Clauses”** means the standard contractual clauses for the transfer of personal data to Data Processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission which amends, replaces or supersedes these;
- 1.10 **“Sub-Processor”** means any Data Processor (including any affiliate of the Data Processor) appointed by the Data Processor to process personal data on behalf of the Data Controller;
- 1.11 **“Supervisory Authority”** means (a) the UK Information Commissioner’s Office pursuant to Article 51 of the UK GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws;
- 1.13 **“Supplier”** means the Supplier under the Main Agreement.

2. Processing of Personal Data

- 2.1 The parties agree that the Buyer is a Data Controller and that the Supplier is a Data Processor for the purposes of processing Personal Data.
- 2.2 Each party shall at all times in relation to processing connected with the Main Agreement comply with Data Protection Laws.
- 2.3 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 Schedule 1 (*Details of Processing of Personal Data*) to this Addendum 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.
- 2.4 The Data Processor shall immediately inform the Data Controller, if in its opinion, an instruction pursuant to the Main Agreement or this Addendum infringes Data Protection Laws.
- 2.5 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

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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 Addendum 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 purposes set out in section 2.1 above in the context of that person's or party's duties to the Data Processor.
- 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

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.
- 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:

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- 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 Addendum 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 Addendum;
 - 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 Addendum, 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 Addendum, the Data Controller hereby authorises the Data Processor to engage those Sub- Processors set out in Schedule 2 (*Authorised Sub- Processors*).

6. Data Subject Rights

- 6.1 The Data Processor shall without undue delay, and in any case within two (2) working 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:
- (i) perform a thorough investigation into the personal data breach; and
 - (ii) 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

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

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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.

9. Deletion or Return of Data Controller Personal Data

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

- (i) cessation of processing of Personal Data by the Data Processor; or
- (ii) 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 Addendum 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 Addendum 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 Addendum and Data Protection Laws.

11. International Transfers of Data Controller Personal Data

- 11.1 The Data Processor shall not (permanently or temporarily) process the Personal Data nor permit any Authorised Sub- Processor to (permanently or temporarily) process the Personal Data in a country outside of the UK without an adequate level of protection, other than in respect of those recipients in such countries listed in Schedule 3 (*Authorised Transfers of Personal Data*), unless authorised in writing by the Data Controller in advance.
- 11.2 When requested by the Data Controller, the Data Processor shall promptly enter into (or procure that any relevant Sub- Processor of the Data Processor enters into) an agreement

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with the Data Controller on Standard Contractual Clauses and/or such variation as Data Protection Laws might require, in respect of any processing of Personal Data in a country outside of the UK without an adequate level of protection.

12. Liability

The disclaimers and limitations of liability set out under the Main Agreement shall apply also to this Addendum.

13. Miscellaneous

- 13.1 Any obligation imposed on the Data Processor under this Addendum in relation to the processing of Personal Data shall survive any termination or expiration of the Main Agreement.
- 13.2 With regard to the subject matter of this Addendum, in the event of any conflict or inconsistency between any provision of the Main Agreement and any provision of this Addendum, the provision of this Addendum shall prevail. In the event of any conflict or inconsistency between the Main Agreement or this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

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SCHEDULE 1: Details of Processing of Personal Data

This Schedule 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
[ENTER DETAILS]
The nature and purpose of the processing of Personal Data
[ENTER DETAILS]
The types of Personal Data to be processed
[ENTER DETAILS]
The categories of data subject to whom the Personal Data relates
[ENTER DETAILS]

SCHEDULE 2: Authorised Sub- Processors

[ENTER DETAILS]

SCHEDULE 3: Authorised International Transfers of Data Controller Personal Data

[ENTER DETAILS]

Appendix B: Data Sharing Agreement

between

Buyer ("Party 1")

and

Supplier ("Party 2")

(each a "**Party**" and together the "**Parties**").

WHEREAS

- (a) Party 1 and Party 2 intend that this data sharing agreement will form the basis of the data sharing arrangements between the parties (the "Agreement");
- (b) The intention of the Parties is that they shall each be independent Data Controllers in respect of the Data that they process under this Agreement; and
- (c) Nothing in this Agreement shall alter, supersede, or in any other way affect the terms of the General Conditions of Purchase.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In construing this Agreement, capitalised words and expressions shall have the meaning set out below:

- "Agreement"** means this Data Sharing Agreement, as amended from time to time in accordance with its terms, including the Schedule;
- "Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday throughout Scotland;
- "Data"** means the information which contains Personal Data and Special Category Personal Data (both of which have the definition ascribed to them in Data Protection Law) described in Part 1;
- "Data Controller"** has the meaning set out in Data Protection Law;
- "Disclosing Party"** means the Party (being either Party 1 or Party 2, as appropriate) disclosing Data (or on behalf of whom Data is disclosed to the Data Recipient);
- "Data Protection Law"** means the provisions of the Data Protection Act 2018, the UK General Data Protection Regulation ("UK GDPR"), the EU Directive 2002/58/EC on Privacy and Electronic Communications, as transposed into UK legislation, and any applicable decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, the Information Commissioner's Office and any other

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- applicable UK government departments, in each together with all laws implementing, replacing, amending or supplementing the same and any other applicable data protection or privacy laws;
- "Data Recipient"** means the party (being either Party 1 or Party 2, as appropriate) to whom Data is disclosed;
- "Data Subject"** means any identifiable individual to whom any Data relates: and the categories of data subjects within the scope of this Agreement as listed in Part 1;
- "Data Subject Request"** means a request to either party as Data Controller by or on behalf of a Data Subject to exercise any rights conferred by Data Protection Law in relation to the data or the activities of the parties contemplated by this Agreement;
- "Disclosing Party"** means the party (being either Party 1 or Party 2, as appropriate) disclosing Data to the Data Recipient;
- "Information Commissioner"** means the UK Information Commissioner and any successor;
- "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;
- "Legal Basis"** means in relation to either Party, the legal basis for sharing the Data as described in Clause 2 and as set out in Part 2;
- "Purpose"** means the purpose referred to in Part 2;
- "Representatives"** means, as the context requires, the representative of Party1 and/or the representative of Party 2 as detailed in Part 4 of the Schedule. The same may be changed from time to time on notice in writing by the relevant Party to the other Party;
- "Schedule"** means the Schedule in 5 Parts annexed to this Agreement and a reference to a "Part" is to a Part of the Schedule; and
- "Security Measures"** has the meaning given to that term in Clause 2.4.6.

1.2 In this Agreement unless the context otherwise requires:

- 1.2.1 words and expressions defined in Data Protection Law shall have the same meanings in this Agreement so that, in the case of Data Protection Law, words and expressions shall be interpreted in accordance with:
- (a) the UK General Data Protection Regulation; and
 - (b) the UK Data Protection Act 2018;
- 1.2.2 more generally, references to statutory provisions include those statutory provisions as amended, replaced, re-enacted for the time being in force and shall include any bye-laws, statutory instruments, rules, regulations, orders, notices, codes of practice, directions, consents or permissions and guidelines (together with any conditions attached to the foregoing) made thereunder.

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2 DATA SHARING

Purpose and Legal Basis

- 2.1 The Parties agree to share the Data for the Purpose in accordance with the provisions of Part 2 of the Schedule.
- 2.2 Save as provided for in this Agreement, the Parties agree not to use any Data disclosed in terms of this Agreement in a way that is incompatible with the Purpose.
- 2.3 Each Party shall ensure that it processes the Data fairly and lawfully in accordance with Data Protection Law and each Party as Disclosing Party warrants to the other Party in relation to any Data disclosed, that such disclosure is justified by a Legal Basis.

Parties Relationship

- 2.4 The Parties agree that the relationship between them is such that any processing of the Data shall be on a Data Controller to Data Controller basis. The Data Recipient agrees that:
- 2.4.1 it is a separate and independent Data Controller in respect of the Data that it processes under this Agreement, and that the Parties are not joint Data Controllers or Data Controllers in common;
- 2.4.2 it is responsible for complying with the obligations incumbent on it as a Data Controller under Data Protection Law (including responding to any Data Subject Request);
- 2.4.3 it shall comply with its obligations under Part 5 of the Schedule;
- 2.4.4 it shall not transfer any of the Data outside the European Economic Area except to the extent agreed by the Disclosing Party;
- 2.4.5 Provided that where the Data has been transferred outside the UK / European Economic Area, the Disclosing Party may require that the Data is transferred back to within the UK / European Economic Area:
- (a) on giving not less than 3 months' notice in writing to that effect; or
- (b) at any time in the event of a change in Law which makes it unlawful for the Data to be processed in the jurisdiction outside the UK / European Economic Area where it is being processed; and
- 2.4.6 it shall implement appropriate technical and organisational measures including the security measures set out in Part 5 of the Schedule (the "**Security Measures**"), so as to ensure an appropriate level of security is adopted to mitigate the risks associated with its processing of the Data, including against unauthorised or unlawful processing, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or damage or access to such Data.
- 2.5 The Disclosing Party undertakes to notify in writing to the other as soon as practicable if an error is discovered in Data which has been provided to the Data Recipient, to ensure that the Data Recipient is then able to correct its records. This will happen whether the error is discovered through existing Data quality initiatives or is flagged up through some other route

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(such as the existence of errors being directly notified to the Disclosing Party by the Data Subjects themselves).

Transferring Data

- 2.6 Subject to the Data Recipient's compliance with the terms of this Agreement, the Disclosing Party undertakes to endeavour to provide the Data to the Data Recipient on a non-exclusive basis in accordance with the transfer arrangements detailed in Part 3 of the Schedule.

3 BREACH NOTIFICATION

- 3.1 Each Party shall, promptly (and, in any event, no later than 12 hours after becoming aware of the breach or suspected breach) notify the other party in writing of any breach or suspected breach of any of that Party's obligations in terms of Clauses 1 and/or 2 and of any other unauthorised or unlawful processing of any of the Data and any other loss or destruction of or damage to any of the Data. Such notification shall specify (at a minimum):
- 3.1.1 the nature of the personal data breach or suspected breach;
 - 3.1.2 the date and time of occurrence;
 - 3.1.3 the extent of the Data and Data Subjects affected or potentially affected, the likely consequences of any breach (in the case of a suspected breach, should it have occurred) for Data Subjects affected by it and any measures taken or proposed to be taken by the that party to contain the breach or suspected breach; and
 - 3.1.4 any other information that the other Party shall require in order to discharge its responsibilities under Data Protection Law in relation to such breach or suspected breach.
- 3.2 The Party who has suffered the breach or suspected breach shall thereafter promptly, at the other Party's expense (i) provide the other Party with all such information as the other Party reasonably requests in connection with such breach or suspected breach; (ii) take such steps as the other Party reasonably requires it to take to mitigate the detrimental effects of any such breach or suspected breach on any of the Data Subjects and/or on the other Party; and (iii) otherwise cooperate with the other Party in investigating and dealing with such breach or suspected breach and its consequences.
- 3.3 The rights conferred under this Clause 3 are without prejudice to any other rights and remedies for breach of this Agreement whether in contract or otherwise in law.

4 DURATION, REVIEW AND AMENDMENT

- 4.1 This Agreement shall come into force immediately on being executed by all the Parties and continue for the duration of the General Conditions of Purchase, unless terminated earlier by the Disclosing Party in accordance with Clause 4.5.

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- 4.2 This Agreement will be reviewed one year after it comes into force and every two years thereafter until termination or expiry in accordance with its terms.
- 4.3 In addition to these scheduled reviews and without prejudice to Clause 4.5, the Parties will also review this Agreement and the operational arrangements which give effect to it, if any of the following events takes place:
- 4.3.1 the terms of this Agreement have been breached in any material aspect, including any security breach or data loss in respect of Data which is subject to this Agreement; or
 - 4.3.2 the Information Commissioner or any of his or her authorised staff recommends that the Agreement be reviewed.
- 4.4 Any amendments to this Agreement will only be effective when contained within a formal amendment document which is formally executed in writing by both Parties.
- 4.5 In the event that the Disclosing Party has any reason to believe that the Data Recipient is in breach of any of its obligations under this Agreement, the Disclosing Party may at its sole discretion:
- 4.5.1 suspend the sharing of Data until such time as the Disclosing Party is reasonably satisfied that the breach will not re-occur; and/or
 - 4.5.2 terminate this Agreement immediately by written notice to the Data Recipient if the Data Recipient commits a material breach of this Agreement which (in the case of a breach capable of a remedy) it does not remedy within five (5) Business Days of receiving written notice of the breach.
- 4.6 Where the Disclosing Party exercises its rights under Clause 4.5 it may request the return of the Data (in which case the Data Recipient shall, no later than fourteen (14) days after receipt of such a written request from the Disclosing Party, at the Disclosing Party's option, return or permanently erase/destroy all materials held by or under the control of the Data Recipient which contain or reflect the Data and shall not retain any copies, extracts or other reproductions of the Data either in whole or in part and shall confirm having done so to the other Party in writing), save that the Data Recipient will be permitted to retain one copy for the purpose of complying with, and for so long as required by, any law or judicial or administrative process or for its legitimate internal compliance and/or record keeping requirements.

5 LIABILITY

- 5.1 Nothing in this Agreement limits or excludes the liability of either Party for:
- 5.1.1 death or personal injury resulting from its negligence; or
 - 5.1.2 any damage or liability incurred as a result of fraud by its personnel; or
 - 5.1.3 any other matter to the extent that the exclusion or limitation of liability for that matter is not permitted by law.

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- 5.2 The Data Recipient indemnifies the Disclosing Party against any losses, costs, damages, awards of compensation, any monetary penalty notices or administrative fines for breach of Data Protection Law and/or expenses (including legal fees and expenses) suffered, incurred by the Disclosing Party, or awarded, levied or imposed against the other party, as a result of any breach by the Data Recipient of its obligations under this Agreement.
- 5.3 Subject to Clauses 5.1 and 5.2 above:
- 5.3.1 each Party excludes all liability for breach of any conditions implied by law (including any conditions of accuracy, security, completeness, satisfactory quality, fitness for purpose, freedom from viruses, worms, trojans or other hostile computer programs, non-infringement of proprietary rights and the use of reasonable care and skill) which but for this Agreement might have effect in relation to the Data;
- 5.3.2 neither Party shall in any circumstances be liable to the other party for any actions, claims, demands, liabilities, damages, losses, costs, charges and expenses that the other party may suffer or incur in connection with, or arising (directly or indirectly) from, any use of or reliance on the Data provided to them by the other Party; and
- 5.3.3 use of the Data by both Parties is entirely at their own risk and each party shall make its own decisions based on the Data, notwithstanding that this Clause shall not prevent one party from offering clarification and guidance to the other party as to appropriate interpretation of the Data.

6 DISPUTE RESOLUTION

- 6.1 The Parties hereby agree to act in good faith at all times to attempt to resolve any dispute or difference relating to the subject matter of, and arising under, this Agreement.
- 6.2 If the Representatives dealing with a dispute or difference are unable to resolve this themselves within twenty (20) Business Days of the issue arising, the matter shall be escalated to the following individuals in Part 4 of the Schedule identified as escalation points who will endeavour in good faith to resolve the issue.
- 6.3 In the event that the Parties are unable to resolve the dispute amicably within a period of twenty (20) Business Days from date on which the dispute or difference was escalated in terms of Clause 6.2, the matter may be referred to a mutually agreed mediator. If the identity of the mediator cannot be agreed, a mediator shall be chosen by the Dean of the Royal Faculty of Procurators in Glasgow.
- 6.4 If mediation fails to resolve the dispute or if the chosen mediator indicates that the dispute is not suitable for mediation, and the Parties remain unable to resolve any dispute or difference in accordance with Clauses 6.1 to 6.3, then either Party may, by notice in writing to the other Party, refer the dispute for determination by the courts in accordance with Clause 8.

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- 6.5 The provisions of Clauses 6.1 to 6.4 do not prevent either Party from applying for an interim court order whilst the Parties attempt to resolve a dispute.

7 NOTICES

Any Notices to be provided in terms of this Agreement must be provided in writing and addressed to the relevant Party in accordance with the contact details noted in Part 4 of the Schedule, and will be deemed to have been received (i) if delivered personally, on the day of delivery; (ii) if sent by first class post or other next working day delivery, the second day after posting; (iii) if by courier, the date and time the courier's delivery receipt is signed; (iv) if by fax, the date and time of the fax receipt; or, if sent by email, the date of the sending of the email.

8 GOVERNING LAW

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) (a "**Dispute**") shall, in all respects, be governed by and construed in accordance with the law of Scotland. Subject to Clause 6, the Parties agree that the Scottish Courts shall have exclusive jurisdiction in relation to any Dispute.

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**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING DATA SHARING AGREEMENT
BETWEEN PARTY1 AND PARTY 2**

SCHEDULE PART 1 – DATA

DATA SUBJECTS

For the purposes of this Agreement, Data Subjects are all living persons about whom information is transferred between the Parties.

The Personal Data shared between the Parties consists of:

SCHEDULE PART 2: PURPOSE AND LEGAL BASIS FOR PROCESSING

Purpose

The Parties are exchanging Data to allow

Legal Basis

- Consent
- Contract
- Legitimate Interests
- Legal Obligation
- Official Authority / Public Interests
- Vital Interests

SCHEDULE PART 3 - DATA TRANSFER RULES

Information exchange can only work properly in practice if it is provided in a format which the Data Recipient can utilise. It is also important that the Data is disclosed in a manner which ensures that no unauthorised reading, copying, altering or deleting of personal data occurs during electronic transmission or transportation of the Data. The Parties therefore agree that to the extent that data is physically transported, the following media are used:

- Face to face
- Secure email
- Courier
- Encrypted removable media

SCHEDULE PART 4 – REPRESENTATIVES

Contact Details

Party 1

Name: #
Job Title: #
Address: #

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E-mail: #
Telephone Number: #

Party 2

Name: #
Job Title: #
Address: #
E-mail: #
Telephone Number: #

SCHEDULE PART 5 – SECURITY MEASURES

1 The Parties shall each implement an organisational information security policy.

2 Physical Security

2.1 Any use of data processing systems by unauthorised persons must be prevented by means of appropriate technical (keyword / password protection) and organisational (user master record) access controls regarding user identification and authentication. Any hacking into the systems by unauthorised persons must be prevented. Specifically, the following technical and organisational measures are in place:

The unauthorised use of IT systems is prevented by:

- User ID
- Password assignment
- Lock screen with password activation
- Each authorised user has a private password known only to themselves
- Regular prompts for password amendments

The following additional measures are taken to ensure the security of any Data:

3 Disposal of Assets

Where information supplied by a Party no longer requires to be retained, any devices containing Personal Data must be physically destroyed or the information must be destroyed, deleted or overwritten using techniques to make the original information non-retrievable rather than using the standard delete or format function.

4 Malicious Software and Viruses

Each Party must ensure that:

4.1.1 PCs used in supporting the service are supplied with anti-virus software and anti-virus and security updates are promptly applied.

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- 4.1.2 All files received by one Party from the other are scanned to ensure that no viruses are passed.
- 4.1.3 The Parties must notify each other of any virus infections that could affect their systems on Data transfer.