

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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 or companies 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 Data"** means the Personal Data Processed by the Supplier under, or in connection with, the Contract (as may be more particularly described in the relevant Contract Initiation Document);
- "Buyer Group"** means David MacBrayne Limited (registration number SC015304), David MacBrayne HR (UK) Limited (with 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 specified in 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;

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

"Confidential Information"	<p>means in relation to each party, all information not publicly known and which is used in or otherwise relates to that party's business, customers or financial or other affairs, including without limitation information relating to:</p> <ul style="list-style-type: none">(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;(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"	<p>means these Conditions, the Contract Initiation Document and, if applicable, the Invitation to Tender and Response to Tender;</p>
"Contract Award Letter"	<p>means a letter issued by the Buyer and countersigned by the Supplier, confirming certain contractual arrangements that are to apply between the parties;</p>
"Contract Initiation Document"	<p>means in relation to any given Contract, the Purchase Order and/or Contract Award Letter specific to that Contract;</p>
"Contract Price"	<p>means the sum agreed in, or calculated in accordance with, the Contract (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;</p>
"Data Protection Legislation"	<p>means</p> <ul style="list-style-type: none">(a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including the Data Protection Act 1998 (up to and including 24 May 2018) and the GDPR (on and from 25 May 2018); and(b) any code of practice or guidance published by the UK Information Commissioner's Office from time to time;
"Data Subject Request"	<p>means an actual or purported subject access request or notice or complaint from (or on behalf of) an individual exercising his or her rights under the Data Protection Legislation;</p>

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

"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;
"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;
"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;
"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 this 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);
"Response to Tender"	means the Supplier's response to the Invitation to Tender;
"Scottish Ministers"	means ministers of the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ, and their successors;

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

"Security Requirements"	means the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the seventh data protection principle of the Data Protection Act 1998 and/or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable;
"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;
"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.

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 any such term.

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 upon:

- (i) receipt by the Buyer of the Supplier's written acknowledgement of a Contract Initiation Document; or
- (ii) delivery of any Deliverables to and/or performance of the Services by the Supplier to the Buyer; or

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

(iii) 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; 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 Supplier by the Buyer, the Supplier shall ensure that it specifies that Purchase Order number on all correspondence with the Buyer.

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;

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

- 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 Deliverables, in force at the Performance 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 Supplier is subject.
- 5.2 The Supplier warrants that the Deliverables shall be of satisfactory quality and fit for any 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

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

- 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;
- 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.
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

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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 90 days after receipt of any notice to terminate; or

7.1.2 no later than 60 days from the completion of the relevant Services.

7.2 Invoices shall be submitted in the manner described in the Contract Initiation Document.

7.3 Unless stated otherwise in the Contract Initiation Document, payment shall be made by the Buyer to the Supplier within 28 days of receipt of a valid VAT invoice from the 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.

7.4 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 28 days of receipt of a valid VAT invoice for the same.

7.5 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.

7.6 Where the Buyer has made payment to the Supplier in respect of Services carried out by a Supplier sub-contractor and the Supplier is in receipt of an invoice from that sub-contractor 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 sub-contractor concerned, or in respect of a sum otherwise due to the Supplier, payment must be made to the sub-contractor concerned against its invoice, without deduction.

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 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;

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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.

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:

(a) 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

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

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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 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 sub-contractors 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 sub-contractor 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 sub-contractor 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 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 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.

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 £5,000,000 (or such greater sum as the Buyer may specify); and

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

16.1.2 employer's liability insurance and public liability insurance, each 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 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 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

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.

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

- 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**
- 18.1 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 laws, regulations, orders and codes of practice for the time being in force relating to data protection, including the Data Protection Legislation.
- 18.2 Without prejudice to Condition 18.1, if and to the extent that the Supplier acts as a Processor under the Data Protection Legislation in relation to any Personal Data Processed by (or on behalf of) the Supplier pursuant to the Contract, the Supplier undertakes to the Buyer that the Supplier shall:
- 18.2.1 Process Buyer Data for and on behalf of the Buyer only in accordance with the Contract and any documented instructions from the Buyer;
- 18.2.2 unless prohibited by law, notify the Buyer immediately (and in any event within 24 hours of becoming aware of the same) if it believes (or ought reasonably to have been aware) that:
- (a) it is required by Data Protection Legislation to act other than in accordance with the instructions of the Buyer; or
- (b) any of the Buyer's instructions under Condition 18.2.1 infringes any part of the Data Protection Legislation;
- 18.2.3 implement and maintain appropriate technical and organisational measures which are sufficient to comply with at least the obligations imposed on the Buyer by the Security Requirements;
- 18.2.4 take all reasonable steps to ensure the reliability and integrity of all of the personnel who shall have access to the Buyer Data, and ensure that such personnel have entered into appropriate contractually-binding confidentiality undertakings;
- 18.2.5 within thirty (30) days of a request from the Buyer, allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by the Buyer (and/or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Condition 18 and provide reasonable information, assistance and co-operation to the Buyer, including access to relevant personnel and/or, on the request of the Buyer, provide the Buyer with written evidence of its compliance with the requirements of this Condition 18;
- 18.2.6 not, without the prior written consent of the Buyer, make (nor instruct or permit a third party to make) a transfer of Buyer Data to a country, territory or jurisdiction outside the European Economic Area which the EU Commission has not deemed to provide

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

adequate protection in accordance with Article 25(2) of the Data Protection Directive or Article 45(1) of the GDPR (as applicable);

18.2.7 notify the Buyer promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request and together with such notices, shall provide a copy of such Data Subject Request. In addition to providing the notice referred to in this Condition it shall:

- (a) not disclose any Buyer Data in response to any Data Subject Request without the Buyer's prior written consent; and
- (b) provide the Buyer with all reasonable co-operation and assistance required by the Buyer in relation to any such Data Subject Request;

18.2.8 notify the Buyer promptly (and in any event within 24 hours) upon becoming aware of any actual or suspected, threatened or "near miss" Personal Data Breach and, together with such notice, shall provide a written description of the Personal Data Breach Particulars. In addition to providing the notice referred to in this Condition 18.2.8, it shall:

- (a) implement any measures necessary to restore the security of the compromised Buyer Data; and
- (b) assist the Buyer to make any notifications to the Information Commissioner's Office and affected Data Subjects;

18.2.9 except to the extent required by Data Protection Legislation, upon the earlier of:

- (a) termination or expiry of the Contract (as applicable); and/or
- (b) the date on which the Buyer Data is no longer relevant to, or necessary for, the Permitted Purpose,

the Supplier shall cease Processing all Buyer Data and return and/or permanently and securely destroy so that it is no longer retrievable (as directed in writing by the Buyer) all Buyer Data and all copies of such Buyer Data in its possession or control.

18.2.10 comply with the obligations imposed upon a Processor under the Data Protection Legislation, and will use all reasonable endeavours to assist the Buyer to comply with any obligations imposed on the Buyer by the Data Protection Legislation in relation to any Personal Data Processed by the Supplier.

18.3 Notwithstanding anything in these Conditions to the contrary, this Condition 18 shall continue in full force and effect for so long as the Supplier Processes any Buyer Data.

18.4 When providing the Buyer with Personal Data which the Buyer will process in its capacity as an independent Controller of the Personal Data concerned, the Supplier shall, in its capacity as the originating Controller of that Personal Data:

18.4.1 ensure it is not subject to any prohibition or restriction which would prevent or restrict:

- (a) it from disclosing or transferring any such Personal Data to the Buyer, as required under this Agreement; or
- (b) the Buyer from Processing any such Personal Data as envisaged under this Agreement;

18.4.2 in relation to Personal Data which the Supplier has supplied to the Customer, ensure that:

- (a) the Personal Data concerned has been gathered lawfully, fairly and in a transparent manner;

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

- (b) all relevant fair processing notices have been given; and
- (c) where appropriate, all relevant consents have been obtained,

as necessary to enable the Buyer to Process the Personal Data concerned as it sees fit.

18.5 For the purposes of this Condition 18, "**Data Subject**", "**Controller**", "**Personal Data**", "**Personal Data Breach Particulars**", "**Processor**", and "**Processed**" have the meanings given to them in the Data Protection Legislation.

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 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 Buyer 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.

20. ASSIGNATION AND SUB-CONTRACTING

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 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, the Scottish Ministers or to the Owner.

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.

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

- 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 (including, but not limited to a breach specified in Condition 19.5) and, if such a breach is remediable, fails to remedy that breach within 10 days (or as specified in Condition 19.5) 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; or
 - 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.
- 21.3 It is the intention of the parties that TUPE will not apply on termination of the Contract and the Supplier will keep the Buyer and all members of the Buyer's Group fully and effectively indemnified against any costs, losses, expenses (including legal expenses), awards or orders made by a tribunal or court or otherwise paid which relate to:
- 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,

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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 30 days then the contractual obligations of the parties shall be reinstated with such reasonable modifications as are necessary to take into account the impact of the force majeure event subject to any such modifications being agreed between the parties, each acting reasonably.

22.3 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.

23. OWNER RIGHTS

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 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

23.2 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

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 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, 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 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 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 6years 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 this Condition 24. This may include enabling the Buyer, whether itself or

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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 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 this Condition 24, the Supplier shall not be entitled to claim any compensation or any further remuneration, regardless of any activities or agreements with additional parties entered into before termination.
- 24.6 If the Supplier or any Associated Person is found to have breached this Condition 24, 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.

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 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 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 £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 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.
- 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.

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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.

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; and

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

(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.

26.2 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.

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 £5,000,000.

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 sub-contractors 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, 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 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 grounds) that the business continuity and disaster recovery plan is insufficient to ensure the continued performance

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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 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 .

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 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.

**GENERAL CONDITIONS OF PURCHASE FOR PROFESSIONAL SERVICES
(JUNE 2018)**

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, 48 hours from the date of posting;

35.1.3 in the case of registered airmail, five 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 9am on a business day the notice shall be deemed to have been received at 9am 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 9am on the next business day. For the purpose of this Condition 35, "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.

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.