

GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
December 2024

1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

(a) a holding company,

(b) a subsidiary, or

(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;

"Change of Control" means a change in the management, ownership or control of the Supplier whereby the ultimate power to control or determine the direction of the management policies of the Supplier, either directly or indirectly and whether through the ownership of voting securities, by contract or otherwise (including that meaning as provided in section 574 of the Capital Allowances Act 2001) is transferred;

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"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 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; and (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 and any associated Purchase Order;
"Contract Award Letter"	means a letter issued by the Buyer and countersigned by the Supplier, confirming certain contractual arrangements that are to apply between the parties;
"Contract Emissions"	means the sum of the Supplier's annual Scope 1, 2 and 3 Emissions, in each case arising out of the provision of the Services and the meeting of its obligations under the Contract more generally;
"Contract Initiation Document"	means in relation to any given Contract, the Purchase Order and/or Contract Award Letter specific to that Contract;
"Contract Price"	means the sum stated in the Contract Initiation Document (exclusive of VAT) to be paid by the Buyer to the Supplier for the performance of the Services and the supply of any Deliverables in accordance with Condition 6;

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"Deliverables"	means any goods or materials (or any part or parts of them) to be supplied by the Supplier under the Contract and includes, without limitation, any reports, written advice, information, specifications, models, drawings or any instructions, documents or handbooks relating to any goods or materials or the performance of the Services in accordance with the Contract;
"Good Industry Practice"	means the performance of the Services and provision of any Deliverables 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 deliverables which are the same as, or similar to, the Services or the Deliverables provided under the Contract;
"Information Security Management System" or "ISMS"	means a set of policies and procedures for managing information security;
"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 deliverables and request for information from the Supplier (together with any other documents (or parts thereof) referred to in such documentation) issued in anticipation of the creation of the Contract;
"Loss"	has the meaning set out in Condition 33.1;
"Owner"	means, in relation to any individual vessel, the legal entity which at the relevant time, is the legal owner of that vessel;
"Performance Date"	means any date for the performance of the Services and/or delivery of any Deliverables specified in the Contract or as agreed between the parties from time to time;
"Purchase Order"	means the Buyer's confirmation of the order of Services and/or Deliverables from the Supplier issued in accordance with these Conditions (together with any other documents (or parts thereof) referred to in such an order);

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"Reporting Standard"	means: <ul style="list-style-type: none">(a) in relation to Scope 1, 2 and 3 Emissions of organisations and supply chains, The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2015 (including the Scope 2 Guidance and Scope 3 Supplement), as updated from time to time; and(b) in relation to the Scope 1, 2 and 3 Emissions of projects, products and services, the GHG Protocol Product Life Cycle Accounting and Reporting Standard, as updated from time to time; or(c) such other standard as may be agreed by the parties from time to time in writing;
"Response to Tender"	means the Supplier's response to the Invitation to Tender;
"Scope 1, 2 and 3 Emissions"	means the three classifications of emissions of GHGs in the Reporting Standard;
"Scottish Ministers"	means ministers of the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ, and their successors;
"Service Level"	means any service level or standard of performance specified in the Contract;
"Services"	means the services described in the Contract and, where services are to be provided on a call off basis, "Services" shall in that context mean the services commissioned as part of any relevant package of work;
"Statement of Applicability"	means the statement of applicability in respect of the Supplier's compliance with the ISO27001 control framework;
"Supplier"	means the person, firm or company to whom the Contract Initiation Document is issued;
"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.

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- 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 the Services and/or Deliverables from the Supplier.
- 2.2 The issue of a Contract Initiation Document constitutes an offer by the Buyer to purchase Services and/or Deliverables from the Supplier 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 Supplier in relation to any given Contract. Any terms and conditions of sale submitted or referred to by the Supplier 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 Supplier'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 Supplier shall be deemed to have accepted the terms of the Contract on the date upon which the first of the following events occurs:
- 2.4.1 receipt by the Buyer of the Supplier's written acknowledgement of a Contract Initiation Document; or
- 2.4.2 delivery of any Deliverables to and/or performance of the Services by the Supplier to the Buyer; or
- 2.4.3 any other act being carried out by the Supplier 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;
- 2.6.5 Invitation to Tender; and
- 2.6.6 any Additional Appendices specified in the Contract Award Letter.

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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 Supplier by the Buyer, the Supplier shall ensure that it specifies that Purchase Order number on all further correspondence with the Buyer. Where a Purchase Order is issued in relation to a given Contract, any terms or conditions referred to within that Purchase Order shall, on the basis that the Purchase Order concerned forms part of the Contract, be deemed null and void.

4.2 The Supplier 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 Supplier by the Buyer from time to time.

4.3 The Supplier 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 Supplier from time to time.

4.4 The Supplier 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 Supplier from time to time together with any supporting documentation requested by the Buyer.

4.5 The Supplier shall display separately the VAT rate and the amount of VAT charged in respect of the Services and the Supplier's VAT registration number on all invoices and statements.

4.6 During the term of the Contract, the Supplier 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 Supplier to the Buyer.

5. SERVICES/DELIVERABLES

5.1 The Supplier warrants that the Services and/or Deliverables 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 Law, including without limitation all Applicable Law relevant from time to time in relation to:

(a) the manufacture, packaging, storage, handling and delivery of any Deliverables, in force at the Performance Date; and

(b) the provision of the Services; and

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- 5.1.4 the rules, regulations, guidance and codes of practice of any professional regulatory body to which the Supplier is subject.
- 5.2 The Supplier warrants that the Deliverables shall be of satisfactory quality and fit for purpose for which the Deliverables are normally used or held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgment.
- 5.3 The Supplier warrants that the Services will be performed by appropriately qualified and trained personnel, who are suitably skilled and experienced to perform tasks assigned to them, with the best skill, care and diligence in accordance with Good Industry Practice and to the highest standard of quality as it is reasonable for the Buyer to expect in all the circumstances. In providing the Services, the Supplier shall co-operate with the Buyer in all matters relating to the Services and comply with the instructions of the Buyer.
- 5.4 The Supplier warrants that it shall not permit or omit to be done, any act which would prejudice or invalidate any warranty given by the original manufacturer or equipment manufacturer, overhauler or repairer (including any relevant builder) of any vessel or equipment, and that it shall give all due consideration to the long term value of any such vessel or equipment.
- 5.5 The Supplier warrants that any Deliverables provided under the Contract do not contain harmful components and shall not be injurious to health or life.
- 5.6 If any key personnel are specified in the Contract Initiation Document or in any other part of the Contract, the Supplier 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 Supplier charges different rates for different grades of its personnel to provide the Services, the Supplier shall make use of personnel of the lowest grade, by whom the relevant Services can be carried out competently.
- 5.7 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 5.8 The Supplier acknowledges that the Buyer seeks, at all times, to obtain best value for money in relation to its business operations and the Supplier warrants that all information provided by the Supplier in connection with the provision of the Services and any Deliverables is true, accurate and not misleading.
- 5.9 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.
- 5.10 If the Buyer is required by law to share any Deliverables with any third party, the Buyer shall be entitled to do so and the Supplier hereby irrevocably consents to the Buyer sharing any such Deliverables:
- 5.10.1 as required by law; and
- 5.10.2 with any third party advisers or individuals who may be instructed by the Buyer from time to time to provide services to the Buyer in connection with the Services.
- 5.11 The Supplier shall comply (and shall procure that any subcontractors shall comply) with all applicable policies and procedures as may be notified to the Supplier by the Buyer from time to time, including but not limited to;

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- 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 Supplier 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 Services.
- 5.13 The first point of contact of the Supplier in respect of the Contract shall be the Buyer. If the Supplier communicates with any other Buyer personnel, the Supplier shall provide the Buyer with copies of such correspondence.
- 5.14 If any equipment or materials are provided to the Supplier by the Buyer in connection with the Services, title to such equipment or materials will remain with the Buyer and the Supplier shall (at the Supplier'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.
- 5.15 If the Buyer requests the return of such equipment or materials, and at the expiry or termination of the Contract, the Supplier shall return such equipment or materials to the Buyer promptly and in good working order.
- 5.16 The Supplier 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.
- 5.17 The parties shall hold periodic review meetings in relation to the Services, as specified in the Contract or as otherwise agreed from time to time.
- 5.18 The Supplier shall ensure that all information relating to the maintenance and/or operation of the vessel is complete and fully updated in all respects.
- 5.19 The Supplier shall:
 - 5.19.1 perform the Services from those locations, regions or countries listed within the relevant Purchase Order as being approved for that purpose and not provide Services from any additional location, region or country without the Buyer's prior written approval;
 - 5.19.2 not do anything to bring the name or reputation of the Buyer or any member of the Buyer's Group into disrepute or prejudice the interests of the business of the whole or any part of the Buyer Group;
 - 5.19.3 keep the Buyer informed of the progress of the Services on a regular basis and, in any event, as and when reasonably required by the Buyer; and
 - 5.19.4 notify the Buyer of any development that may have a material or adverse impact on the Supplier's ability to effectively perform the Services in accordance with the Contract, (including applicable Service Levels) and in compliance with Applicable Law and regulatory requirements.

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6. CONTRACT PRICE

- 6.1 The Contract Price shall be specified in the Contract Initiation Document. All prices shall be fixed or the hourly rates of the Supplier's staff shall be fixed and the Supplier shall provide an estimate (which the Supplier shall make as accurate as possible) of the hours required to carry out the Services. All prices and hourly rates shall be notified by the Supplier to the Buyer, and agreed by the Buyer, prior to the commencement of the Services. The Supplier shall not quote variable prices or hourly rates or stipulate that any other particular prices or hourly rates will apply at the Performance Date(s) or otherwise.
- 6.2 Any rates charged shall be itemised to identify the cost of overheads and support staff.
- 6.3 The Supplier shall not charge the Buyer for the time of apprentices, trainees or students without the prior written consent of the Buyer.
- 6.4 If not already included in the Contract Price, the Buyer shall reimburse to the Supplier all reasonable and properly incurred costs and expenses, incurred by the Supplier in the course of performing the Services, provided that:
- 6.4.1 no accommodation, travel expenses or disbursements are incurred without the Buyer's prior written consent; and
- 6.4.2 the Supplier provides to the Buyer receipts for all such costs and expenses.

7. PAYMENT TERMS

- 7.1 The Supplier shall be entitled to submit an invoice, marked for the attention of the Buyer for the Services and/or any Deliverables on a monthly basis or as otherwise specified in the Contract Initiation Document. On expiry or termination of the Contract, the Supplier shall submit its final invoice:
- 7.1.1 no later than ninety (90) days after receipt of any notice to terminate; or
- 7.1.2 no later than sixty (60) days from the completion of the relevant Services.
- 7.2 The Supplier shall not be entitled to increase the Contract Price without the prior written consent of the Buyer.
- 7.3 If any payment is subject by Applicable Law to any withholding tax, the Buyer shall make payment of the amount owing, less a deduction for such withholding tax, and shall account to the relevant tax authority for the withholding tax. Provided that the Supplier has provided the Buyer with current and accurate declarations of tax residence on the prescribed forms and certification of the relevant taxation authorities to confirm the applicability and availability of any reduced rate of withholding tax under the provisions of any applicable double taxation convention and/or treaty, the amount of withholding tax deducted will be calculated by the payer in accordance with such convention or treaty. Payment of the net sum to the Supplier and to the relevant tax authority of the withholding tax shall constitute full settlement of the sums owing under the relevant invoice. The Buyer shall use reasonable endeavours to obtain and provide the Supplier with evidence from the relevant local tax authority of the payment of the withholding tax (including, where available, tax deduction certificates or the equivalent thereof).
- 7.4 Invoices shall be submitted in the manner described in the Contract Initiation Document.
- 7.5 Unless stated otherwise in the Contract Initiation Document, payment shall be made by the Buyer to the Supplier within twenty eight (28) days of receipt of a valid VAT invoice from the

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Supplier unless by the time when payment is due the Buyer has rejected the Services and/or Deliverables (in whole or in part) under Condition 10.

- 7.6 If the Buyer has rejected the Services and/or any Deliverables (in whole or part) without having made payment and such rejected Services and/or Deliverables are thereafter replaced or re-performed by the Supplier with Services and/or Deliverables which conform to the Contract then payment shall be made by the Buyer for the Services and/or any Deliverables within twenty eight (28) days of receipt of a valid VAT invoice for the same.
- 7.7 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 Supplier of its obligations.
- 7.8 Where the Buyer has made payment to the Supplier in respect of Services carried out by a Supplier subcontractor and the Supplier is in receipt of an invoice from that subcontractor relating to delivery of the Services concerned then, provided the Buyer is not exercising a right of retention or set-off in respect of a breach of contract by the subcontractor concerned, or in respect of a sum otherwise due to the Supplier, payment must be made to the subcontractor concerned against its invoice, without deduction.
- 7.9 Unless otherwise expressly set out in the Contract, the obligation to pay the Contract Price shall constitute the Buyer's entire payment liability to the Supplier for the performance of the Supplier's obligations.

8. INSPECTION

- 8.1 The Buyer shall have the right to check progress, inspect and test the Deliverables, inspect the Supplier's premises or observe the performance of the Services, at any time before any relevant Performance Date(s), at the premises of the Supplier or the Supplier's subcontractors, as applicable. The Buyer shall give not less than forty eight (48) hours' notice in writing of any such visit.
- 8.2 Any inspection, checking or approval on behalf of the Buyer under this Condition 8, or any remedial action taken by the Supplier under Condition 8.4, shall not relieve the Supplier of any of its obligations under the Contract.
- 8.3 The Supplier shall ensure that the terms of its subcontracts provide for the rights of the Buyer as stated in this Condition 8.
- 8.4 If, following any inspection or testing under this Condition 8, the Buyer considers that the Deliverables do not conform or are unlikely to comply with the Supplier's obligations under the Contract, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 8.5 The Supplier must at all times maintain information, documents, records and the like in the possession of, or available to the Supplier relating to the Services including information, documents, and records of any material:
- 8.5.1 monitoring of the performance of the Supplier's obligations under the Contract;
 - 8.5.2 financial records associated with the performance of the Services, including books of account; and
 - 8.5.3 incidents relating to health and safety which occur during the performance of the Services.

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8.6 The Supplier shall, on request of the Buyer, supply any of the information maintained under Condition 8.5 to the Buyer and the Buyer and the Scottish Ministers shall have the right to inspect all such records and documents on request.

8.7 Where the Services involve the conduct of work on any vessel or equipment owned by the Owner, the Supplier shall allow the Owner, or its nominees, to inspect or observe the performance of the Services at any time and provide such assistance and access to any such equipment or vessel as the Owner, or its nominees may reasonably require.

9. DELIVERABLES

Any Deliverables created pursuant to the Contract shall be the property of the Buyer and the Supplier shall ensure that all Deliverables are:

9.1.1 properly packed (if applicable) to survive transit to destination and to resist damage, theft, distortion, corrosion or contamination and that all Deliverables are clearly and legibly labelled and addressed; and

9.1.2 provided in such a format as may be requested by the Buyer.

10. REJECTION

10.1 If any of the Services or Deliverables 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 and irrespective of whether any such Services and/or Deliverables have been accepted or paid for.

10.2 The Supplier shall immediately replace or (to the extent possible) re-perform any such rejected Services or Deliverables with Services or Deliverables which conform to the Contract.

10.3 If following a request to do so by the Buyer, the Supplier does not replace the rejected Deliverables, or re-perform the Services immediately, the Buyer shall have the right to purchase elsewhere replacement deliverables or services of the same or similar description and, without prejudice to any other rights which the Buyer may have against the Supplier, to recover from the Supplier:

10.3.1 any payments made in respect of the rejected Services or Deliverables; and

10.3.2 the difference between the price of the rejected Services and/or Deliverables and the price of the replacement deliverables and/or services.

10.4 If the Supplier fails to replace any rejected Services or Deliverables within ten (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 Supplier.

10.5 The Supplier will be obliged to remove, at its expense, any Deliverables rejected by the Buyer.

11. TITLE AND RISK OF LOSS

Title to any Deliverables which are goods (within the meaning of the Sale of Goods Act 1979) and the risk of loss shall pass to the Buyer on completion of delivery in accordance with Condition 12 provided that the risk in any Deliverables rejected by the Buyer under

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Condition 10 shall revert to the Supplier immediately upon notice being given by the Buyer of such rejection.

12. PERFORMANCE DATE(S)

- 12.1 Time of performance and delivery shall be of the essence of the Contract and the Services shall be performed by the Supplier, and any Deliverables shall be provided to the Buyer, by any Performance Date(s) specified in the Contract.
- 12.2 The Supplier shall supply the Buyer in good time with any instructions or other information required that would enable the Buyer to accept delivery of the Deliverables and/or performance of the Services.
- 12.3 The Buyer shall have the right, at no cost to the Buyer, to postpone delivery of any Deliverables or performance of the Services, provided that the Buyer gives the Supplier no less than fourteen (14) days' written notice of any such postponement.

13. DELAYED PERFORMANCE

- 13.1 If the Supplier fails to perform the Services or deliver any Deliverables by any specified Performance Date(s), the Buyer shall be entitled to terminate the Contract and purchase other Services and/or Deliverables of the same or similar description from elsewhere and recover from the Supplier the amount by which the cost of purchasing such other Services and/or Deliverables exceeds the Contract Price, without prejudice to any other rights which the Buyer may have in respect of the Supplier's breach of the Contract.
- 13.2 Where the Supplier provides Services to the Buyer which do not meet the agreed Service Level then the Supplier 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 Supplier confirms that there is no conflict of interest between Buyer and any other client of the Supplier or any subcontractors used in the provision of the Services and/or any Deliverables, which has not been disclosed to the Buyer before the Commencement Date. The Supplier shall not, without the prior written consent of the Buyer, accept work from any other person which would, or would reasonably be considered likely to, create a conflict of interest.
- 14.2 Subject to Condition 14.1, the Supplier shall ensure that no director, partner, member of staff or subcontractor is engaged on providing the Services if that engagement would constitute a conflict of interest in relation to the Buyer and any other client of the Supplier. The Supplier shall carry out conflict of interest checks on an ongoing basis.
- 14.3 No director, partner, staff or subcontractor of the Supplier shall be granted access to any Confidential Information of the Buyer if the Buyer has advised the Supplier that such director, partner, staff or subcontractor should be excluded from access to Confidential Information.

15. ENVIRONMENTAL

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

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

16. INSURANCE

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

16.1.1 professional indemnity insurance with a limit of not less than five million pounds sterling (£5,000,000) (or such greater sum as the Buyer may specify); and

16.1.2 employer's liability insurance and public liability insurance, each with a limit of not less than five million pounds sterling (£5,000,000) (or such greater sum as the Buyer may specify),

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

16.2 Without prejudice to Condition 16.1, the Supplier shall purchase any other insurance deemed necessary by the Supplier to protect its position in the performance of the Contract.

16.3 Within seven (7) days of any request by the Buyer, the Supplier shall provide the Buyer with a copy of the insurance policies specified in Condition 16.1 and a certificate from its insurers confirming that the insurance is in force. The Supplier 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.

16.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required under this Condition 16, the Buyer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

17. INTELLECTUAL PROPERTY

17.1 The Supplier warrants to the Buyer that neither the Services nor any Deliverables, will infringe any third party's Intellectual Property Rights.

17.2 The Supplier shall indemnify the Buyer and all members of the Buyer's Group against all actions, costs, claims, demands, expenses and liabilities arising from any claim that the Services or Deliverables infringe the Intellectual Property Rights of any third party.

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

17.3.1 obtain for the Buyer the right to continue to use the Services and/or Deliverables;

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

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- 17.3.3 refund the purchase price of the Services and/or Deliverables and the cost of the Services and/or Deliverables and the cost of disposal of them to the Supplier's instructions.
- 17.4 To the extent that any Intellectual Property Rights are created by the Supplier in connection with the provision of the Services and any Deliverables, the Supplier 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:
- 17.4.1 any and all right, title and interest, past, present and future in and to any Intellectual Property Rights created by the Supplier in connection with the Services and/or Deliverables or to the fullest extent permitted by law;
- 17.4.2 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 Supplier in connection with the Services and/or Deliverables together with the right to retain any financial awards, settlement or other sums obtained as a result of such action; and
- 17.4.3 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 Supplier in connection with the Services and/or Deliverables.
- 17.5 The Supplier shall do all acts necessary to vest absolute title in the Intellectual Property Rights created by the Supplier in connection with the Services and/or Deliverables in the Buyer.
- 17.6 If the Buyer requires permission to use Intellectual Property Rights owned by the Supplier or a third party in order to use the Services and/or Deliverables, then:
- 17.6.1 in the case of Intellectual Property Rights owned by the Supplier, the Supplier 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 Services and/or Deliverables; and
- 17.6.2 in respect of third party Intellectual Property Rights, the Supplier 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 Services and/or Deliverables concerned.
18. **DATA PROTECTION**
- The Supplier undertakes to the Buyer that, in relation to its performance of the Contract and/or as required for the proper and lawful operation of the Contract, it will comply with all Applicable Law for the time being in force relating to data protection, and adhere to Appendix A: Data Processing Appendix included within the Contract.
19. **DATA SECURITY**
- 19.1 All information or data provided by the Buyer to the Supplier in connection with the Contract shall remain at all times the property of the Buyer.
- 19.2 The Supplier shall take all reasonable precautions and implement appropriate technical and organisational measures to preserve the integrity and prevent any corruption, loss, damage or destruction of the Buyer's information and data and to protect against any unauthorised

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or unlawful processing of such information and data. The Supplier shall also ensure it has entered into appropriate contractually binding confidentiality undertakings in order to protect the Personal Data;.

- 19.3 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer's information or data.
- 19.4 The Buyer shall ensure that any system on which it holds any of the Buyer's information or data is a secure system. To the extent that the Buyer's information or data is held by, and/or processed by, the Supplier; the Supplier shall supply that data to the Buyer as requested and in the format specified. If requested by the Buyer, the Supplier shall perform secure back-ups of information and data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to the Buyer at all times and are delivered to the Buyer on request.
- 19.5 The Supplier shall preserve the integrity of the Buyer's information and data and prevent the corruption or loss of the same. If the Supplier suspects or has reason to believe that the Buyer's information or data has or may become corrupted, lost or degraded in any way, the Supplier shall notify the Buyer immediately.
- 19.6 If the Buyer's information or data is corrupted, lost or degraded as a result of any act or omission of the Supplier, the Buyer may require (at its sole discretion and at the Supplier's expense) that the Supplier restores, or procures the restoration, of such information or data as soon as possible. On receipt of any such request from the Buyer, the Supplier shall promptly comply with that request.
- 19.7 The Supplier shall during the term of the Contract either:
- 19.7.1 be certified, and at all times maintain such certification, against the latest version of the ISO 27001 control framework; or
 - 19.7.2 operate an Information Security Management System which is aligned against and compliant with the latest version of the ISO 27001 control framework.
- 19.8 The Statement of Applicability shall be relevant to the processes and infrastructure used for the Services delivered to the Buyer.
- 19.9 The Supplier shall regularly review and update their ISMS in line with Good Industry Practice.

20. ASSIGNATION AND SUBCONTRACTING

- 20.1 The Supplier shall not, without the prior written consent of the Buyer, assign, transfer or sub-contract or charge or deal in any other manner with either the benefit or the burden of the Contract or any of its rights or obligations under the Contract or purport to do any of the same.
- 20.2 The Supplier shall be responsible for all Services supplied by subcontractors as if the Services had been supplied or performed by the Supplier.
- 20.3 The Buyer may at any time assign, novate or otherwise transfer any and all of its rights and obligations under the Contract, including the benefit of any warranties, to any other member of the Buyer Group, the Scottish Ministers or to the Owner.

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21. TERMINATION

- 21.1 The Buyer may terminate, without cost, the Contract at any time within the period of scheduled Services or delivery of any Deliverables by providing the Supplier with fourteen (14) days' written notice to that effect.
- 21.2 The Buyer shall be entitled to terminate the Contract with immediate effect by notice in writing to the Supplier if:
- 21.2.1 the Supplier commits a material or persistent breach of the Contract and, if such a breach is remediable, fails to remedy that breach within ten (10) days of receipt of notice in writing of the breach;
 - 21.2.2 any corporate action, legal proceedings or other proposal, procedure or step is taken in relation to:
 - (a) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Supplier or any of its assets; or
 - (b) any voluntary arrangement, scheme of arrangement or re-organisation of the Supplier; or
 - (c) any analogous procedure or step is taken in any jurisdiction;
 - 21.2.3 the Supplier is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts, proposes any composition, assignment or arrangement or, by reason of actual or anticipated financial difficulties, commences negotiations with, one or more of its creditors with a view to re-scheduling any of its indebtedness or any analogous procedure, step, event or circumstance is taken or occurs in relation to it in any jurisdiction;
 - 21.2.4 the value of the Supplier's assets at any time is less than its liabilities (taking into account contingent and prospective liabilities);
 - 21.2.5 a moratorium is declared or comes into force in respect of the Supplier or any of its indebtedness;
 - 21.2.6 the Supplier ceases or threatens to cease to carry on business;
 - 21.2.7 the Supplier does something, omits to do something, or is alleged to have done something which could weaken, damage or be detrimental to the reputation or goodwill of any brand of the Buyer Group.
 - 21.2.8 the Supplier breaches any of the provisions of Condition 19 (Data Security);
 - 21.2.9 the Supplier breaches any of the provisions of Condition 25 (Confidentiality); or
 - 21.2.10 the Supplier is the subject of a Change of Control.
- 21.3 It is the intention of the parties that TUPE will not apply on termination of the Contract and the Supplier will keep the Buyer and all members of the Buyer's Group fully and effectively

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indemnified against any costs, losses, expenses (including legal expenses), awards or orders made by a tribunal or court or otherwise paid which relate to:

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

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

21.4 Following receipt by the Supplier of any notice of termination, or at any time in the month prior to expiry of the Contract, the Supplier shall comply (and shall procure that any subcontractor shall comply) with the Buyer's reasonable directions and shall provide the Buyer with any and all termination assistance reasonably requested by the Buyer to allow the Services to continue without detriment to them or to the Buyer and to facilitate the orderly transfer of responsibility for the provision of the Services to the Buyer and/or a new Supplier.

22. FORCE MAJEURE

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

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

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

23. OWNER RIGHTS

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

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

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

24. ANTI-CORRUPTION

Anti-Bribery

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- 24.1 The Supplier undertakes to the Buyer that:
- 24.1.1 it will comply with, and that the Services will be performed in accordance with, all Applicable Law, including without limitation all statutes, regulations and codes relating to taxation, exchange controls, customs matters, bribery, corruption, competition law, money laundering, trade sanctions, financial sanctions and criminal matters;
 - 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, 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 Supplier under the Bribery Act 2010 and to ensure compliance with any local or internationally Applicable Law 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 Supplier from time to time.
- 24.2 During the term of the Contract, the Supplier shall keep books, accounts and records of all financial transactions relating to the Contract. The Supplier shall not make any off-the-books accounts, payments or expenditures. The Supplier shall retain such books, accounts and records for a period of six (6) years after the expiry or earlier termination of the Contract.
- 24.3 The Supplier shall co-operate with the Buyer and promptly provide the Buyer with any information or confirmation which the Buyer requires from time to time in connection with the obligations of the Supplier pursuant to Conditions 24.1 to 24.6. This may include enabling the Buyer, whether itself or through an agent, to conduct an audit of records and information held by the Supplier or any Associated Person. The Supplier acknowledges that the Buyer will place reliance upon the information provided. This obligation shall continue after the expiry or termination of the Contract.
- 24.4 The Supplier shall immediately notify the Buyer in writing if the Supplier becomes aware or has reasonable grounds to believe that any bribe or improper payment has been requested, demanded, offered, accepted, paid or received in relation to the Contract. In such a circumstance, the Supplier shall co-operate in good faith with any investigation by the Buyer into whether bribery has taken place. These obligations shall continue after the expiry or termination of the Contract.
- 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 thirty (30) days of receiving notification of a contravention from the Buyer will also be a material breach of the Contract. The Buyer shall have the right to suspend and/or terminate the Contract for material breach immediately, or on such other time specified by the Buyer, upon written notice to the Supplier. If the Buyer suspends or terminates the Contract for a suspected breach of any provisions contained within Conditions 24.1 to 24.6, the Supplier shall not be entitled to claim any compensation or any

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further remuneration, regardless of any activities or agreements with additional parties entered into before termination.

- 24.6 If the Supplier or any Associated Person is found to have breached this any provisions contained within Conditions 24.1 to 24.6, the Buyer shall be entitled to recover from the Supplier the amount of any losses, damages, costs, claims, liabilities and expenses (including legal and investigation expenses) incurred by the Buyer resulting from or arising in respect of such breach, or the termination of the Contract pursuant to Condition 24.5.

Anti-Slavery

- 24.7 The Supplier:

24.7.1 warrants and represents that:

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

24.7.2 acknowledges that any breach by the Supplier of this Condition 24.7 shall constitute a material breach of the Contract which is not capable of remedy.

Anti-Tax Evasion

- 24.8 The Supplier hereby warrants and confirms to the Buyer that:

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

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

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

25. CONFIDENTIALITY

- 25.1 The Supplier shall hold as confidential all Confidential Information and any other matter relating to the Services and/or any Deliverables 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

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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 Supplier consents to such disclosure as required by the provisions of these statutes. In the event the Buyer has to comply with any such request, the Supplier will assist and provide any relevant information requested by the Buyer within five (5) days of receipt of any such request.
- 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 twenty five thousand pounds sterling (£25,000). The Supplier consents to the Buyer publishing details of any paid invoices regarding the Contract pursuant to this legislation.
- 25.4 The Supplier acknowledges that, due to the confidential nature of the Confidential Information, damages may not be an adequate remedy for breach of this Condition 25 and the Buyer would therefore be entitled (without prejudice to other rights and remedies available) to seek specific performance or other equitable relief to enforce the undertakings of the Contract.
- 25.5 If the Supplier is a law firm or legal practitioner, to ensure that any legal advice given by the Buyer in relation to the Contract is protected as far as possible by legal advice privilege, the parties shall agree in writing from time to time a list of Buyer personnel who will be the "client" for the purpose of giving instructions to and communicating with the Supplier.
- 25.6 The parties acknowledge and agree that the Buyer shall be permitted to provide general information (not including any of the Supplier's pricing information) regarding the nature of the Services provided by the Supplier to prospective new Suppliers in relation to competitive tender processes for services which are the same as, or similar to, the Services.
- 25.7 The Supplier shall not advertise or announce publicly any details regarding the Contract whatsoever (including, without limitation, its existence or any details of the name or brand of the Buyer) without the prior written consent of the Buyer. If such consent is granted by the Buyer pursuant to this Condition 25.7, the form of advertisement or announcement shall be subject to receipt of prior written approval from the Buyer.

26. INDEMNITY

- 26.1 The Supplier shall keep the Buyer and all members of the Buyer's Group fully and effectively indemnified against:

26.1.1 any royalties payable by the Supplier;

26.1.2 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 Deliverables (or part thereof); or

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- (c) the Services performed by the Supplier; or
- (d) otherwise occasioned by reason of the negligence of, or any act or omission of the Supplier or any of its subcontractors, including the death or personal injury of any person arising from any negligence by the Supplier in respect of the provision of the Services and/or Deliverables.

26.1.3 any breach by the Supplier of Condition 18 (Data Protection); and

26.1.4 any breach by the Supplier of Condition 25 (Confidentiality).

26.2 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), fraud or fraudulent misrepresentation, or any other matter in respect of which liability cannot by Applicable Law be limited.

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

26.4 Subject at all times to Condition 26.1, the Supplier's liability for each and every claim arising out of or in connection with the Contract shall be as specified in the Contract Initiation Document or, in the event that no such sum is specified, the sum of five million pounds sterling (£5,000,000).

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

27. BUSINESS CONTINUITY

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

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

27.3 The Supplier shall permit the Buyer to have sight of the business continuity and disaster recovery plan upon reasonable notice at any time. If the Buyer considers (on reasonable

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

28. EQUALITY

The Supplier shall comply at all times with the Equality Act 2010 and any other equal opportunities legislation applicable in the jurisdiction in which the Supplier provides the Services and/or any Deliverables and shall ensure that its employees, agents and subcontractors (if any) do not discriminate against any person on the grounds of sex, gender reassignment, marital or civil partnership status, pregnancy, race including ethnic or national origin, nationality or colour, disability, sexual orientation, religion or belief or age .

29. WAIVER

No failure or delay by either 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.

30. SET OFF

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

31. RELIANCE

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

32. 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.

33. BENEFIT OF CONTRACT

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

33.2 If and to the extent that the Buyer is unable to recover Loss suffered by other members of the Buyer Group under Condition 33.1, each member of the Buyer Group shall be entitled to recover such Loss directly from the Supplier and to enforce the Contract against the Supplier for this purpose under the Contracts (Rights of Third Parties) Act 1999. The parties agree that although these Conditions are made under Scots law, English law will apply to the extent needed to give effect to this Condition 33.2. The Buyer and the Supplier may

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withdraw from or vary the Contract or terminate it in accordance with its terms without the agreement of any other member of the Buyer Group.

- 33.3 Except as expressly provided in this Condition 33, 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.

34. 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.

35. NOTICES

- 35.1 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:

35.1.1 if delivered personally, at the time of delivery;

35.1.2 in the case of pre-paid recorded delivery or registered post, forty eight (48) hours from the date of posting;

35.1.3 in the case of registered airmail, five (5) days from the date of posting; and

35.1.4 in the case of fax, at the time of transmission.

- 35.2 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.

36. LAW

Subject to Condition 33.2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.

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Appendix A - Data Processor Appendix

1. Definitions

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

- 1.1 **"Processing"**, **"Data Subject"**, **"Personal Data"** and **"Personal Data Breach"** shall have the same meaning as described in Data Protection Laws (and **"Process"** and **"Processed"** shall be construed accordingly). The terms **"Data Processor"** and **"Data Controller"** shall have the meaning given to "processor" and "controller" in the Data Protection Laws;
- 1.2 **"Administrative Purposes"** means the administration and management of the Main Agreement, resolution of disputes in connection with the Main Agreement, and compliance with obligations under Applicable Law;
- 1.3 **"Appendix"** means this Data Processor Appendix;
- 1.4 **"Appropriate Safeguard(s)"** means a safeguard which ensures that the Restricted Transfer may occur in accordance with the Data Protection Laws and applicable guidance issued by the ICO, including such requirements as are set out in section 11 below in relation to the transfers of data to a Third Party Provider and includes any one of the following:
- (a) the execution of a Data Transfer Agreement;
 - (b) where the Third Party Provider is a member of the Data Processor's Group, relying on a valid set of binding corporate rules that have been approved by a Data Protection Supervisory Authority; or
 - (c) any other data transfer mechanism which is or may become available (including any standard clauses forming part of an applicable code of conduct or certification scheme);
- 1.5 **"Authorised Sub-Processors"** means (a) those Sub-Processors (if any) set out in ANNEX 2 (*Authorised Sub-Processors*); and (b) any additional Sub-Processors consented to in writing by the Data Controller in accordance with section 5.1;
- 1.6 **"Data Processor's Group"** means the Data Processor together with any subsidiaries or any holding companies (as defined in section 1159 of the Companies Act 2006) from time to time of the Data Processor, and any subsidiaries from time to time of a holding company of the Data Processor;
- 1.7 **"Data Importer"** means a Third Party Provider that Processes the Buyer's Personal Data in a Restricted Country, which it receives from, or is granted access to by, the Data Processor (whether directly from the Data Processor or indirectly from a Third Party Provider);
- 1.8 **"Data Protection Impact Assessment"** means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the UK GDPR;
- 1.9 **"Data Protection Laws"** means, in relation to any Personal Data which is Processed in the performance of the Main Agreement, the **UK GDPR**; the Data Protection Act 2018 ("**DPA 2018**"); the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6); and any applicable decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, the ICO and other applicable UK government departments; in each case together with all laws implementing, replacing, amending or supplementing the same and any other applicable data protection or privacy laws;

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

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

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

2. Processing of Personal Data

- 2.1 The parties agree that they may each Process Personal Data under the Main Agreement. Accordingly, they each acknowledge that the factual arrangement between them dictates the classification of each party in respect of the Data Protection Laws.
- 2.2 Notwithstanding section 2.1 and subject to section 2.3, the parties anticipate that the Buyer shall act as a Controller and the Supplier shall act as Processor. For the purpose of this Appendix, references to "**Data Controller**" shall mean the Buyer and "**Data Processor**" shall mean the Supplier.
- 2.3 Notwithstanding section 2.1, the parties anticipate that each shall act as independent Controller in relation to any Processing of Personnel Personal Data for the Administrative Purposes.
- 2.4 Each party will comply with its obligations under the Data Protection Laws in its performance of its obligations under the Main Agreement.
- 2.5 Each party shall at all times in relation to Processing connected with the Main Agreement comply with Data Protection Laws.
- 2.6 The Data Processor shall only process the types of Personal Data relating to the categories of Data Subjects for the purposes of the Main Agreement and for the specific purposes in each case as set out in ANNEX 1 (*Details of Processing of Personal Data*) to this Appendix and shall not process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than in accordance with the Data Controller's documented instructions (whether in the Main Agreement or otherwise) unless Processing is required by Applicable Law to which the Data Processor is subject, in which case the Data Processor shall, to the extent permitted by such law, inform the Data Controller of that legal requirement before Processing that Personal Data.

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- 2.7 The Data Processor shall immediately inform the Data Controller, if in its opinion, an instruction pursuant to the Main Agreement or this Appendix infringes Data Protection Laws.
- 2.8 The Data Controller warrants to and undertakes with the Data Processor that all Data Subjects of the Personal Data have been or will be provided with appropriate privacy notices and information to establish and maintain for the relevant term the necessary legal grounds under Data Protection Laws for transferring the Personal Data to the Data Processor to enable the Data Processor to process the Personal Data in accordance with this Appendix and the Main Agreement.
- 3. Data Processor Personnel**
- 3.1 The Data Processor shall treat all Personal Data as strictly confidential and shall inform all its employees, agents, contractors and/or Authorised Sub-Processors engaged in Processing the Personal Data of the confidential nature of such Personal Data.
- 3.2 The Data Processor shall take reasonable steps to ensure the reliability of any employee, agent, contractor and/or Authorised Sub-Processor who may have access to the Personal Data, ensuring in each case that access is limited to those persons or parties who need to access the relevant Personal Data, as necessary for the purpose of performing its obligations under the Main Agreement.
- 3.3 The Data Processor shall ensure that all such persons or parties involved in the Processing of Personal Data are subject to:
- 3.3.1 confidentiality undertakings or are under an appropriate statutory obligation of confidentiality; and
 - 3.3.2 user authentication processes when accessing the Personal Data.
- 4. Security**
- 4.1 The Data Processor shall implement appropriate technical and organisational measures to ensure a level of security of the Personal Data appropriate to the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.
- 5. Sub-Processing**
- 5.1 Subject to section 5.4, the Data Processor shall not engage any Sub-Processor to process Personal Data other than with the prior specific or general written authorisation of the Data Controller.
- 5.2 In the case of general written authorisation, the Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of other Data Processors (Sub-Processors), thereby giving the Data Controller the opportunity to object to such changes.
- 5.3 With respect to each Sub-Processor, the Data Processor shall:
- 5.3.1 carry out adequate due diligence on each Sub- Processor to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Appendix including without limitation, sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of Data Protection Laws and this Appendix;

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- 5.3.2 include terms in the contract between the Data Processor and each Sub-Processor which are the same as those set out in this Appendix, and shall supervise compliance thereof;
- 5.3.3 insofar as that contract involves the transfer of Personal Data outside of the UK, incorporate the Standard Contractual Clauses or such other mechanism as directed by the Data Controller into the contract between the Data Processor and each Sub- Processor to ensure the adequate protection of the transferred Personal Data, or such other arrangement as the Data Controller may approve, as providing an adequate protection in respect of the Processing of Personal Data in such third country(ies); and
- 5.3.4 remain fully liable to the Data Controller for any failure by each Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data.

5.4 As at the date of the Main Agreement or (if later) implementation of this Appendix, the Data Controller hereby authorises the Data Processor to engage those Sub- Processors set out in ANNEX 2 (*Authorised Sub-Processors*).

6. Data Subject Rights

6.1 The Data Processor shall without undue delay, and in any case within two (2) Business Days, notify the Data Controller if it receives a request from a Data Subject under any Data Protection Laws in respect of Personal Data, including requests by a Data Subject to exercise rights in chapter 3 of the UK GDPR, and shall provide full details of that request.

6.2 The Data Processor shall co-operate as reasonably requested by the Data Controller to enable the Data Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws in respect of Personal Data and to comply with any assessment, enquiry, notice or investigation under any Data Protection Laws in respect of Personal Data or the Main Agreement, which shall include:

- 6.2.1 the provision of all information reasonably requested by the Data Controller within any reasonable timescale specified by the Data Controller in each case, including full details and copies of the complaint, communication or request and any Personal Data it holds in relation to a Data Subject;
- 6.2.2 where applicable, providing such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with the relevant request within the timescales prescribed by Data Protection Laws; and
- 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;

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- 7.1.2 communicate the name and contact details of the Data Processor's data protection officer or other relevant contact from whom more information may be obtained;
 - 7.1.3 describe the likely consequences of the Personal Data Breach; and
 - 7.1.4 describe the measures taken or proposed to be taken to address the data breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 7.2 The Data Processor shall fully co-operate with the Data Controller and take such reasonable steps as are directed by the Data Controller to assist in the investigation, mitigation and remediation of each Personal Data Breach, in order to enable the Data Controller to:
- 7.2.1 perform a thorough investigation into the Personal Data Breach; and
 - 7.2.2 formulate a correct response and to take suitable further steps in respect of the Personal Data Breach in order to meet any requirement under Data Protection Laws.
- 7.3 The parties agree to coordinate and cooperate in good faith on developing the content of any related public statements or any required notices for the affected persons. The Data Processor shall not inform any third party without first obtaining the Data Controller's prior written consent, unless notification is required by law to which the Data Processor is subject, in which case the Data Processor shall, to the extent permitted by such law, inform the Data Controller of that legal requirement, provide a copy of the proposed notification and consider any comments made by the Data Controller before notifying the Personal Data Breach.
- 8. Data Protection Impact Assessments and Consultation**
- 8.1 The Data Processor shall, at the Data Controller's request, provide reasonable assistance to the Data Controller with any Data Protection Impact Assessments and any consultations with any Supervisory Authority of the Data Controller as may be required in relation to the Processing of Personal Data by the Data Processor on behalf of the Data Controller.
- 9. Deletion or Return of Data Controller Personal Data**
- 9.1 The Data Processor shall promptly and in any event within ninety (90) calendar days of the earlier of:
- 9.1.1 cessation of Processing of Personal Data by the Data Processor; or
 - 9.1.2 termination of the Main Agreement, at the choice of the Data Controller either return all Personal Data to the Data Controller or securely dispose of Personal Data (and thereafter promptly delete all existing copies of it),
- except to the extent that any Applicable Law requires the Data Processor to store such Personal Data.
- 10. Audit Rights**
- 10.1 The Data Processor shall make available to the Data Controller on request all information necessary to demonstrate compliance with this Appendix and Data Protection Laws and allow for and contribute to audits, including inspections by the Data Controller or another auditor mandated by the Data Controller of any premises where the Processing of Personal Data takes place.

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- 10.2 The Data Processor shall permit the Data Controller or another auditor mandated by the Data Controller during normal working hours and on reasonable prior notice to inspect, audit and copy any relevant records, processes and systems in order that the Data Controller may satisfy itself that the provisions of Data Protection Laws and this Appendix are being complied with.
- 10.3 The Data Processor shall provide full co-operation to the Data Controller in respect of any such audit and shall at the request of the Data Controller, provide the Data Controller with evidence of compliance with its obligations under this Appendix and Data Protection Laws.

11. International Transfers of Data Controller Personal Data

- 11.1 The Data Processor shall not (and shall procure that any Third Party Provider shall not) make a Restricted Transfer to a Data Importer without notifying the Data Controller at least thirty (30) days prior to the date of the Restricted Transfer. The Data Controller shall be entitled to object to any Restricted Transfer.
- 11.2 The Data Processor warrants that it shall have conducted a Data Transfer Risk Assessment prior to making (or authorising a Third Party Provider to make) a Restricted Transfer. The Data Processor shall provide further information to the Data Controller about the Data Transfer Risk Assessment promptly upon the Data Controller's request. The Data Processor shall review and update the Data Transfer Risk Assessment at appropriate intervals, unless otherwise requested by the Data Controller (acting reasonably).
- 11.3 The Data Processor warrants that it has no reason to believe that the applicable law and practices in the Restricted Country prevent the Data Processor from fulfilling its obligations under the Main Agreement or the Data Importer fulfilling its obligations under the relevant Appropriate Safeguard.
- 11.4 If the Data Processor (or a Third Party Provider) makes a Restricted Transfer, the Data Processor shall notify the Data Controller within five (5) Business Days if it suspects that:
- 11.4.1 it or the Data Importer has become subject to laws which negatively affect the conclusions set out in the Data Transfer Risk Assessment such that they invalidate or materially undermine the effectiveness and sufficiency of the Appropriate Safeguard; and/or
- 11.4.2 the applicable law or practices of the Restricted Country will prevent the Data Processor from complying with, or cause it to breach, its obligations under the Main Agreement (or prevent the Data Importer from complying with, or causing it to breach, its obligations under or in connection with the relevant Appropriate Safeguard).

The Appropriate Safeguard

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

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Public Authority Requests

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

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ANNEX 1: Details of Processing of Personal Data

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

Subject matter and duration of the Processing of Personal Data
[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]

ANNEX 2: Authorised Sub-Processors

[ENTER DETAILS]

ANNEX 3: Authorised International Transfers of Data Controller Personal Data

[ENTER DETAILS]