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OMB No. 1124-0006; Expires July 31, 2023

U.S. Department of Justice
Washington, DC 20530

Exhibit A to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently. The filing of this document requires the payment of a filing fee as set forth in Rule (d)(1), 28 C.F.R. § 5.5(d)(1). Compliance is accomplished by filing an electronic Exhibit A form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide this information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the FARA Unit in Washington, DC. Statements are also available online at the FARA Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .22 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, FARA Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant
Development Counsellors International

2. Registration Number
4777

3. Primary Address of Registrant
215 Park Ave. South, Suite 1403
New York, NY 10003

4. Name of Foreign Principal
Visit Scotland

5. Address of Foreign Principal
Ocean Point 1, 94 Ocean Drive, Edinburgh, EH6 6JH

6. Country/Region Represented
Scotland

7. Indicate whether the foreign principal is one of the following:

- ☒ Government of a foreign country [1]
- ☐ Foreign political party
- ☐ Foreign or domestic organization: If either, check one of the following:
  - ☐ Partnership
  - ☐ Corporation
  - ☐ Association
  - ☐ Committee
  - ☐ Voluntary group
  - ☐ Other *(specify)* _____
- ☐ Individual-State nationality _____

8. If the foreign principal is a foreign government, state:

a) Branch or agency represented by the registrant
Visit Scotland

b) Name and title of official with whom registrant engages
Richard Knight, Director of Marketing - The Americas

1 "Government of a foreign country," as defined in Section 1(e) of the Act, includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

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9. If the foreign principal is a foreign political party, state:

a) Name and title of official with whom registrant engages

b) Aim, mission or objective of foreign political party

10. If the foreign principal is not a foreign government or a foreign political party:

a) State the nature of the business or activity of this foreign principal.

b) Is this foreign principal:

Supervised by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Owned by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Directed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Controlled by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Financed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Subsidized in part by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐

11. Explain fully all items answered "Yes" in Item 10(b).

12. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

EXECUTION

In accordance with 28 U.S.C. § 1746, and subject to the penalties of 18 U.S.C. § 1001 and 22 U.S.C. § 618, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this statement filed pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, that he/she is familiar with the contents thereof, and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date	Printed Name		Signature	
October 27, 2021	Karyl Leigh Barnes	Sign	/s/ Karyl Leigh Barnes	eSigned
		Sign		
		Sign		
		Sign		

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U.S. Department of Justice

Washington, DC 20530

Exhibit B to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the FARA Unit in Washington, DC. Statements are also available online at the FARA Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov .

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, FARA Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant	2. Registration Number
Development Counsellors International	4777

3. Name of Foreign Principal

Visit Scotland

Check Appropriate Box:

4. ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.

5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.

6. ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.

7. What is the date of the contract or agreement with the foreign principal? October 8, 2020

8. Describe fully the nature and method of performance of the above indicated agreement or understanding.

Destination marketing and public relations to increase the profile of Scotland as a meetings and conventions location.

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9. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

Destination marketing and public relations to increase the profile of Scotland as a meetings and conventions location.

10. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act[1].

Yes ☐ No ☒

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose. The response must include, but not be limited to, activities involving lobbying, promotion, perception management, public relations, economic development, and preparation and dissemination of informational materials.

11. Prior to the date of registration[2] for this foreign principal has the registrant engaged in any registrable activities, such as political activities, for this foreign principal?

Yes ☐ No ☒

If yes, describe in full detail all such activities. The response should include, among other things, the relations, interests, and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored, or delivered speeches, lectures, social media, internet postings, or media broadcasts, give details as to dates, places of delivery, names of speakers, and subject matter. The response must also include, but not be limited to, activities involving lobbying, promotion, perception management, public relations, economic development, and preparation and dissemination of informational materials.

Set forth below a general description of the registrant's activities, including political activities.

Set forth below in the required detail the registrant's political activities.

Date	Contact	Method	Purpose

12. During the period beginning 60 days prior to the obligation to register[3] for this foreign principal, has the registrant received from the foreign principal, or from any other source, for or in the interests of the foreign principal, any contributions, income, money, or thing of value either as compensation, or for disbursement, or otherwise?

Yes ☐ No ☒

If yes, set forth below in the required detail an account of such monies or things of value.

Date Received	From Whom	Purpose	Amount/Thing of Value

Total

13. During the period beginning 60 days prior to the obligation to register[4] for this foreign principal, has the registrant disbursed or expended monies in connection with activity on behalf of the foreign principal or transmitted monies to the foreign principal?

Yes ☐ No ☒

If yes, set forth below in the required detail and separately an account of such monies, including monies transmitted, if any.

Date	Recipient	Purpose	Amount

1 "Political activity," as defined in Section 1(o) of the Act, means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

2,3,4 Pursuant to Section 2(a) of the Act, an agent must register within ten days of becoming an agent, and before acting as such.

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EXECUTION

In accordance with 28 U.S.C. § 1746, and subject to the penalties of 18 U.S.C. § 1001 and 22 U.S.C. § 618, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this statement filed pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, that he/she is familiar with the contents thereof, and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date	Printed Name		Signature	
October 29, 2021	Karyl Leigh Barnes	Sign	/s/ Karyl Leigh Barnes	eSigned
		Sign		
		Sign		
		Sign		

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CONFIDENTIAL & SUBJECT TO CONTRACT

Business Events – Sales Agency Representation – North America

between

VISITSCOTLAND

and

DEVELOPMENT COUSELLORS INTERNATIONAL

[NOTE TO BIDDERS – DRAFT SUBJECT TO FURTHER REVIEW BY VS]

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AGREEMENT

BETWEEN:

(1) **VISITSCOTLAND**, a body corporate established under the Development of Tourism Act 1969 and amended under the Tourist Boards (Scotland) Act 2006 and having its principal place of business at Ocean Point 1, 94 Ocean Drive, Edinburgh, EH6 6JH (**"VisitScotland"**); and

(2) **DEVELOPMENT COUNSELLORS INTERNATIONAL,** a company incorporated in **THE UNITED STATES OF AMERICA** (Registered Number: **13-1945303**) having its Registered Office at **215 Park Avenue South, 14th Floor, New York 10003** (the **"Supplier"**),

together the "Parties" and each a "Party"

INTRODUCTION:

(A) on **15 May 2020** VisitScotland placed a notice in the Official Journal of the European Union seeking expressions of interest from parties in relation to a contract for the provision of **Sales Agency Representation – North America (Business Events)** to VisitScotland;

(B) during **15 May 2020** VisitScotland issued an invitation to tender and accompanying information memoranda to parties (including the Supplier) that expressed an interest in the contract;

(C) the Supplier submitted its tender to VisitScotland on **16 June 2020**;

(D) the Supplier is skilled and experienced in the provision of services similar to the Services; and

(E) on the basis of the Supplier's tender (and any clarifications to that tender) VisitScotland has selected the Supplier to provide the Services, and the Supplier undertakes to provide the Services on the terms set out in this Agreement.

1. DEFINITIONS AND INTERPRETATION

Now therefore it is hereby agreed as follows:

1.1. In this Agreement and the recitals, unless the context otherwise requires, the following expressions shall have the meanings set out below.

"Affected Party" means the Party seeking to claim relief in respect of a Force Majeure Event;

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time, and "**Affiliates**" shall be construed accordingly;

"Agreement" means the clauses of this Agreement together with the Schedule, the Annexes and any other documents expressly incorporated into it (including, without limitation, all Statements of Work);

"Annex" means any annex appended to this Agreement, and **"Annexes"** shall be construed accordingly;

"Applicable Laws" means as defined in Clause 17.3.1 below;

"Approved Sub-processor" means a Sub-processor that has been approved in writing by the Purchaser to Process Personal Data on the Supplier's behalf pursuant to this Agreement;

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“Assets” means, as the context requires, the Supplier Assets and/or the Purchasers’ Assets;

"Change in Law” means any change in Law, which impacts on the performance of the Services and which comes into force after the Commencement Date;

“Charges” means, as the context requires, the Core Services Charges and/or the charges payable by the Purchaser for the provision of the relevant Additional Services set out in the Statement of Work;

"Confidential Information" means any information, however it is conveyed that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of the relevant Party together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

"Data Controller" " has the meaning given to "controller" in the Data Protection Legislation;

"Data Processor" has the meaning given to "processor" in the Data Protection Legislation;

"Data Protection Legislation" means the GDPR, the Data Protection Act 2018 and/or any corresponding or equivalent national laws or regulations and any replacement, amendment, re-enactment or consolidation of the same from time to time, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner’s Office and/or any other relevant Regulatory Body and the terms of this Agreement;

"Data Requirements" means the Data Protection Legislation and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable, the guidance and codes of practice issued by the Information Commissioner's Office and/or any other relevant Regulatory Body and the terms of Clause 17;

"Data Subject" has the meaning given in the Data Protection Legislation;

"Default" means any breach of the obligations of the relevant Party (including but not limited to a fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence, misconduct or statement of the relevant Party, its employees, servants, agents or sub-contractors (or their respective employees) in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

“Deliverables” means all products, reports, presentations, documentation, software, inventions, designs, information, know-how, specifications, formulae, data, processes, methods, techniques, technology, equipment, goods, features and other items (in whatever form or format) that are provided by or on behalf of the Supplier to the Purchaser and or any Affiliates under and/or pursuant to this Agreement, which shall include, without limitation, all deliverables identified in the Mobilisation Plan, the Specification, the Services Description and in each Statement of Work;

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"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Agreement;

"Employee Liabilities" means all liabilities, entitlements and/or claims in respect of and/or in connection with any of the Supplier Personnel, including claims (whether pursued by or on behalf of any Supplier Personnel or by any trade union in respect of any Supplier Personnel) for protective awards, awards in respect of any failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006, redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal (including automatically unfair dismissal) compensation, compensation for sex, race, disability, age, gender reassignment, marriage and civil Partnership, sexual orientation discrimination or discrimination by reason of religion or belief, claims for equal pay, claims in relation to pensions entitlements, compensation for less favourable treatment of part-time workers or fixed term employees, and any claims (whether in delict, tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission, or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses and any other Losses related to any such liabilities, entitlements and/or claims;

Exit Plan means the plan produced and updated by the Supplier during the term of the contract in support of Exit Management;

"Exit Management" means the planning required ensuring the orderly transition of the Services from the Supplier to Purchaser and/or any Replacement Supplier in the event of termination or expiry of the Agreement;

"Expiry Date" means, subject to earlier termination pursuant to Clause 24 (Termination Rights), the expiry date set out in paragraph 2.2 of the Services Description (or such other date as the Parties may agree in writing);

"Force Majeure Event" means any event, occurring after the Commencement Date, which affects the performance by a Party of its obligations and which arises from the following acts, events, omissions, happenings or non-happenings: acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster, but which shall not include (i) lack of funds, (ii) foreseeable adverse weather or other similar conditions, (iii) strike or labour disputes between the Supplier and any Supplier Personnel (or between any Supplier Personnel and any of the respective employees) (and whether or not such strikes or labour disputes involve official or unofficial action), (iv) any other failure in the Supplier's supply chain, and/or (v) Changes in Law;

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"General Change in Law" means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) and/or which would affect the supply of services that are the same or similar to the Services to any another customer of the Supplier;

"Good Industry Practice" means the exercise of the degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a reputable professional organisation within the relevant industry or business sector;

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"Insolvency Event" means the occurrence of any of the following events (or any event analogous to any of the following in any jurisdiction) in relation to the relevant entity: (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved; (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue; (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors; or (d) the entity being unable to pay its debts or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, and in the case of (a) or (c) other than for the purposes of a bona fide solvent reorganisation or reconstruction;

"Intellectual Property Rights" or **"IPRs"** means:

(a) copyright, rights related to or affording protection similar to copyright (including moral rights), rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, service marks, rights in internet domain names and website addresses, goodwill and rights to sue for passing off or unfair competition and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) above that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction and subsisting as at the date of this Agreement or at any other time;

"Invoicing Procedure" means the Purchasers' procedure for the preparation, submission and processing of invoices as notified by the Purchaser to the Supplier from time to time;

"Key Personnel" means, in relation to (i) the Mobilisation Services and/or the Core Services, any person(s) identified as "Key Personnel" in the Services Description and (ii) in relation to the Additional Services provided pursuant to each Statement of Work, any person(s) identified as "Key Personnel" in the relevant Statement of Work;

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"Losses" means all losses, liabilities, claims, actions, demands, proceedings, damages, costs, charges and/or expenses (including legal and other professional fees and expenses) made against or incurred by the Purchaser;

"Personal Data" has the meaning given in the Data Protection Legislation;;

"Personal Data Breach" means an actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;

"Purchaser" means VisitScotland

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"Personnel" means all employees, agents, consultants and contractors of a Party and/or of any permitted sub-contractor of a Party;

"Premises" means any premises owned, controlled or occupied by the Purchaser which the Supplier and/or any Supplier Personnel are given access in order to enable the Supplier to perform its obligations under this Agreement;

"Processing" has the meaning given in the Data Protection Legislation and "Process" and "Processed" have corresponding meanings;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Purchaser and **"Regulatory Body"** shall be construed accordingly;

"Replacement Supplier" means any supplier appointed by the Purchaser to provide any services which are substantially similar to any of the Services and which the Purchaser receive or are to receive in substitution for any of the Services at any time prior to or following the expiry and/or termination of all or part of this Agreement;

"Representatives" means the Parties respective representatives identified as such in the Services Description;

"Schedule" means the schedule to this Agreement, and a reference to a "Schedule Part" is to a part of that Schedule;

"Service Levels" means the standards of performance to be achieved by the Supplier in the performance of the relevant Core Services as set out in Schedule Part 2 (Service Levels);

"Services" means the services to be provided by the Supplier to the Purchaser under and/or pursuant to this Agreement, which shall include the Core Services and all Additional Services, and shall include the provision of and Deliverables in accordance with the terms of this Agreement;

"Services Description" means the description of the Services set out in Schedule Part 1 (Services Description);

"Service Level Failure" means any failure by the Supplier to provide all or part of the Services in accordance with any of the Service Level(s);

"Significant Financial Difficulties" means an event which would be likely to cause the Purchaser, in the Purchasers' reasonable opinion, to consider that the Supplier (or any guarantor providing a Parent Company Guarantee pursuant to Clause 5.6 ("Guarantor")) may be unable to continue to carry on its business as a going concern, whether the Purchaser have been notified of any such difficulties by the Supplier (or the Guarantor) or has formed such view itself from information available at the time, including (but not limited to) information concerning the Supplier's (and/or the Guarantor's) share price and profit warnings announced (in the case of listed companies), financial information provided by reputable credit referencing agencies and any other publicly available information;

"Specification" means the specification of the Services set out in Annex A (Specification);

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"Specific Change in Law" means a Change in Law that relates specifically to the business of the Purchaser and which would not affect the supply of services that are the same or similar to the Services to another customer of the Supplier;

"Sub-processor" means any person which Processes Personal Data on behalf of the Supplier pursuant to this Agreement;

"Supplier" means the successful Supplier appointed to deliver the Framework Contract;

"Supplier Assets" means all hardware, equipment, physical assets, software, systems and other items that are used by or on behalf of the Supplier in connection with the provision of the Services (including the items (if any) identified as Supplier Assets in the Services Description), but which shall exclude Purchaser Assets;

"Supplier Personnel" means all employees, agents, consultants and contractors of the Supplier, its authorised affiliates and/or any authorised sub-contractors that are engaged from time to time in connection with the provision of the Services;

"Statement of Work" means any statement of work, substantially in the form set out in Schedule Part 4 (Form of Statement of Work) that is agreed and executed by both Parties in accordance with Clause 4 (Provision of Additional Services) from time to time.

"VAT" means value added tax as provided for in the Value Added Tax Act 1994;

"Variation" means a formal variation to this Agreement made in accordance with Clause 18 (Variation Procedure), which shall be substantially in the form set out in Schedule Part 5 (Form of Variation);

"Purchaser Assets" means all hardware, equipment, physical assets, software, systems and other items (in whatever medium) that are made available by the Purchaser for the Supplier to access and/or use in connection with the Services (including the items (if any) identified as Purchaser Assets in the Services Description);

"Purchaser Data" means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Supplier by or on behalf of the Purchaser; or

(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; and

(b) any Personal Data for which the Purchaser is the Data Controller;

"Working Day" means any day other than a Saturday, Sunday, or a bank holiday in Scotland; and

1.2. In this Agreement, unless the context otherwise requires:

1.2.1. the singular includes the plural and vice versa;

1.2.2. reference to a gender includes the other gender and the neuter;

1.2.3. references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision

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or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it.

1.3. The words in this Agreement shall bear their natural meanings. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentum.

1.4. The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

1.5. Unless expressly stated to the contrary, wherever the consent of one or more of the Parties is required under this Agreement such consent shall be requested (and, where appropriate, required to be given) in writing.

1.6. Words denoting persons shall include natural persons, companies, corporations, firms, partnerships (whether limited or unlimited), joint ventures, trusts, voluntary associations, other incorporated and/or unincorporated bodies or other entities (in each case, whether or not having separate legal personality) and all such words shall be construed interchangeably in that manner.

1.7. References to the Parties shall include their respective successors in title and permitted assigns.

1.8. References to Clauses and the Schedule are, unless otherwise provided, references to the clauses of and schedule to this Agreement.

1.9. In construing this Agreement, neither the rule known as the ejusdem generis rule nor any similar rule or approach shall apply to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words and accordingly where the words "include" or "including" appear in this Agreement they are construed as meaning without limitation.

1.10. If there is any conflict between the Clauses, the Schedule (including any appendices to any Part of the Schedule), the Annexes and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence (listed in descending order of precedence):

1.10.1. the Clauses of this Agreement;

1.10.2. the Schedule and any appendices to any Part of the Schedule;

1.10.3. the Annexes; and

1.10.4. any other document referred to and expressly incorporated into this Agreement.

2. <u>COMMENCEMENT AND DURATION</u>

2.1. This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with Clause 23 (Termination Rights), shall continue until the Expiry Date.

2.2. Subject to Clause 23 (Termination Rights), the termination or expiry of any Statement of Work shall not operate to terminate this Agreement.

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3. PROVISION OF SERVICES

3.1. The Supplier shall provide the Services to the Purchaser in accordance with the terms of this Agreement.

3.2. Without prejudice to its other obligations under and/or pursuant to this Agreement, the Supplier shall at all times provide the Core Services in order to meet or exceed the Service Levels.

3.3. Without prejudice to the Purchaser's other rights and remedies under and/or pursuant to this Agreement and/or at law, in the event of any Service Level Failure:

3.3.1. the Supplier shall take all steps necessary to remedy the relevant Service Level Failure, address the cause of the relevant Service Level Failure and to prevent the relevant Service Level Failure from being repeated;

3.3.2. if requested by the Purchaser, the Supplier will provide the Purchaser (within five Working Days of request) with a corrective action plan which explains the steps that the Supplier will be taking pursuant to Clause 3.4.1

4. SUPPLIER'S DUTIES

4.1. The Supplier shall provide the Services and deliver the Deliverables to the Purchasers' satisfaction and in accordance with the terms of this Agreement (including the Services Description) and the relevant Statement of Work(s).

4.2. Without prejudice to Clause 6.1 (Quality of Service) and its other obligations under and/or pursuant to this Agreement (including its obligations set out in each Statement of Work), the Supplier shall:

4.2.1. provide such general advice, assistance and information in relation to the Services as the Purchaser may reasonably require, and shall comply with all reasonable requests and directions of the Purchaser in connection with the Services, including any instructions by the Purchaser to provide all or part of the Services to and/or in conjunction with the Purchasers' authorised contractors, consultants and/or agents;

4.2.2. without prejudice to Clause 9 (Delays) and Clause 23.1.5 (Termination Rights), comply with any timescales for performance of its obligations as set out in the Services Description, the relevant Statement of Work and/or as may be otherwise be directed by the Purchaser from time to time;

4.2.3. provide the Services at the relevant premises or location(s) specified in the Services Description or the relevant Statement of Work (as applicable) and/or at such other premises or locations as the Purchaser may reasonably direct from time to time;

4.2.4. allocate suitable Supplier personnel with appropriate levels of experience and seniority to perform the Services;

4.2.5. provide and manage all personnel, equipment, tools, plant, materials, vehicles and such other items as are required by the Supplier to provide the Services;

4.2.6. use all reasonable endeavours to promote and protect the interests of the Purchaser in connection with the Services; and

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4.2.7. provide the Purchaser (in a timely manner) with such assistance and information as the Purchaser may reasonably require in order to perform its obligations under this Agreement.

4.3. The Supplier acknowledges and agrees that it has (or shall prior to the date of execution of the relevant Statement of Work have):

4.3.1. been afforded all necessary access, information (including details regarding contracts, assets and resources) and support by the Purchaser to enable it to evaluate the Purchasers' requirements in connection with the relevant Services and to develop a solution for provision of those Services in order to meet the Purchasers' requirements; and

4.3.2. satisfied itself of all details relating to the nature of the relevant Services.

4.4. The Supplier acknowledges and agrees that it shall not be entitled to any additional payment nor be excused from any liability under this Agreement if it has misinterpreted any matter or fact relating to any of the Services.

4.5. The Parties acknowledge and agree that the arrangements contemplated in this Agreement do not constitute a commitment by the Purchaser to use the Supplier exclusively for the provision of services which are the same as or similar to any of the Services. The Supplier shall co-operate with any reasonable requests made by the Purchaser in connection with the procurement and/or supply of any goods and/or services from any third parties and shall, if so required by the Purchaser, provide such assistance as the Purchaser may reasonably require in connection with such goods and/or services.

4.6. If required by the Purchaser, the Supplier shall deliver to the Purchaser a parent company guarantee (either from the Supplier's ultimate parent company or an intermediate parent company acceptable to the Purchaser), in the form required by the Purchaser (a "Parent Company Guarantee") on or prior to the Commencement Date.

4.7. The Purchaser shall be entitled (at its sole discretion) to terminate this Agreement with immediate effect and without liability to the Supplier in the event that the Purchaser require a parent company guarantee pursuant to Clause 4.6 and:

4.7.1. the Supplier fails to deliver a Parent Company Guarantee to the Purchaser within seven (7) days of the Commencement Date (or such longer period as the Purchaser may agree in writing); or

4.7.2. the guarantor under the Parent Company Guarantee:

4.7.2.1. is in breach or anticipated breach of the terms of the Parent Company Guarantee;

4.7.2.2. terminates or revokes (or purports to terminate or revoke) the Parent Company Guarantee; and/or

4.7.2.3. suffers an Insolvency Event,

and, the Supplier fails to procure a replacement guarantee to the satisfaction of the Purchaser within seven (7) days of the occurrence of the relevant event referred to in Clauses 4.7.2.1 to 4.7.2.3.

5. THE PURCHASERS' DUTIES

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5.1. Without prejudice to the Purchasers' specific obligations set out in this Agreement and/or in any Statement of Work, the Purchaser shall use reasonable endeavours to provide the Supplier with such assistance and access to such information (which is under the control of the Purchaser) as the Supplier may reasonably require in order to perform its obligations under this Agreement.

5.2. The Purchaser warrants to the Supplier that it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement.

6. QUALITY OF SERVICE

6.1. Without prejudice to its other obligations under and/or pursuant to this Agreement, the Supplier warrants and undertakes to the Purchaser that:

6.1.1. it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement;

6.1.2. it shall perform its obligations under and/or pursuant to this Agreement in accordance with Good Industry Practice;

6.1.3. it has the know-how, qualifications, skills, experience and necessary ability to satisfy its obligations under and/or pursuant to this Agreement and (for the avoidance of doubt) shall ensure that its employees and contractors are similarly qualified;

6.1.4. it shall provide independent and unbiased advice to the Purchaser in relation to the Services and the Services shall present an appropriate solution to the Purchaser requirements set out in this Agreement and the relevant Statement of Work;

6.1.5. in providing the Services, it shall use the best available quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Purchaser, shall be free from defects in workmanship, installation and design;

6.1.6. all Services provided under and/or pursuant to this Agreement shall conform with the description set out in the Specification, the Services Description and/or the relevant Statement of Work (as applicable) and all Services and Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Purchaser;

6.1.7. it has and shall continue to have all licences, permissions, authorisations, consents and permits required to perform its obligations under and/or pursuant to this Agreement;

6.1.8. it shall comply with all Laws applicable to the performance of its obligations under and/or pursuant to this Agreement;

6.1.9. it shall comply with all Purchaser policies, procedures and practice directions relevant to the provision of the Services as notified to the Supplier from time to time, including, without limitation, the Purchasers' policies and procedures listed in Annex C to this Agreement;

6.1.10. the use by the Purchaser and/or any Affiliate of the Deliverables and/or any other items provided by or on behalf of the Supplier under and/or pursuant

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to this Agreement will not infringe the Intellectual Property Rights of any third party;

6.1.11. in performing its obligations under and/or pursuant to this Agreement, it shall use a sufficient number of Personnel who possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and the performance which they are required to achieve and who shall perform those tasks in a workmanlike and professional manner;

6.1.12. all Supplier Personnel shall be engaged by the Supplier under appropriate written contracts during the period in which they are involved in providing Services under and/or pursuant to this Agreement;

6.1.13. it shall not enter into any agreement, arrangement or otherwise act in relation to any matter that will, or is likely to, create a conflict of interest with the Supplier's obligations under and/or pursuant to this Agreement;

6.1.14. it shall take all reasonable steps to ensure that, in the performance of its obligations under this Agreement, interference with the operations of the Purchasers' businesses (and that of their respective employees or other contractors and suppliers) is kept to a minimum; and

6.1.15. except to the extent the Purchaser agrees otherwise in writing, none of the Supplier Assets which require to be used by the Purchaser in connection with the receipt of the Services shall comprise, contain or rely upon any open source software;

6.1.16. that no previous or future date change has had or will have any adverse impact on the performance or functionality of any of the Supplier Assets which require to be used by the Purchaser in connection with the receipt of the Services;

6.1.17. use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete malicious software from the Assets, the Supplier's own systems and all Deliverables provided by or on behalf of the Supplier in connection with this Agreement;

6.1.18. it shall hold all Purchaser Assets and all other materials, plant, equipment and tools, drawings, specifications, information and data supplied by the Purchaser to the Supplier ("Purchasers' Materials") in safe custody at its own risk, maintain the Purchasers' Materials in good condition until returned to the Purchaser, maintain adequate insurance cover in relation to the Purchasers' Materials while in the Supplier's possession and not dispose of or use the Purchasers' Materials other than in accordance with the Purchasers' written instructions or authorisation.

6.2. Subject always to Clause 6.5, if the Supplier provides any Services and/or Deliverables that do not comply with the undertakings and/or warranties set out in this Agreement (including in the relevant Statement of Work), then, without limiting its other rights or remedies, the Purchaser shall be entitled to exercise one or more of the following rights (whether or not it has accepted and/or paid for the relevant Services and/or Deliverables):

6.2.1. to require the Supplier (at the Supplier's own cost) to re-provide, repair, make good or replace any relevant Deliverables and/or re-provide the relevant Services;

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6.2.2. to refuse to accept any subsequent provision of the Services and/or related Deliverables which the Supplier attempts to make;

6.2.3. withhold payment of any sums in relation to Services and/or related Deliverables that have not been provided by the Supplier in accordance with this Agreement;

6.2.4. where the Purchaser have paid any sums in advance in relation to Services and/or related Deliverables that have not been provided by the Supplier in accordance with this Agreement, to have such sums refunded by the Supplier; and/or

6.2.5. to require the Supplier to reimburse the Purchaser for any additional Losses which are in any way attributable to the Supplier's failure to provide the Services and/or related Deliverables in accordance with this Agreement, including the additional costs of obtaining replacement services.

6.3. The Supplier shall operate a quality management system which meets the requirements of an appropriate national and/or international standard and any standards specifically referred to in the Services Description and/or the relevant Statement of Work, and the Supplier shall ensure that the supply and/or provision of all the Services and the Deliverables is managed and controlled within the operational requirements of such system. The Supplier will demonstrate exemplar levels of quality management throughout the duration of the Agreement and shall take a continuous improvement approach to the development of a quality system which will:

6.3.1. deliver monitoring, evaluating, and maintaining quality of service and ensuring timely and accurate delivery of the Services;

6.3.2. ensure that problem resolution, and any non-adherence/failure to deliver the Services is managed within prescribed timescales; and

6.3.3. ensure that feedback on the Services delivered is captured in accordance with the requirements of this Agreement and explains how this information will be used in the development of the Services.

6.4. The Supplier will support the Purchaser's Sustainable Procurement principles and practices through a continuous improvement programme and agrees to work with the Purchaser within the guidelines contained in the Scottish Government's Procurement Journey. Further details of the Procurement Journey can be found at: www.procurementjourney.scot .

6.5. the Purchasers' rights and remedies under this Clause 6 are in addition to its rights and remedies under the remainder of the Agreement and/or any rights and remedies that are implied by statute and/or common law.

7. CHARGES AND INVOICING

7.1. In consideration of the Supplier carrying out its obligations under this Agreement, the Purchaser shall pay the Charges to the Supplier subject to and in accordance with the terms of this Clause 7, the Invoicing Procedure, Schedule Part 3 (Charges) and the relevant Statement of Work.

7.2. The relevant Charges shall be payable by the Purchaser within thirty (30) days of receipt

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of the Supplier's correct invoice properly rendered in accordance with this Agreement, containing (as a minimum) the following information: -

7.2.1. a statement summarising the Services to which the invoice relates;

7.2.2. the Purchasers' contract number, purchase order number and (if any) the project number allocated by the Purchaser, each as notified by the Purchaser to the Supplier from time to time;

7.2.3. if requested by the Purchaser, the total amount invoiced by the Supplier and the total amount paid by the Purchaser under this Agreement up to the date of the invoice; and

7.2.4. Such other information as the Purchaser may reasonably request (including time sheets or records, receipts and third-party invoices) to enable the Purchaser to verify that the sums claimed in the invoice are accurate.

7.3. All invoices shall be submitted to the Purchaser at the relevant address specified by the Purchaser for that purpose from time to time.

The Purchaser may choose to pay sums due to the Supplier under this Agreement via the Banks Automated Clearing Services System (BACS) in which event the Supplier shall provide the Purchaser with all relevant banking details. The Purchaser shall not be liable for any late payment charges in the event that the Supplier fails to comply with this Clause 8.4.

7.4. The Purchaser may withhold payment against any invoice which is not submitted in accordance with this Agreement or which covers or purports to relate to obligations which have not been performed in accordance with this Agreement or which it disputes for any other valid reason.

7.5. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with this Agreement at the rate of 2% per annum above the base rate for the time being of the Bank of England on the relevant undisputed invoiced amount of the Charges.

7.6. The Supplier shall account to HM Revenue & Customs for all taxes and other related liabilities, charges and dues (including PAYE and National Insurance) for which the Supplier (or any of its contractors, agents and/or employees) is or are liable.

7.7. The Supplier shall indemnify and keep the Purchaser indemnified from and against all Losses arising from or incurred by reason of any breach of Clause 8.7 by the Supplier.

7.8. Unless stated to the contrary in Schedule Part 3 (Charges) or the relevant Statement of Work (as applicable), the Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable.

7.9. The Parties acknowledge and agree that payment of any sums by the Purchaser under this Agreement shall be without prejudice to any claims or rights which the Purchaser may have against the Supplier and shall not constitute any acceptance, admission or waiver by the Purchaser as to the performance by the Supplier of its obligations hereunder.

7.10. Any Credits that are due by the Supplier to the Purchaser shall (at the Purchasers' option) either (i) be set off against any Charges payable by the Purchaser to the Supplier or (ii) payable by the Supplier as a debt to the Purchaser within 30 days of written demand by the Purchaser.

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7.11. The Purchaser may retain or set off any amount owed by it to the Supplier against any amount due by the Supplier to the Purchaser under this Agreement. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Purchaser in order to justify withholding payment of any amount due by the Supplier to the Purchaser.

7.12. Without prejudice to Clause 13 (Audits), the Supplier shall maintain complete and accurate records of all time spent and materials used by the Supplier in providing the Services (including, where required by the Purchaser, completed time sheets in a form approved by the Purchaser), and the Supplier shall allow the Purchaser to inspect such records at any time on the Purchasers' reasonable request.

7.13. The Supplier will adopt and apply VisitScotland's Procurement Guidelines when purchasing goods or services from third party organisations on behalf of the Purchaser. At the time of submitting their invoice the Supplier must provide the Purchaser with copy invoices for all purchases made in relation to this Agreement allowing the Purchaser, or the Purchasers' nominated auditors, access to sufficient detail to audit any transaction. Without prejudice to the Purchasers' rights under Clause 13 (Audits), audits pursuant to this Clause 7.14 will be conducted periodically throughout the term of the Agreement.

7.14. For the avoidance of any doubt, except as otherwise expressly provided in this Agreement, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.

8. DELAYS

8.1. If the Supplier becomes aware that there shall be, or is likely to be, any delay in its performance of any Services and/or in meeting any Key Milestones it shall immediately notify the Purchaser of the fact of the delay (or likely delay).

9. ASSETS AND INTELLECTUAL PROPERTY RIGHTS

9.1. Supplier Assets

The Supplier agrees that, throughout the term of this Agreement, it will make available the Supplier Assets for use by or on behalf of the Purchaser (together, the "Users") to the extent and for the purposes reasonably required by the Users. The Parties agree that nothing in this Agreement shall operate to transfer ownership of any Supplier Assets to any of the Users, unless the Parties agree otherwise in writing.

9.2. Purchaser Assets

The Purchaser agree that, during the term of this Agreement, it will make available to the Supplier such of Purchaser Assets as the Supplier reasonably requires using in order to perform its obligations under this Agreement. The Parties agree that nothing in this Agreement shall operate to transfer ownership of any Purchaser Assets to the Supplier (or any of its permitted agents or sub-contractors), unless the Parties agree otherwise in writing. The Supplier shall comply with such instructions and conditions as the Purchaser may specify in connection with the Supplier's use of any Purchaser Assets.

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9.3. Intellectual Property Rights

The Suppliers shall not have any right to use any of the Purchasers' names, logos or trade marks on any of its products or services without the Purchasers' prior written consent.

10. PUBLICITY

Without prejudice to Clause 19 (Confidentiality), the Supplier shall not be entitled to publish any reports, articles, press releases or other documents or information relating to the subject matter of this Agreement without the prior written consent of the Purchaser.

11. ACCESS TO PREMISES AND SAFETY/SECURITY

11.1. Where applicable, the Purchaser:

11.1.1. shall provide the Supplier Personnel with such access to relevant areas of the Premises and at such times as the Purchaser may deem is reasonably required by the Supplier in order to perform the Services;

11.1.2. may refuse admission to the Premises and/or direct the Supplier to end the involvement in the provision of the Services of any of the Supplier Personnel whom the Purchaser believe represents a security risk, has been negligent or guilty of misconduct or does not have the required levels of training and expertise or where the Purchaser has other grounds for doing so including, without limitation, any failure by any of the Supplier Personnel to comply with any of the requirements or works rules referred to in Clause 11.2. The decision of the Purchaser pursuant to this Clause 11.1.3 shall be final. For the avoidance of doubt, the Supplier shall ensure that any Supplier Personnel in respect of whom the Purchaser exercise their rights pursuant to this Clause 11.1.3 shall be replaced forthwith by a suitably qualified and experienced member of the Supplier Personnel.

11.2. The Supplier shall:

11.2.1. ensure that Supplier Personnel comply with all reasonable requirements of the Purchaser concerning conduct at the Premises (including security and health and safety requirements) and ensure that all Supplier Personnel comply with all health safety and welfare policies of the Purchaser (as amended and/or updated from time to time); and

11.2.2. provide a list of the names of all Supplier Personnel requiring admission to the Premises, specifying the capacities in which they require admission and giving such other particulars as the Purchaser may reasonably require. Failure by the Supplier to provide any name a reasonable time before access is required shall entitle the Purchaser to refuse admission to that individual.

11.3. Either Party shall notify the other as soon as practicable of any health and safety hazards at the Premises of which it becomes aware. The Supplier shall draw these hazards to the attention of the Supplier Personnel and shall instruct those persons in connection with any necessary associated safety measures.

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12. CONTRACT MANAGEMENT

12.1. The Purchaser will operate Contract & Supplier Management in accordance with the Scottish Government's Procurement Journey. The Procurement Journey sets out a series of controls to simplify and regulate the way in which public sector bodies interact with suppliers. Further details of the Procurement Journey can be found at www.procurementjourney.scot .

12.2. The Parties respectively appoint the individuals identified as such in the Services Description as their Representatives in relation to the Services.

12.3. Each Party may, by written notice to each other Party, revoke or amend the authority of its Representative or appoint a new Representative, provided always that the Supplier may not at any time appoint more than one person to be its Representative in relation to the Services. Any change to the Supplier's Representative shall be subject to the prior consent of the Purchaser, which consent shall not be unreasonably withheld or delayed.

12.4. The Parties' relevant Representatives shall be responsible for the day-to-day management of the Services provided under any Statement of Work (as applicable).

12.5. If requested by the Purchaser, the Supplier shall provide the Purchaser with regular reports throughout the term of the Agreement in relation to the performance of the Parties' obligations, which shall contain such information as the Purchaser may reasonably request from time to time. Without prejudice to the preceding sentence, the Supplier shall provide, as a minimum, the reports required under the Services Description and Schedule Part 2 (Service Levels).

12.6. The Supplier acknowledges that the Key Personnel identified (i) in the Services Description and (ii) in each Statement of Work are essential to the proper provision of the Services to the Purchaser pursuant to that Statement of Work. The Supplier shall ensure that all Key Personnel remain engaged in the performance of the relevant Services throughout the term of this Agreement (or throughout the period of performance of the relevant Services, if shorter).

12.7. Without prejudice to Clause 12.8, the Supplier shall use all reasonable endeavours to ensure that the role of any Key Personnel is not vacant for any longer than five (5) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

12.8. The Purchaser (acting reasonably) may identify any of the Supplier Personnel as Key Personnel in connection with any Services, who shall then be included on the list of Key Personnel under the Services Description or relevant Statement of Work (as applicable). The Purchaser may also require the Supplier to remove any Key Personnel that the Purchaser (acting reasonably) considers in any respect unsatisfactory, subject to the Purchaser providing reasons for such removal.

12.9. The Supplier shall not during the term of this Agreement and for twelve (12) months following the termination of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the relevant any person employed or engaged by any.

12.10. The Supplier shall identify a process to record and report innovations to the Purchaser. Innovation should be embedded as part of the business culture and the Supplier shall

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work with the Purchaser in actively seeking opportunities for continual improvement and innovation. Innovation shall be measured as a constituent element of the Agreement and contract management processes identified in this Clause 12.

12.11. The Supplier will support Sustainable Procurement principles and practices through a continuous improvement programme and agrees to work with the Purchaser within the guidelines contained in the Scottish Government's Procurement Journey. Further details of the Procurement Journey can be found at: www.procurementjourney.scot.

13. AUDITS

13.1. The Supplier shall keep or cause to be kept full and accurate records of all matters relating to the performance of its obligations under this Agreement (the "Records"). The Records shall be maintained in a form suitable for audit purposes, shall be kept separate from any other records of the Supplier and shall be retained for the period required by any applicable statutory provision and in any event during the term of this Agreement and for a period of not less than six (6) years thereafter.

13.2. The Purchaser may, on reasonable notice to the Supplier, conduct audits for the purposes of inspecting, reviewing and verifying the Supplier's compliance with its obligations under this Agreement (including, without limitation, pursuant to Clause 34 (Prevention of Corruption)) and/or to meet any other audit or information requirement that may be required by law and/or any Regulatory Body.

13.3. The Supplier shall provide the Purchaser (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including (i) all information requested by the Purchaser within the scope of the audit, (ii) access to the Supplier's sites and any other relevant site used by the Supplier in connection with the Services, (iii) access to any systems (including IT systems), infrastructure and/or equipment used by the Supplier (whether exclusively or non-exclusively) in the performance of the Services, and (iv) access to Supplier Personnel.

13.4. The Purchaser shall use its reasonable endeavours to ensure that the conduct of any audit carried out pursuant to Clause 13.2 does not unreasonably disrupt the business of the Supplier and shall use its reasonable endeavours to ensure that any such audit is carried out in compliance with any confidentiality obligations owed by the Supplier to any third party, provided that such confidentiality obligations are made known to the Purchaser in advance.

14. CHANGE IN LAW

14.1. The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Charges as the result of:

14.1.1. a General Change in Law; or

14.1.2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known (or should have been known had the Supplier acted in accordance with Good Industry Practice) at the Commencement Date.

14.2. If a Specific Change in Law occurs or will occur during the term of this Agreement (other than those referred to in Clause 14.1.2), the Supplier shall notify the Purchaser of the likely effects of that change, including whether any Change is required to the Services, the Charges or this Agreement and whether any relief from compliance with the Supplier's obligations is required.

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14.3. As soon as practicable after any notification in accordance with Clause 14.2, the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

14.3.1. providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

14.3.2. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier in its planning for provision of the relevant Services before the Specific Change in Law occurred;

14.3.3. giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

14.3.4. demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.

14.4. Any amendment to the Charges or the Services agreed by the Parties pursuant to Clause 14.3 shall not be binding unless and until it is agreed in accordance with the Variation Procedure.

15. VARIATION PROCEDURE

15.1. At any time during the term of this Agreement VisitScotland may request, and the Supplier may recommend, changes to the Services, any Statement of Work and/or this Agreement (a "Proposed Change"). Any Proposed Change shall be made by submission of a draft Variation by one party to the other in substantially the same form as set out in Schedule Part 5 (Form of Variation).

15.2. The Supplier shall investigate the impact of any Proposed Change upon the Services, the relevant Statement of Work(s), the Charges and any other aspect of this Agreement and shall (if required by VisitScotland and at the Supplier's cost) provide VisitScotland with a detailed written report and quotation.

15.3. Neither Party shall withhold or delay its agreement to any Proposed Change unreasonably.

15.4. If the Parties agree the terms of any Proposed Change, the Variation (as agreed between the Parties) shall be signed by each of the Parties. This Agreement and/or the relevant Statement of Work shall be deemed to be amended in accordance with the terms of any Variation signed by both Parties with effect from the effective date set out in the Variation.

15.5. Until such time as a Variation is signed by both Parties in accordance with Clause 15.4, each Party shall, unless otherwise agreed in writing, continue to perform its obligations set out in this Agreement as if the Proposed Change had not been raised.

15.6. Subject always to Clause 15.1, the Supplier undertakes that any proposed amendments to the Charges in connection with any Proposed Change shall be reasonable and proper. The Supplier shall provide to VisitScotland reasonable details in writing of any such proposed amendment to the Charges and shall provide such information as VisitScotland may reasonably require in order to demonstrate that the relevant amendments to the Charges are justifiable and competitive.

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16. DISPUTES

16.1. All Disputes between the Parties shall in the first instance be referred by the Parties to their relevant respective Representatives for resolution. The Parties shall procure that their relevant Representatives meet as soon as possible (and in any event within five (5) Working Days) after any Party identifies that a Dispute exists, to seek to resolve the Dispute.

16.2. If any Dispute cannot be resolved by Parties' relevant Representatives within ten (10) Working Days after the date of referral under Clause 16.1, either Party may refer the Dispute to the Parties' respective chief executive officer (or such other representatives of the Parties with sufficient seniority having regard to the nature of the Dispute).

16.3. If the Dispute cannot be resolved by escalation pursuant to Clause 16.2 within ten (10) Working Days after the date of referral under Clause 16.2 then the Purchaser may, at its sole discretion, refer the Dispute to resolution by an expert. The expert shall be agreed between the Parties, or, if the Parties are unable to reach agreement, selected by the President for the time being of the Law Society of Scotland. The expert shall act as an expert and not an arbitrator and the decision of the expert shall be final and binding, save in the case of manifest error.

16.4. Where the Purchaser does not exercise their rights pursuant to Clause 16.3 to refer a Dispute to an expert, either party may refer that Dispute for determination by a Court of competent jurisdiction in accordance with Clause 35 (Governing Law and Jurisdiction).

16.5. Nothing in this Agreement shall prevent either Party from raising Court proceedings in order to preserve or enforce its proprietary or other rights.

17. PROTECTION OF PERSONAL DATA

17.1. The Supplier warrants and undertakes to the Purchaser that in the performance of its obligations under this Agreement it shall comply at all times with the Data Requirements as a Data Processor or Data Controller (as appropriate).

17.2. The Supplier acknowledges that to the extent that it acts as the Data Processor for the purposes of any Processing of Personal Data, Part 6 of the Schedule sets out the nature and purpose of Processing by the Supplier, the subject-matter and duration of the Processing and the types of Personal Data and categories of Data Subject.

17.3. Without prejudice to the generality of Clause 17.1 above, if at any time during the term of this Agreement the Supplier acts as the Data Processor for the purposes of any Processing of Personal Data, the Supplier shall comply with the provisions of Clause 17.3 below:

17.3.1. The Supplier shall Process that Personal Data only on the written instructions of the Purchaser, unless the Supplier is required to Process the Personal Data by the laws of any member state of the European Union or by the laws of the European Union applicable to the Supplier ("Applicable Laws"). Where the Supplier is relying on any Applicable Laws as the basis for Processing Personal Data, the Supplier shall immediately notify the Purchaser of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Purchaser.

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17.3.2. The Supplier shall ensure that it has in place appropriate technical and organisational security measures, reviewed and approved by the Purchaser, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. The Supplier shall ensure that the security measures to be taken are appropriate having regard to the nature of the Personal Data and the scope, context and purposes of the Processing and the likelihood and severity of the risks to Data Subjects that are presented by the Processing of such Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed and the state of technological development and the cost of implementing such measures.

17.3.3. The Supplier shall ensure that all of the Supplier Personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential.

17.3.4. The Supplier shall not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Purchaser has been obtained.

17.3.5. The Supplier shall assist and co-operate with the Purchaser in responding to and complying with any request made by a Data Subject pursuant to the Data Requirements (including but not limited to a subject access request) and/or responding to any enquiry made or investigation or assessment of Processing initiated by the Information Commissioner's Office and/or any other relevant Regulatory Bodies or supervisory authorities in respect of Personal Data.

17.3.6. The Supplier shall assist the Purchaser in ensuring compliance with its obligations under the Data Requirements with respect to security, breach notifications, data protection impact assessments and consultations with the Information Commissioner's Office and any other Regulatory Bodies or supervisory authorities.

17.3.7. The Supplier shall notify the Purchaser immediately on becoming aware of a Personal Data Breach and shall ensure that the original notification to the Purchaser includes: (i) a description of the Personal Data Breach; (ii) an explanation of how the Personal Data Breach occurred; (iii) the categories of Personal Data affected; (iv) the categories and approximate number of Data Subjects concerned; (v) a description of the likely consequences of the Personal Data Breach; (vi) a description of the measures it has taken to address the Personal Data Breach; and (vii) a description of the proposed measures it intends to take to address the Personal Data Breach, including, where appropriate, measures to mitigate the possible adverse effects of the Personal Data Breach.

17.3.8. The Supplier shall provide all reasonable assistance to the Purchaser from time to time in undertaking any data protection impact assessments that the Purchaser may reasonably decide to undertake.

17.3.9. The Supplier shall immediately delete or return all Personal Data and any copies thereof to the Purchaser at any time upon request by the Purchaser

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and in any event upon termination or expiry of this Agreement, unless the Supplier is required by any Applicable Laws to store the Personal Data.

17.3.10. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 17 and the Data Requirements.

17.3.11. The Supplier shall provide the Purchaser with all such information as the Purchaser reasonably requests from time to time to enable the Purchaser to satisfy itself that the Supplier is complying with its obligations under this Clause 17 and/or the Data Requirements.

17.3.12. The Supplier shall allow the Purchaser and the Purchaser's agents, representatives and/or external auditors access to the Supplier's premises, provided reasonable prior notice is given, to allow the Purchaser to audit compliance by the Supplier with its obligations under this Clause 17 and shall provide all reasonable co-operation as requested by the Purchaser in the performance of any such audit.

17.4. The Purchaser acknowledges and agrees that the Supplier shall be entitled to use Approved Sub-processors to Process Personal Data on behalf of the Supplier pursuant to this Agreement. In the event that the Supplier wishes to appoint a new or replacement Sub-processor(s), such appointment or replacement is subject to the prior written approval of the Purchaser. The Supplier shall ensure that any Approved Sub-processor who has access to Personal Data shall be subject to binding contractual obligations which are substantially the same as the terms set out in this Clause 17.

17.5. Words and phrases which are defined in the Data Protection Legislation (unless the context requires otherwise) have the same meanings in this Clause 17.

18. ACCESS TO INFORMATION LEGISLATION

18.1. The Supplier acknowledges that the Purchasers, as public sector bodies in Scotland, is subject to the requirements of certain access to information legislation, including the Freedom of Information (Scotland) Act 2002, the Access to Environmental Information (Scotland) Regulations 2004 and the Public Services Reform (Scotland) Act 2010 (the "Information Laws").

18.2. The Supplier acknowledges that the Purchaser may be obliged under the Information Laws to disclose information relating to the Supplier. The Purchaser will take reasonable steps, where appropriate, to give the Supplier advance notice of the proposed disclosure of any of the Supplier's Confidential Information, or failing that, to draw the relevant disclosure to the Supplier's attention as soon as reasonably practicable after any such disclosure. The Supplier acknowledges that the Purchaser will be responsible for determining in the Purchasers' absolute discretion whether any information requires to be disclosed in accordance with the provisions of the Information Laws, and that nothing in this Agreement shall prevent the Purchaser from disclosing (and the Purchaser shall not have any liability to the Supplier in connection with the disclosure of) any information pursuant to the Information Laws.

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19. CONFIDENTIALITY

19.1. Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Agreement (including, without limitation, in Clause 19):

19.1.1. each Party (the "Receiving Party") shall:

19.1.1.1. treat all of the other Party's (the "Disclosing Party"'s) Confidential Information as confidential and safeguard it accordingly; and

19.1.1.2. not disclose the other Disclosing Party's Confidential Information to any other person without the Disclosing Party's prior written consent.

19.2. Clause 20.1 shall not apply to the extent that the Receiving Party can demonstrate (to the reasonable satisfaction of the Disclosing Party) that:

19.2.1. such disclosure is required by Law or by a court of competent jurisdiction, provided that the Receiving Party shall use all reasonable endeavours to provide prior written notice to the Disclosing Party of any proposed disclosure pursuant to this Clause 19.2.1 in sufficient time to allow the Disclosing Party to make any submissions to the Receiving Party and/or such court or other competent authority and/or otherwise seek to prevent or constrain such disclosure;

19.2.2. such information was in the possession of the Receiving Party by being recorded in its files without obligation of confidentiality prior to its disclosure by the Disclosing Party;

19.2.3. such information was obtained from a third party without obligation of confidentiality;

19.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

19.2.5. such information was independently developed without access to the Confidential Information.

19.3. The Supplier may only disclose the Purchasers' Confidential Information to Supplier Personnel who are directly involved in the performance of the Supplier's obligations under this Agreement and who need to know the information, and the Supplier shall procure that all Supplier Personnel are made aware of, and comply, with the obligations as to confidentiality set out in this Clause 19. The Supplier shall be liable and responsible to the Purchaser in relation to all acts and omissions of the Supplier Personnel as if they were the acts and omissions of the Supplier.

19.4. The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of Confidential Information otherwise than for the purposes of this Agreement without the prior written consent of the Purchaser.

19.5. At the Purchasers' request, the Supplier shall procure that any Supplier Personnel identified by the Purchaser from time to time execute(s) a confidentiality undertaking directly for the Purchasers' benefit, in the form prescribed by the Purchaser.

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20. INDEMNITY

20.1. Subject (where applicable) to any limitations set out in this Agreement (but without prejudice to the Purchasers' rights or remedies under this Agreement or at law), the Supplier shall indemnify and keep the Purchaser fully and effectively indemnified from and against all Losses arising from, relating to and/or in connection with:

20.1.1. any injury (including death) to or of any persons or loss of or damage to any property which arises out of the negligence, breach of contract or other act, omission or default of the Supplier (including the Supplier's Personnel) and/or any injury (including death) to or of any persons or loss of or damage to any property which arises from an event in respect of which the Supplier is required to maintain insurance pursuant to this Agreement;

20.1.2. any breach by the Supplier and/or any Supplier Personnel of the terms of Clauses 17 (Protection of Personal Data), 19 (Confidentiality) and/or the Data Requirements;

20.1.3. any other direct or indirect breach or negligent performance or failure or delay in the Supplier's performance of the Supplier's obligations under and/or pursuant to this Agreement; and/or

20.1.4. any breach by the Supplier and/or any Supplier Personnel of any term of this Agreement due to its and/or their wilful misconduct, fraud or fraudulent misrepresentation,

provided, in each case, that the indemnity shall not apply if and to the extent that the relevant Losses have directly arisen from negligence on the part of the Purchaser.

21. LIMITATIONS ON LIABILITY

21.1. Neither Party limits its liability for:

21.1.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or

21.1.2. fraud and/or fraudulent misrepresentation by it or its employees; or

21.1.3. breach of any obligation as to title implied by statute.

21.2. Subject to Clause 23.1, the Supplier's total aggregate liability under this Agreement to the Purchaser:

21.2.1. in respect of the indemnities granted by the Supplier in each of Clauses 7.8, 20.1.2, 20.1.4 and 24.3 shall be unlimited;

21.2.2. for all loss of or damage to Premises, property and/or assets (including technical infrastructure, assets or equipment), and all Losses connected to such loss or damage, shall in no event exceed £2,000,000 for any one event or series of connected events; and

21.2.3. in respect of all other claims, losses or damages, whether arising from delict, tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall in no event exceed, in aggregate, the greater of (i) 125% of the aggregate Charges paid, due or payable in the future under this Agreement or (ii) £1,000,000.

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21.3. Subject to Clause 21.1 and without prejudice to the Purchasers' obligation to pay the Charges as and when they properly fall due for payment, the total aggregate liability of the Purchaser (including all claims, losses or damages, whether arising from delict, tort, negligence, breach of contract or otherwise) under and/or in connection with this Agreement shall not exceed, in aggregate, 125% of the aggregate Charges paid under this Agreement.

21.4. Subject to Clauses 21.1 and 21.5, neither Party shall be liable to the other Party for:

21.4.1. any indirect loss, special loss or consequential loss or damage; or

21.4.2. any indirect loss of profits, indirect loss of contracts, indirect loss of revenue, indirect loss of business opportunities, or indirect damage to goodwill.

21.5. The Supplier acknowledges and agrees that the Purchaser may, without limitation, recover as a direct loss:

21.5.1. any additional operational and/or administrative costs and expenses incurred by arising from any Supplier's Default;

21.5.2. any wasted expenditure or charges rendered unnecessary and/or incurred by arising from any Supplier's Default;

21.5.3. the additional costs, expenses and/or liabilities of procuring replacement services and/or deliverables; and/or

21.5.4. any anticipated savings which would otherwise have been made by the Purchaser.

22. INSURANCE

22.1. Without limiting any of its other responsibilities or liabilities under and/or pursuant to this Agreement, and except as expressly stated to the contrary in the Services Description and/or any Statement of Work, the Supplier shall take out and maintain or procure the maintenance for the term of this Agreement and for twelve (12) months thereafter the following insurances:

22.1.1. Employer's Liability Insurance;

22.1.2. Public Liability Insurance; and

22.1.3. Professional Indemnity insurance (where applicable),

for such sum and range of cover as shall be prudent and appropriate in all the circumstances, bearing in mind (in particular) the nature and the extent of the Supplier's obligations and/or liabilities under this Agreement (and in any event in compliance with all compulsory statutory insurance requirements), provided always that:

(a) the minimum sum insured under the policy referred to at Clause 22.1.2 shall be £2,000,000 per event or series of connected events; and

(b) without prejudice to the remainder of this Clause 22.1, the Supplier shall comply with the specific insurance requirements (if any) set out in the Services Description.

22.2. The Supplier shall provide to the Purchaser, on request, evidence (in a form acceptable to the Purchaser) of the insurances in place pursuant to Clause 22.1 from time to time.

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22.3. If requested by the Purchaser, the Supplier shall ensure that all policies of insurance maintained pursuant to Clause 22.1 include an indemnity to principals clause which operates for the benefit of the Purchaser.

22.4. For the avoidance of any doubt, the risks, obligations and responsibilities of the Supplier under and/or pursuant to this Agreement are not limited to taking out the insurance policies required pursuant to this Clause 22, and the Supplier's liability under and/or pursuant to this Agreement shall not be limited or restricted to the amount(s) insured and/or recovered under any insurance policies maintained by the Supplier at any time or from time to time.

23. TERMINATION RIGHTS

23.1. The Purchaser may terminate all or any part of this Agreement (or any part of the Services) immediately and without any liability to the Supplier by giving written notice of termination to the Supplier if:

23.1.1. the Supplier is in material Default which is capable of remedy and it has failed to remedy such Default within twenty-one (21) Working Days of receipt of notification of such Default from the Purchaser;

23.1.2. the Supplier commits a material Default which is not capable of remedy;

23.1.3. an Insolvency Event occurs in relation to the Supplier (and/or, where applicable, the guarantor under any Parent Company Guarantee);

23.1.4. a Force Majeure Event occurs which affects all or a substantial part of the performance of the Supplier's and/or the Purchaser' obligations under this Agreement for a continuous period of more than fifteen (15) Working Days;

23.1.5. a "Critical Service Level Failure" (as defined in Schedule Part 2 (Service Level)) occurs;

23.1.6. it is entitled to do so pursuant to Clause 4.7 (Supplier's Duties), Clause 34.5 (Prevention of Corruption) and/or any other express provision of this Agreement;

23.1.7. The Purchaser (acting reasonably) considers that the Supplier (and/or, where applicable, the guarantor under any Parent Company Guarantee) is experiencing Significant Financial Difficulties;

23.1.8. there is a change in the identity of the person that has, directly or indirectly, the power to direct or cause the direction of the management of the policies of the Supplier (whether through the ownership of voting shares, by contract or otherwise);

23.1.9. the Supplier transfers or disposes of, or threatens to transfer or dispose of, all or a substantial part of its business or assets;

23.1.10. the Supplier ceases or suspends or threatens to cease or suspend all or a substantial part of its business; and/or

23.1.11. the Purchaser become aware that the performance by either Party of all or any part of its obligations pursuant to this Agreement, is (or is likely to be) in contravention of any legal, governmental and/or regulatory requirement applicable to either Party.

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23.2. The Supplier may terminate the entire Agreement) immediately by giving written notice of termination to the Purchaser if:

23.2.1. The Purchaser are in material breach of its obligation to pay undisputed Charges by giving the Purchaser ninety (90) days written notice specifying the breach and requiring its remedy. The Supplier's right of termination under this Clause 23.2 shall not apply to non-payment of the Charges by the Purchaser where such non-payment is due to the Purchaser exercising their rights to withhold and/or set-off Charges in accordance with this Agreement; and/or

23.2.2. an Insolvency Event occurs in relation to the Purchaser.

23.3. Without prejudice to the Purchasers' other rights of termination under this Clause 23, the Purchaser may terminate the entire Agreement (including all Statement of Works) without liability to the Supplier at any time on providing not less than six (6) months' prior written notice to the Supplier.

23.4. Without prejudice to the Purchasers' other rights of termination under this Clause 23, the Purchaser may terminate any part of the Services and/or all or any part of any specific Statement of Work without liability to the Supplier at any time on providing not less than ten (10) Working Days' prior written notice to the Supplier.

23.5. Where the Purchaser exercise their rights of termination pursuant to Clause 23.3 and/or 23.4, the Parties acknowledge and agree that Charges shall be paid by the Purchaser only in relation to

23.6. Services properly performed by the Supplier in accordance with this Agreement up to the effective date of termination.

23.7. The Supplier acknowledges and agrees that, in any circumstances where the Purchaser are entitled to terminate all or part of the Agreement and/or any Statement of Work pursuant to this Clause 23, the Purchaser may (at the Purchasers' sole option and with effect from such date as the Purchaser may notify to the Supplier) suspend the Supplier's performance of all or any part of the Services for such period as the Purchaser considers appropriate. The Parties agree that:

23.7.1. any exercise by the Purchaser of their rights pursuant to this Clause 23.6 shall be without prejudice to the Purchasers' other rights and remedies under and/or pursuant to this Agreement and/or at law (including, without limitation, the Purchasers' rights to terminate all or any part of the Agreement and/or any Statement of Work at any time in accordance with this Clause 23);

23.7.2. in the event that the Purchaser exercise their rights pursuant to this Clause 23.6, the Supplier shall not be entitled to payment of any Charges (or any other fees, charges and/or expenses) in respect of any Services that are suspended (the "Suspended Services") during the relevant period of suspension; and

23.7.3. the Supplier shall re-commence performance of the Suspended Services with effect from the relevant date (if any) notified to it by the Purchaser.

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23.8. For the avoidance of any doubt:

23.8.1. where the Purchaser terminates part of the Services and/or any one or more Statements of Work pursuant to Clause 23.1 and/or Clause 23.4, this shall not affect the continuance in full force and effect of the remainder of this Agreement and any other Statements of Work;

23.8.2. where the Purchaser or the Supplier terminates the entire Agreement in accordance with the terms of this Clause 24, all Services and all Statements of Work shall also terminate with effect from the date of termination of the entire Agreement; and

23.8.3. the Purchaser shall not be obliged to make any payments to the Supplier as a result of or in connection with the suspension or termination of all or part of this Agreement, except to the extent expressly provided for in this Clause 23.

24. CONSEQUENCES OF TERMINATION

General

24.1. If required by the Purchaser, the Supplier shall provide (at no cost to) such reasonable assistance and information as the Purchaser may request in connection with termination of this Agreement and/or any Statement of Work, including, without limitation, any assistance and/or support as the Purchaser may require in connection with any handover of responsibility for provision of services that are the same as or similar to the Services to and/or Replacement Supplier.

24.2. The Parties do not intend that expiry or termination of all or any part of this Agreement, the Services and/or any Statement of Work (for whatever reason) shall give rise to a relevant transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

24.3. In the event that, notwithstanding the terms of Clause 24.2, TUPE is deemed to apply in the event of expiry or termination of all or any part of this Agreement or any of the Supplier's Personnel asserts or intimates a claim that TUPE so applies, the Parties agree that Clause 24.4 shall apply.

24.4. The Supplier shall indemnify and keep indemnified (i) the Purchaser and (ii) each and any Replacement Supplier (either, at the option of the Purchaser, directly or through the Purchaser as agent or trustee for the relevant Replacement Supplier), fully from and against all losses, costs, claims, awards, damages, liabilities and expenses (including but not limited to legal fees), and demands relating to any Employee Liabilities which the Purchaser, and/or any Replacement Supplier (as the case may be) suffers or incurs by reason or on account of or arising out of the employment of any Supplier's Personnel and/or termination of any contract of employment of any Supplier's Personnel by the Purchaser, or any Replacement Supplier (as the case may be) including (but not limited to) sums payable to any such person in connection with their employment up to the date of termination of their employment.

24.5. On termination or expiry of this Agreement for whatever reason:

24.5.1. except where expressly stated to the contrary in this Agreement, the Supplier shall cease using and shall return to the Purchaser all (or such part) of the Purchasers' Confidential Information which is in its possession (and the Supplier shall ensure that all of the Supplier Personnel do the same);

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24.5.2. the Supplier shall cease using and shall return to the Purchaser (at the Supplier's cost) all Purchaser Assets and Purchaser Materials which is in its possession (and the Supplier shall ensure that all of the Supplier Personnel do the same);

24.5.3. the Supplier shall cease using and shall return or destroy (at the Purchasers' option) all Purchaser Data and any other material and information which it possesses or controls and was supplied to it by or on behalf of the Purchaser in connection with this Agreement (and the Supplier shall ensure that all of the Supplier Personnel do the same); and

24.6. The Supplier acknowledges that it is of the utmost importance to the Purchaser that in the period prior to expiry or termination of all or any part of this Agreement for any reason whatsoever, the supply of the Services shall continue to be provided in accordance with the standards detailed in this Agreement, and where there are no standards applicable to parts of the supply of the Services, such parts of the supply of the Services shall continue to be provided to the same standards to which such supplies of the Services were provided prior to such period and in any event in accordance with Good Industry Practice.

24.7. If requested by the Purchaser, the Supplier hereby undertakes to provide assistance to the Purchaser and/or any Replacement Supplier or other third party engaged by the Purchaser to enable or assist with the continued supply of the services that are the same as or similar to the Services following termination or expiry of this Agreement (in whole or in part) and the orderly transfer of supply of such services to the Purchaser and/or to a Replacement Supplier, with the minimum of disruption to the business of the Purchaser.

Exit Plan

24.8. Without prejudice to the Supplier's other obligations under this Clause 24, the Supplier is required to ensure the orderly transition of the Services from the Supplier to the Purchaser and/or any Replacement Supplier in the event of termination or expiry of this Agreement in accordance with the Exit Plan. The Exit Plan will be based on and reflective of the principles of this Clause 24. For the avoidance of doubt, the Supplier shall be responsible (at its own cost) for the overall management of its responsibilities in relation to the exit and service transfer arrangements.

24.9. The Supplier will, within six months from the Commencement Date, deliver to the Purchaser an Exit Plan which sets out the Supplier's proposed methodology for achieving an orderly transition of Services from the Supplier to the Purchaser and/or their Replacement Supplier on the expiry or termination of the Agreement. Within 30 days after the submission of the Exit Plan, the Parties will use their respective reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan, then such dispute shall be resolved in accordance with the expert determination procedure set out in Clause 16.3.

24.10. The Exit Plan will contain, as a minimum:

24.10.1. a detailed description of both the transfer and cessation processes, including a timetable;

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24.10.2. detail of how the Services will transfer to the Replacement Supplier and/or the Purchaser, including details of stock, the processes, documentation, and data transfer and systems migration.

24.11. The Supplier shall (unless advised otherwise in writing by the Purchaser) continue to provide the relevant Services until the effective date of termination or expiry of all or the relevant part of this Agreement and the Purchaser shall continue to pay the relevant Charges (subject to Clause 24.12 below) in relation to such period on the terms of this Agreement until the date of expiry or termination of all or the relevant part this Agreement.

24.12. The Parties recognise that the migration of the Services from the Supplier to the Purchaser and/or any Replacement Supplier may occur in stages and that this may result in a gradual cessation by the Supplier of the provision of parts of the Services and their provision by the Replacement Supplier. In this regard, the Parties acknowledge that such a gradual cessation may in turn require a reduction in the Charges payable to the Supplier. The Charges shall accordingly be varied from time to time during the Exit Planning Phase in accordance with the arrangements set out in the Exit Plan or as otherwise agreed or determined in accordance with the Variation Procedure.

24.13. The Supplier will return to the Purchaser (or, if required by the Purchaser to a Replacement Supplier) such of the following as is in the Supplier's possession or control:

24.13.1. all materials created by the Supplier under this Agreement, the IPRs in which are owned by the Purchaser and/or which are licensed to the Purchaser on a perpetual basis pursuant to Schedule Part 5 (Intellectual Property Rights);

24.13.2. all the Purchaser Data (in complete, uncorrupted form) in its possession or control to the Purchaser and/or a Replacement Supplier save to the extent (and for the limited period) that such data is required for the purposes of continuing to provide any services to the Purchaser pursuant to an agreement reached between the Parties and/ as expressly set out in the Exit Plan.

24.13.3. the Supplier will fully co-operate in the execution of the agreed plan for the migration of the Databases to the Purchaser and/or the Replacement Supplier.

24.14. Upon the written request of the Purchaser (which written request shall be capable of being made by the Purchaser at any time after the service of a notice of termination and at any time in three months preceding the Expiry Date), the Supplier shall, (within ten (10) Working Days of receipt of such a request transfer to the Purchaser and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents.

24.15. To facilitate the transfer of knowledge from the Supplier to the Purchaser and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Purchaser and/or the Replacement Supplier.

24.16. The information which the Supplier shall provide to the Purchaser and/or its

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Replacement Supplier pursuant to Clause 24.15 above will include (but not be limited to):

24.17. copies of up-to-date procedures and operations manuals;

24.18. any relevant interface information;

24.19. providing details of work volumes over the 12 month period immediately prior to the date of the Purchasers' request under Clause 24.15;

24.20. with respect to work that will be in progress as at the date the Supplier ceases to provide the relevant Services, documenting the current status and stabilising for continuity during transition;

24.21. answering all reasonable questions from the Purchaser and/or their Replacement Supplier regarding the Services; and

24.22. any other information that the Purchaser and/or a Replacement Supplier may reasonably require.

Accrued Rights and Survival of Terms

24.23. Except as expressly stated to the contrary in this Agreement, the termination of this Agreement or its expiry for whatever reason shall not prejudice or affect any accrued rights or remedies of either Party.

24.24. The termination or expiry of this Agreement for whatever reason shall not affect the coming into force or continuation in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiry and, without prejudice to the foregoing generality, the provisions of Clauses 1.2 to 1.11, 4.4, 6, 7.7, 7.8, 7.10, 9, 10, 13, 16, 17, 19, 20, 20, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34 and 35, together with the relevant referring provisions of Clause 1.1 and the relevant referring provisions of the Schedule and the Annexes.

25. FORCE MAJEURE

25.1. Subject to the remaining provisions of this Clause 25, a Party may claim relief from liability for non-performance of its obligations if and only to the extent that this is due to a Force Majeure Event affecting that Party (the "Affected Party").

25.2. The Affected Party shall immediately give the other Party written notice of any claim that a Force Majeure Event has occurred. The notification shall include full details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and the action the Affected Party proposes to take to mitigate its effect.

25.3. As soon as practicable following after the Affected Party's notification, the Parties shall consult with each other in good faith and the Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

25.4. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with

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its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

25.5. The Affected Party shall not be entitled to relief under this Clause 25 to the extent that it has caused or has substantially contributed to any delay or failure in the performance of its obligations, including any failure to place orders or issue instructions when it ought reasonably to have done so.

26. ALIENATION

26.1. The Supplier shall not be permitted to assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights and/or obligations under this Agreement without the prior written consent of the Purchaser.

26.2. The Purchaser may, by written notice to the Supplier, sub-contract, assign, novate or otherwise dispose of any or all of its rights and/or obligations under this Agreement to any other party on providing written notice to the Supplier.

26.3. Following receipt of notice from the Purchaser under Clause 26.2, the Supplier shall expeditiously execute all forms, agreements and/or other documentation necessary for the sub-contracting, novation, disposal transfer or assignment/assignation of the Purchasers' rights and/or obligations under this Agreement in accordance with the notice provided by the Purchaser under Clause 26.2.

26.4. Without prejudice to Clause 26.3, the Supplier hereby appoints the Purchaser to be its attorney to execute and do any such instrument or thing, and generally to use its name, for the purpose of giving the Purchaser the benefit of Clause 26.2 and effecting any sub-contract, assignation or assignment, novation, disposal or other instrument of transfer required by the Purchaser under Clause 26.3. The Supplier acknowledges that a certificate in writing signed by the Purchaser that any instrument or act falls within the authority conferred by this Clause 26.4 shall be conclusive evidence of such authority.

26.5. In the event that the Purchaser provide their prior written consent to any proposed sub-contracting by the Supplier in accordance with Clause 26.1, the Supplier acknowledges and agrees that such consent shall not relieve the Supplier from any of its obligations under and/or pursuant to this Agreement and the Supplier shall remain responsible for all acts and omissions of its permitted sub-contractors and all Supplier Personnel, whose acts and omissions shall be deemed to be acts and omissions of the Supplier. An obligation on the Supplier under and/or pursuant to this Agreement to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Supplier Personnel also do, or refrain from doing, such act or thing.

26.6. The Supplier acknowledges and agrees that (in defence of any claims or proceedings raised under this Agreement or otherwise) it shall not be entitled to contend that its liability under and/or pursuant to this Agreement and/or or at law is excluded, reduced or otherwise affected on the grounds that any person acquiring an interest in this Agreement pursuant to Clause 26.2 was not an original party to this Agreement.

27. WAIVER AND CUMULATIVE REMEDIES

27.1. Any failure to exercise or any delay in exercising a right or remedy by a Party shall not constitute and/or be construed as a waiver of that right or remedy or of any other rights or remedies. The rights and remedies provided to a Party under and/or pursuant to this Agreement may be waived only by written notice by the relevant Party to the other Party in a manner that expressly states that a waiver is intended, and such waiver shall only be

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operative with regard to the specific circumstances referred to in the notice.

27.2. Unless any of the Purchasers' rights or remedies under and/or pursuant to this Agreement are expressly stated to be an exclusive right or remedy, the exercise of such rights and remedies shall be without prejudice to the Purchasers' other rights and remedies.

27.3. The Purchasers' rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at law or otherwise under this Agreement. For the avoidance of any doubt, and unless expressly stated to the contrary in this Agreement, no approval, comment, instruction, inspection, statement, notice, consent, advice, action or inaction from or by or on behalf of the Purchaser shall in any way release the Supplier from its obligations under this Agreement and/or limit or discharge the liability of the Supplier to the Purchaser.

28. RELATIONSHIP OF THE PARTIES

Each Party is an independent operator and nothing in this Agreement is intended to (i) create a relationship of employment, partnership or joint venture between the Parties or any other legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party or (ii) authorise either Party to act as agent for the other. The Supplier shall not have the authority to make representations for the Purchaser, act in the name or on behalf of the Purchaser or otherwise bind the Purchaser and shall not hold itself out as having any such authority.

29. SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court or administrative body of competent jurisdiction, such provision shall be severed without effect to the remaining provisions of the Agreement that are not affected by such invalidity, illegality or unenforceability. If a provision of this Agreement is held to any extent to be invalid, illegal or unenforceable, the Parties shall immediately commence good faith negotiations to remedy that invalidity and to agree any appropriate alternative provisions which achieve, to the greatest extent possible, the economic, legal and commercial objectives of the invalid, illegal or unenforceable provision(s).

30. FURTHER ASSURANCES

The Supplier undertakes to the Purchaser that at the request of the Purchaser it shall do all acts and execute all documents which may be necessary to give effect to the meaning and intent of this Agreement.

31. ENTIRE AGREEMENT

31.1. This Agreement, together with the Statement of Works and any other documents expressly referred to and incorporated into it constitute the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and supersedes, cancels and nullifies any previous agreement between the Parties in relation to that subject matter.

31.2. For the avoidance of any doubt, this Agreement supersedes (i) any terms and conditions that the Supplier may propose or have proposed, at any time, to apply to the subject matter of this Agreement and/or any of the Services and (ii) any terms and conditions that are annexed to any purchase order issued by the Purchaser in connection with this Agreement and/or any of the Services. No term, condition, limitation, or restriction on

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use or reliance or assignation or transfer contained in or incorporated into any reports, quotations, or other communications issued by or on behalf of the Supplier shall be valid save to the extent that the same has been expressly incorporated into the terms of this Agreement.

31.3. No purported amendment to this Agreement shall be effective unless and until it is set out in a written document that is signed by authorised representatives of both Parties, which, in the case of the Purchaser, shall require signature by two authorised representatives of the Purchaser.

32. THIRD PARTY RIGHTS

32.1. Subject to Clauses 24.4 a, a person who is not a party to this Agreement has no right to enforce any term of this Agreement and nothing in this Agreement shall confer on any third party any benefit and/or the right to enforce any term of this Agreement, whether pursuant to the Contract (Rights of Third Parties) Act 1999, the common law doctrine of jus quaesitum tertio or otherwise.

32.2. For the avoidance of any doubt, the Parties may agree to alter, vary, terminate or rescind this Agreement (in accordance with its terms) without the consent of any third party.

33. NOTICES

33.1. Any notice or other communication required to be given to a party under or in connection with this Agreement must be in writing and must be delivered to the other party personally or sent by prepaid first-class post, recorded delivery post or by commercial courier, to the address notified by the relevant Party for the purposes of this Clause 34. If no address has been so notified by a Party for the purposes of this Clause 34, notices shall be sent to the Party's registered office (if a company) or (in any other case) its principal place of business of the other party. Any notice sent by post or courier shall be deemed to have been received on the second Working Day after despatch and any notice delivered personally shall be deemed to have been received on the first Working Day after delivery.

33.2. In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at the relevant address pursuant to Clause 34.1 and delivered either to that address or into the custody of the postal authorities as pre-paid first-class post, recorded delivery, registered post or airmail letter pursuant to Clause 34.1.

33.3. For the purposes of this Clause 33, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

34. PREVENTION OF CORRUPTION

34.1. Each Party shall:

34.1.1. comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 ("Relevant Requirements"); and

34.1.2. have and shall maintain in place throughout the term of this Agreement, and enforce where appropriate, its own policies and procedures to comply

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with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.

34.2. The Supplier shall:

34.2.1. promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement; and

34.2.2. immediately notify the Purchaser if a foreign public official exerts a direct or indirect influence over the performance of this Agreement.

34.3. The Supplier shall not:

34.3.1. offer or agree to give any person working for or engaged by the Purchaser any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other agreement between the Supplier and the Purchaser, including its award to the Supplier and any of the rights and obligations contained within it; nor

34.3.2. enter into this Agreement if it has knowledge that, in connection with it, any money has been, or shall be, paid to any person working for or engaged by the Purchaser or by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Purchaser and has been approved by the Purchaser before execution of this Agreement.

34.4. The Supplier shall ensure that any person associated with the Supplier who is performing Services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 34 and the Supplier shall ensure the compliance by such persons with such terms.

34.5. In the event of a breach of this Clause 34 by the Supplier, the Purchaser may (without prejudice to its other rights under this Agreement and/or at law):

34.5.1. terminate this Agreement immediately by written notice, and/or

34.5.2. withhold payment of all or any part of the Charges; and/or

34.5.3. suspend this Agreement at any time and without liability for such time period as required by the Purchaser.

34.6. For the purpose of this Clause 34, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 34 a person associated with the Supplier includes but is not limited to any subcontractor or agent of the Supplier.

34.7. Notwithstanding the terms of Clause 16 (Disputes), any Dispute relating to the interpretation of this Clause 34 shall be determined solely by the Purchaser and the Purchasers' decision shall be final and conclusive except in the event of manifest error.

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35. GOVERNING LAW AND JURISDICTION

35.1. This Agreement shall be governed by and construed in accordance with the laws of Scotland and, without prejudice to the terms of Clause 16 (Disputes), each Party hereby irrevocably submits to the exclusive jurisdiction of the Scottish Courts as regards any claim or matter arising out of or in connection with this Agreement including any question or difference concerning the construction, meaning or effect of this Agreement or the rights and liabilities of the Parties under this Agreement.

35.2. The Parties agree that any order or judgement obtained in the Court of competent jurisdiction may be enforced in the Courts of any other jurisdiction.

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IN WITNESS WHEREOF this Agreement has been executed as follows: -

SUBSCRIBED for and on behalf of

VISITSCOTLAND

by ……..

Authorised Signatory

in the presence of: -

Witness……..

Full Name……..

Address……..

SUBSCRIBED for and on behalf of

DEVELOPMENT COUNSELLORS INTERNATIONAL

Karyl Leigh Barnes

……..

Director

By Karyl Leigh Barnes

in the presence of:

Daniella Middleton

Witness……..

Full Name Daniella Middleton

Address 215 Park Avenue South, Suite 1403

New York, NY 100003

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THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN VISITSCOTLAND AND THE SUPPLIER

SCHEDULE PART 1

SERVICES DESCRIPTION

1. TERM

1.1 The Commencement Date of this Agreement is **9 October 2020**.

1.2 The Expiry Date of this Agreement is **8 October 2020.** The contract may be extended by a further 2 x 12 month periods at the sole discretion of the Purchaser.

2. DESCRIPTION OF THE SERVICES

2.1 The Specification

The following documents (each of which are set out in Annex A to this Agreement) together comprise the "Specification".

-

In the event of any conflict or inconsistency between the terms of the documents referred to above, the terms of the document which appears earliest in the list above shall prevail.

3. CONTRACT MANAGEMENT

The Parties respectively appoint the individuals identified below as their Representatives:

Development Counsellors International (The Supplier)	**Daniella Middleton, Business Events Marketing Strategist** **Stella Tsitsipatis, Account Director**
VisitScotland (The Purchaser)	**Richard Knight, Director of Marketing – The Americas** **Kirsty Strowes, Assistant Purchasing Manager - Contracts**

4. REPORTS

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The reports to be provided by the Supplier to the Purchaser in connection with this Agreement shall include:

Description of Report	Frequency
• **January Monthly combined report** • **February combined report** • **March combined report** • **April combined report** • **May combined report** • **June combined report** • **July and August combined report** • **September combined report** • **October combined report** • **November and December combined report** **A combined report summarising the activity, achievements along with new contacts, market research and RFP updates. The report will be submitted on a monthly basis and combined with the PR report.**	**10 per annum** **(July/August and November/ December combined)**

5. KEY PERSONNEL

The Supplier's Key Personnel in relation to the Services are as follows:

Name	Job Title and Role
Development Counsellors International (The Supplier)	**Daniella Middleton, Business Events Marketing Strategist** **Stella Tsitsipatis, Account Director** **Raul Cavazos, Account Manager** **Pam Balakian, Sales Manager**

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SCHEDULE PART 2

SERVICE LEVELS

1. SERVICE LEVELS

1.1. The Appendix to this Schedule Part 2 (Service Levels) sets out Service Levels (and the Service Credits) applicable to the Core Services.

1.2. The Supplier shall monitor its performance of the Services by reference to the Service Levels and shall send the Purchaser a report detailing the level of service which was achieved in accordance with the provisions of paragraph 3 of this Schedule Part 2.

1.3. The level(s) of performance for a Service Level or Service Levels which, if not met by the Supplier, will entitle the Purchaser to terminate all or part of this Agreement (each a "Critical Service Level Failure") are set out in the Appendix to this Schedule Part 2.

2. PERFORMANCE MONITORING AND REPORTING

2.1. The Supplier will attend contract review meetings with the Purchaser to discuss the performance of the Contract. Initially, these meetings will occur quarterly, but their frequency may vary as required. For at least one meeting in the course of each 12-month period, a procurement representative(s) will also be present.

2.2. A timetable for the regular meetings shall be agreed between the parties during the Lead-in Period and documented. The Supplier shall prepare and submit a draft agenda for each meeting to the relevant Purchaser no later than ten (10) days prior to the scheduled date for the meeting. The Purchasers' account manager/s may add to or otherwise amend the agenda. Once reviewed and approved by the relevant Purchaser, the agenda shall be issued to all proposed attendees.

2.3. Without prejudice to Clause 15.1 (Audits), the Supplier shall keep appropriate documents and records in relation to the Services being delivered and the other requirements to be satisfied. The records and documents of the Supplier shall be available for inspection by the Purchaser and/or its nominee at any time and the Purchaser and/or its nominee may make copies of any such records and documents.

2.4. In addition to the requirement in paragraph 2.3 of this Schedule Part 2 to maintain appropriate documents and records, the Supplier shall provide to the Purchaser such supporting documentation as the Purchaser may reasonably require in order to verify the level of the performance of the Supplier under this Agreement not later than four days before the scheduled meeting date.

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APPENDIX TO SCHEDULE PART 2

SERVICE LEVELS AND SERVICE CREDITS

1. **SERVICE LEVELS (WHERE APPLICABLE)**

NOT USED

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SCHEDULE PART 3

CHARGES

1. CONTRACT SUM

1.1. The contract sum shall not exceed **£315,000** over the 36 month period of the contract.

2. RATES & DISCOUNTS

2.1. The rates to be used by the Supplier to calculate the proposed Charges payable by the Purchaser in respect of any Delivery of Services will not exceed the rates set out in the tables below.

Service Charges – Core Services	**Personnel (where appropriate)**	**Person Hours**	**Hourly Rate £ (ex VAT)**	**Monthly Price £ (Ex VAT)**
Monthly Fee (Retainer)				**£**
Monthly Resource				
	Managing Partner	**6**	**£162**	**£972**
	Account Director	**144**	**£81**	**£11,664**
	Account Manager	**1104**	**£49**	**£54,096**
	Account Executive	**480**	**£33**	**£15,840**
	General Admin Support	**As needed**	**£33**	**-**
Monthly Allowance for Expenses		**Person Hours**	**Hourly Rate £ (ex VAT)**	**Monthly Price £ (Ex VAT)**
	Travel & Subsistence			**£2,000**
	Other Expenses			**£**
Price per month				**£7047.67**
Total Price per annum				**£84,572**

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SCHEDULE PART 4

FORM OF STATEMENT OF WORK

STATEMENT OF WORK

between

VISITSCOTLAND ("VisitScotland")

And

[INSERT NAME OF SUPPLIER] (the "Supplier")

(together, the "Parties")

When signed by both Parties, this Statement of Work forms part of, and is subject to the terms of, the Services Agreement between the Parties dated on or about ******** (the "Agreement"). Unless the context requires otherwise, capitalised terms in this Statement of Work shall have the same meanings as are given to them in the Agreement.

1. SERVICE TERM

1.1 The effective date of this Statement of Work is *********.

1.2 Subject to earlier termination pursuant to Clause 23 of the Agreement (Termination Rights), this Statement of Work shall continue from the effective date set out in paragraph 1.1. above until ********

2. SERVICE DESCRIPTION

3. KEY PERSONNEL

The Supplier's Key Personnel in relation to the Services provided pursuant to this Statement of Work are as follows:

Name	**Job Title and Role**

4. CHARGES

4.1. The Charges payable by the Purchaser to the Supplier in connection with the Services described in this Statement of Work pursuant to and in accordance with the terms of this Agreement shall be calculated in accordance with this paragraph 6.

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VisitScotland hereby agree to the terms of this Statement of Work:

_____

Authorised Signatory

Print Name:_____

Date:_____

The Supplier hereby agrees to the terms of this Statement of Work:

Karyl Leigh Barnes

_____

Authorised Signatory

Print Name: Karyl Leigh Barnes

Date: 10/8/20

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SCHEDULE PART 5

Form of Variation

VARIATION

between

***VISITSCOTLAND* ("VisitScotland")**

and

***[INSERT NAME OF SUPPLIER]* (the "Supplier")**

(together, the "Parties")

When signed by both Parties, this Variation amends, with effect from the effective date set out in section [ ] below, the terms of the Services Agreement between the Parties dated on or about ***[NOTE – INSERT DATE OF AGREEMENT]*** (the "Agreement"). Unless the context requires otherwise, capitalised terms in this Variation shall have the same meanings as are given to them in the Agreement. Save as amended by this Variation, the Agreement shall remain in full force and effect according to its terms.

1. BRIEF DESCRIPTION AND RATIONALE

[NOTE – TO BE INSERTED BY PARTY REQUESTING/RECOMMENDING CHANGE]

2. AGREED AMENDMENTS TO THE AGREEMENT

CLAUSE	**AMENDMENT**
[NOTE – DETAILS OF AMENDMENTS TO BE AGREED AND INSERTED]	

3. AGREED AMENDMENTS TO STATEMENT(S) OF WORK

STATEMENT OF WORK AND PARAGRAPH NUMBER	**AMENDMENT**
[NOTE – DETAILS OF AMENDMENTS TO BE AGREED AND INSERTED]	

4. EFFECTIVE DATE OF VARIATION

The effective date of this Variation is ***[NOTE – DATE TO BE INSERTED]***.

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VisitScotland hereby agree to the terms of this Variation:

_____

Authorised Signatory

Print Name:_____

Date:_____

The Supplier hereby agrees to the terms of this Variation:

Karyl Leigh Barnes

_____

Authorised Signatory

Print Name: Karyl Leigh Barnes

Date: 10/8/20

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SCHEDULE PART 6

Data Processing

In accordance with Article 28(3) of the GDPR, please see below the details of the Processing by the Data Processor:

1.1 The subject-matter and duration of the Processing

1.2 The nature and purpose of the Processing

1.3 The types of Personal Data

1.4 The categories of Data Subjects

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ANNEX A

Specification

For the Purchaser

BACKGROUND INFORMATION - VISITSCOTLAND

Overview of VisitScotland and Importance of Tourism to Scotland

The tourism sector is of vital importance to the Scottish economy - latest figures indicate total overnight and day visitor expenditure in Scotland was around £9.7 billion – this comprised of expenditure from overnight visitors of £4.7 billion and expenditure by day visitors of £5.0 billion.

Spending by tourists in Scotland generates around £12 billion of economic activity in the wider Scottish supply chain and contributes around £6 billion to Scottish GDP (in basic prices). This represents about 5% of total Scottish GDP.

Employment in the tourism-related industries sector (as measured by the Scottish Government's Tourism Growth Sector) in Scotland was 196,000 in 2014 – accounting for around 7.7% of employment in Scotland.

BUSINESS EVENTS ACTIVITY

Value of Business Tourism

- Business Tourism accounts for 20% of all tourism expenditure in Scotland. The North American market is the biggest overseas market accounting for over 22% of Business Tourism expenditure within Scotland
- Edinburgh and Glasgow rank second only to London in the UK, in terms of number of international association meetings hosted.

Why is Business Events important?

- Promotes Scotland as a vibrant, thriving, contemporary business destination.
- Business Events are high yield - spend per night by business visitors is 1.9 times that of a leisure visitor.
- Business Events do not exhibit marked seasonality, and slight conferencing peaks in the spring and autumn counterbalance the summer leisure tourism peak.
- Attracting a major conference reinforces Scotland's credentials in that discipline and hence makes Scotland a more attractive location for inward investment.
- Business visitors are potential influencers in corporate location and trading decisions.
- Some of the key corporate industries for North America that bring meetings/incentives to Scotland include the pharmaceuticals / medical industry, Tech organisations, finance and insurance along with automotive
- Up to 31% of delegates extend their stay pre- or post-conference for leisure purposes.
- Up to 32% of delegates claim that they would be likely to return to the destination of the conference for a holiday.

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Role of VisitScotland's Business Events Team

VisitScotland is the national tourism promotion agency for Scotland and is funded primarily by the Scottish Government. Based in Edinburgh with Regional Network Offices around Scotland and in London, it employs over 800 people.

The Business Events team is the department within VisitScotland tasked with attracting business events to Scotland from the UK and overseas markets.

Our primary goal is to grow the volume and value of discretionary business events to Scotland by:

- developing Scotland's business events brand as a world-class destination for conferences, meetings and incentive travel
- generating demand for Scotland through a targeted marketing communications plan
- providing a range of sales and marketing platforms to connect Scottish suppliers with potential buyers
- providing unbiased destination advice to potential conference buyers and planners
- leading and guiding the Scottish industry through the collection and dissemination of market intelligence
- enhancing the profile of business tourism among government and stakeholders
- Position VisitScotland messaging in line with the policy / sector driven model.

The Business Events Team's main tasks are:

- to position Scotland as a leading business events destination with world-class facilities
- to raise awareness, knowledge and appeal, and encourage conversion to booking
- to generate demand for the City Convention Bureaux and private sector to exploit
- to maintain a strong P.R. and marketing resource in key markets
- to target messages for each market sector
- to maximise any linkages with VisitScotland's leisure product

Our marketing activities are focused on meeting and incentive planners and decision makers with the potential to deliver the greatest incremental business to Scottish business tourism.

What credentials will a VisitScotland Sales Representation Supplier be able to demonstrate?

- Understanding and experience of the MICE (Meetings, Incentives, Conferences and Exhibitions) sector including key contacts within organisations that organise and hold international meetings, conferences and incentive trips. In addition to reaching intermediaries and conference planners, we are also seeking to reach and influence corporate decision-makers /budget holders such as Sales and Marketing Directors/CEOs etc, and International / European Associations as they will often make, or influence, destination decisions.

- An understanding of key industry sectors that attract Business Events and travel to Scotland.

- Ability to manage and grow VisitScotland's database of meeting and incentive planners with relevant/quality clients through proactive initiatives.

- A track record in generating new business in terms of corporate meetings and incentives; experience in handling travel accounts; experience of organising events such as sales missions and networking events; and some knowledge of Scotland and its attractions for meeting and incentive planners.

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What Key Messages should be communicated?

Scotland has been positioned as the following, within our key market segments:

Association & Corporate:

Scotland delivers the perfect combination of world-class science, technology and business capabilities together with unique, dramatic locations and warm welcoming people. Scots are renowned for their business acumen and centres of excellence are located throughout the country.

Key Sectors include: -

- Finance
- Life Sciences (Medical and Pharmaceuticals)
- Manufacturing
- Automotive
- Technology and digital
- Space

Incentive Programmes:

The warmth of hospitality of the people, breath-taking landscapes and the best golf in the world deliver luxury and reward Scottish style

The key messages derived from the above positioning statements and research findings include:

- Dramatic scenery
- Range of locations/venues
- Warm welcoming people
- Culture, History and Traditions
- Tradition of innovation
- Vibrant cities
- Golf
- Luxury and reward
- Accessibility
- Value for Money
- Sustainable destination

Who are we targeting?

Target segments in North America are:

- Corporate companies holding board meetings, conferences and larger meetings, particularly in key industry sectors where Scotland has an established strength, and incentive trips

- Intermediaries – i.e. Professional Conference Organisers, Association Management Companies, Destination Management Companies, Event Organisers, Venue Finding Agencies, Meeting & Incentive Planning Agencies (e.g. Maritz, Carlson Marketing Worldwide)

- International Associations based in North America (the Sales Supplier will be tasked with inviting planners once a year to our Scotland Means Business Workshop and will have to take account of

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any crossovers with our city convention bureaux own sales missions and be sensitive to those associations already in discussions with the cities)

- Association Management Companies based in North America (only those active in international markets should be targeted)

Our priority sectors are Conventions, Corporate Meetings & Conferences and Incentive Programmes. Exhibitions, while falling within the MICE sector, are less easily influenced and tend to stay in a selected location for a few years.

The Business Events Team do not target individual business travelers i.e. those traveling on routine business, who will not be influenced by our marketing activities, except in as far as they offer potential as "business extenders" i.e. to stay longer pre- or post-business for leisure purposes, or to return for a future leisure visit. This is however not a priority for us but rather a "nice to have" as our main objective is to increase meetings, conferences and incentive programs to Scotland.

Ongoing lead generation from the International Associations sector, while important for Scotland, is handled primarily by Scotland's 4 City Convention Bureaus (Dundee Convention Bureau, Glasgow City Marketing Bureau and Aberdeen Convention Bureau), and may be the subject of separate projects.

3.3 KEY RESPONSIBILITIES

What outcomes are VS expecting?

- A strategic approach promoting Scotland as outlined above in a detailed plan of action.
- Co-ordination and implementation of key activity as stated in the next section, with a view to achieving agreed targets and objectives.
- Monthly Status report with evaluation and performance vs targets
- Monthly conference calls, and 2 face-to-face planning meetings per annum
- The Sales Supplier will work directly with the Director of Marketing – The Americas, and the Associations and Sectors Manager. The Head of Business Events oversees Sales & Marketing activities and strategy for the UK, North America and Europe.

What is required of VS Sales Representation?

Role

Our marketing activity is intended to raise awareness and appeal of Scotland as a destination for Meetings, Conferences and Incentives and create an environment which will generate demand. The role of the Sales Representation Supplier for the North American market is to convert this interest into confirmed business for Scotland by pre-qualifying sales leads, proactively building/maintaining and expanding our comprehensive database and proactively pursuing sales prospects.

The Sales Representation Supplier for North America will focus efforts on the corporate meeting and incentive market. Additional project activity will be agreed with regard to reaching Associations.

General

- office
- dedicated telephone/fax/email
- secretarial and administration services
- site visits to Scotland by sales and marketing representatives
- 2 Marketing/Sales meetings per year

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- Sales Tools – request and monitor availability of relevant sales kits/tools from VisitScotland and Scottish Companies
- Establish, maintain and develop relationships with Scottish suppliers to ensure that Sales Representation Supplier are kept up to date with Scottish product
- Development of a planned communication and engagement calendar to assist in the re-launch of Scotland Business Events product during the recovery and post COVID – 19 phases
- Ongoing refinements to the above plan with future developments, inclusive of a crisis management plan for future use.

Enquiry Service

- Monthly report – update on all contacts and leads for each month
- Enquiries should be logged onto Scotland database and sent where possible directly to appropriate suppliers (copying in VisitScotland) or to VisitScotland for advice
- Enquiries and monthly report to be viewable on website (password protected)
- Follow-up programme for enquirers – one month after contact
- Management of the Cvent enquiry system

General Telemarketing

- Development of telephone guidelines and training of telemarketing staff
- Telephone calls to database of clients
- Results of all calls to be included in monthly reports

Sales Calls & Lead Acquisition

- A Calendar of Sales mission in key North American locations of which 3 will incorporate the wider reaching Scottish industry These can be attended by the sales Supplier when appropriate., All appointments to be arranged by the Sales Representation Supplier. We expect up 1 weeklong sales mission where partners are involved and shorter 2 to 3 day missions where it is just VisitScotland with c.3-5 appointments per day with a mixture of planners (excl. Association planners).
- Meetings and presentations as appropriate with Association Management Companies (AMCs), active internationally
- Profile and details of business to be included in the monthly reports

North American Exhibitions

- Representation at selected North American Exhibitions. Exact shows to be confirmed and agreed in advance, but will include Imex America
- Timely follow up to leads from all exhibitions attended by VisitScotland (in North America)
- Event report to be included in monthly report to VisitScotland (is to be no more than 2 sides of A4) and only necessary if no VisitScotland staff attended the exhibition

Events

- preparation and co-ordination of sales events in North America in conjunction with Business Events Director of Marketing – The Americas:

  1. Sales missions (Up to 3 per year) – organising appointments with buyers
  2. Meetings with AMCs (for Association Manager) as appropriate
  3. Scotland Week Event (first week in April annually) – evening function together with SDI (Scottish Development International)
  4. Possibility of other joint events which may or may not include VisitScotland contacts. If VS contacts to be invited, then the Sales Supplier would co-ordinate these to the VS database.

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5. Coordination of appointment creation in line with VisitScotland's agreed events schedule

- close development of leads established through events
- timely follow up to leads from all events attended by VisitScotland in North America
- Assistance with Scotland based events such as Industry Seminar to Scottish suppliers where a North American Seminar will be held (this tends to only happen every 2 years)
- Assistance with recruitment for Scottish Familiarisation trips and events, such as The UK Summit
- The recommendation of additional activity which will drive incremental MICE business to Scotland.
- A full plan of activity to embrace themed years. Themed years for subsequent years are available on request.

Familiarization trips

- Up to 2 incentive/corporate fam trips per year around
- Supplier responsible for procurement and pre-qualification of participants, pre-trip communication, and co-ordination/booking of flights for participants from North America to Scotland and back. VisitScotland will organise all land arrangements in Scotland for the groups.

Database Management

- The Sales Representation Supplier would be responsible for maintaining and updating information on the Scotland database
- This database of contacts with pre-qualified interest in Scotland would however be owned by VisitScotland and would be available to VisitScotland at any time for its own activities and easily transferable to for example excel
- The Database is to be cleaned at least once a year
- The Supplier will be tasked to use its initiative to find ways to grow the database with valuable corporate meeting and incentive contacts. Any new contacts generated as a result of Marketing/Sales Activity for Scotland should be the property of VisitScotland.
- Full compliance with current and future data protection requirements (GDPR)

Direct Marketing

VisitScotland will communicate relevant product information and news to key intermediaries and decision makers in the North American market on a quarterly basis via an e-newsletter. This will keep our contacts up to date on what's new and keep Scotland front of mind. The Sales Representation Supplier would be expected to provide VisitScotland with up-to-date email lists (in excel format) quarterly to then be used for VisitScotland e-newsletter mailing.

Market Intelligence

- Monthly reports should include anecdotal feedback from North American travel market – trends, business climate etc.
- Supplier is expected to forward on information on trends/research findings to VisitScotland for Corporate, Incentive & Association markets and present on any new findings/research at planning meetings that will take place twice a year

What are some of the key milestones for the activity plan?

April (annually)	Scotland Week
September / October (annually)	IMEX America
Time to be agreed	FAM trip(s)

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Various Times	North American based sales missions

NOTE: Due to the current circumstances relating to COVID-19 some of the above will change and should were possible be replaced with innovative platforms of engagement that can be suggested by the agency

With whom should a VS Sales Representation Supplier be allied?

Supplier to liaise with:

- Director of Marketing – The Americas, Marketing Manager, Associations and sectors on all association-related activity. The wider Business Events team will assist with day-to-day activity.
- Scottish business tourism partners including conference centres, hotels, venues and support services

Other organisations with a role to play in driving business tourism to Scotland e.g. Scottish Development International and appropriate North American airlines

For the Supplier



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ANNEX B

Policies and Standards

[NOTE - RELEVANT VS POLICIES AND STANDARDS TO BE INSERTED/INCORPORATED BY REFERENCE IN THIS ANNEX]

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