

## **CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES**

These Conditions shall apply to, and are deemed incorporated into, all Contracts for the procurement of Services by Scottish Natural Heritage ("SNH"). These Conditions may be varied only with the Written agreement of SNH, and shall prevail over any Terms or Conditions put forward at any time by the Contractor and any such Terms or Conditions put forward at any time by the Contractor shall not form any part of the Contract unless specifically agreed in Writing by SNH.

### **1. THE SERVICES**

- 1.1 The Contractor shall perform the Services in accordance with the Contract (including any performance standards and timescales referred to in the Contract); with due care, skill and ability; using suitably qualified and experienced personnel; in compliance with all applicable laws and regulations; in accordance with generally accepted industry standards, practices and principles applicable to the Contractor; in compliance with any SNH policies notified by SNH to the Contractor from time to time; and shall use all reasonable endeavours to promote the interests of SNH.
- 1.2 The Contractor shall provide SNH with such reports of its work on the Services at such intervals and in such form as SNH may from time to time require.
- 1.3 The Contractor shall ensure that it is available at all times on reasonable notice to provide such assistance or information as SNH may require.

### **2. CONTRACTOR'S PERSONNEL**

- 2.1 The Contractor shall make available for the purposes of the Services any individuals named in the Contract as key personnel. SNH may at any time by Written notice to the Contractor designate any person(s) concerned with the Services or any part of it as key personnel. The Contractor shall not without the prior Written approval of SNH make any changes in the key personnel referred to in this Condition 2.
- 2.2 The Contractor shall take the steps reasonably required by SNH to prevent unauthorised persons being admitted to the Premises. If SNH gives the Contractor notice that any person is not to be admitted to, or is to be removed from, the Premises or is not to become involved in, or is to be removed from, involvement in the Services, the Contractor shall ensure compliance with such notice.
- 2.3 The decision of SNH as to: whether any person is to be admitted to, or is to be removed from, the Premises or is not to become involved in, or is to be removed from involvement in the Services; or the designation or approval of key personnel; or whether the Contractor has furnished the information or taken the steps required of him by this Condition 2, shall be final and conclusive.
- 2.4 The Contractor shall bear the cost of any notice, instruction or decision of SNH under this Condition 2.

### **3. CHANGE TO CONTRACT REQUIREMENTS**

- 3.1 SNH may order any variation to any part of the Services that for any reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations and substitutions to the Services, and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 3.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 3.1 hereof shall be valid unless given or confirmed in Writing by SNH, provided that if for any reason SNH shall instruct such variation orally in the first instance, the Contractor shall comply with such oral instruction but it must be confirmed in Writing by SNH within 2 Working Days of the giving of such oral instruction, failing which the variation made by such oral instruction shall cease to have effect on the expiry of the said 2 Working Day period.
- 3.3 Where any variation of the Services made in accordance with Condition 3.1 and 3.2 has affected or may affect the costs incurred by the Contractor in providing the Services, the Contractor will notify SNH in Writing of the effect which it has had or may have on said costs and such notification shall be considered by SNH, taking all of the facts into account and SNH may authorise such alteration to the sums to be paid to the Contractor in accordance with the provisions of the Contract as are, in its opinion, appropriate and reasonable in the circumstances.

### **4. CONTRACTOR'S STATUS**

In carrying out the Services the Contractor shall be acting as principal and not as the agent of SNH. Accordingly, the Contractor shall not (and shall procure that its agents, employees, consultants and sub-contractors do not) say or do anything that might lead any other person to believe that the Contractor (or its agents, employees, consultants or sub-contractors) is acting as the agent of SNH, or is able to bind SNH in any way; and nothing in the Contract shall impose any liability on SNH in respect of any liability incurred by the Contractor (or its agents, employees, consultants or sub-contractors) to any other person, but this shall not be taken to exclude or limit any liability of SNH to the Contractor that may arise by virtue of either a breach of the Contract or any negligence on the part of SNH.

### **5. FEES AND EXPENSES**

- 5.1 Where applicable, SNH shall pay to the Contractor any fees and/or expenses at the rate and on the basis specified in the Contract. If so specified in the Contract, SNH shall make payment towards capital and other reimbursable costs incurred by the Contractor in the provision of the Services.
- 5.2 The Contractor shall be entitled to be reimbursed by SNH only for expenses reasonably and properly incurred by it in the performance of its duties hereunder, subject to production of such evidence thereof as SNH may reasonably require and subject to the prior Written authorisation of SNH to such expenses being incurred.

### **6. REIMBURSABLE COSTS AND CAPITAL ITEMS**

- 6.1 The level of reimbursable costs detailed in the Contract shall not be exceeded without the prior Written consent of SNH. The Contractor shall submit claims for payment in respect of reimbursable costs in line with the agreed repayment schedule, submitting evidence of actual expenditure and a certification of accuracy along with the invoices.
- 6.2 A capital item is any building installation, plant, equipment, vehicle or other item which is bought or fabricated at a cost of £5,000 or more (inclusive of VAT). The Contractor shall obtain at least 3 competitive quotations for any capital items, the lowest to be accepted unless otherwise agreed in Writing by SNH.

- 6.3 Capital items shall be the property of SNH and shall be safeguarded and maintained adequately by the Contractor. Any damage to such items during the period of the Contract, other than fair wear and tear, shall be made good at the Contractor's own expense.
- 6.4 On termination of the Contract, SNH reserves the right to take possession of capital items but may afford the Contractor the option to purchase all or any capital items at a valuation in line with SNH's own asset valuation procedures.
- 6.5 Any capital items supplied by SNH on loan shall similarly be recorded, safeguarded and maintained. On termination of the Contract, all such loaned items shall be returned to SNH or disposed of in accordance with SNH's Written instructions.

## **7. TIME OF PERFORMANCE**

The Contractor shall begin performing the Services on the date(s) stated in the Contract, or as otherwise agreed in Writing between SNH and the Contractor, and shall complete the Services by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). Time of performance shall be of the essence of the Contract, unless otherwise agreed in Writing by SNH and failure to deliver within the time specified shall enable SNH (at its option) to release itself from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract therefor, in either case without prejudice to its other rights and remedies. SNH may by Written notice require the Contractor to execute the Services in such order as SNH may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as SNH may from to time request. Any unforeseen delays in performance of the Services should, once known of, be notified to SNH in Writing, as soon as possible.

## **8. PAYMENT**

- 8.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices for work completed to the satisfaction of SNH and in respect of any reimbursable costs.
- 8.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 8.3 Time of payment shall not be of the essence of the Contract.

## **9. RECOVERY OF SUMS DUE**

- 9.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum that the Contractor is liable to pay to SNH in respect of any breach of the Contract), that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other agreement or contract with SNH.
- 9.2 The Contractor shall make any payments due to SNH without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by SNH to the Contractor.

## **10. AUDIT**

- 10.1 The Contractor shall allow (at the Contractor's expense) SNH and any auditors of or other advisers to SNH to access any of the Contractor's premises, personnel and relevant records as may reasonably be required in order to verify that the Services are being provided, and all obligations of the Contractor are being performed, in accordance with the Contract.
- 10.2 The Contractor shall provide SNH (and its auditors and/or other advisers) with all reasonable co-operation, access and assistance in relation to any audit undertaken pursuant to the terms of Condition 10.1.
- 10.3 SNH shall provide at least 5 Working Days' notice of its intention to conduct an audit in terms of Condition 10.1 unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.

## **11. INTELLECTUAL PROPERTY**

- 11.1 Except in respect of designs furnished by SNH to the Contractor, the Contractor warrants and undertakes that nothing done or produced by the Contractor in the performance of the Services shall infringe any Intellectual Property Rights (IPR) of any third party and the Contractor shall indemnify SNH in respect of all actions, claims, demands, costs and expenses which SNH may suffer or incur as a result of or in connection with any breach of this Condition 11.
- 11.2 All rights (including IPR) in any reports, documents, data, results, specifications, instructions, plans, drawings, inventions, photographs (for avoidance of doubt including negatives and digital images), models or designs whether in writing or on magnetic or other media:
- (a) furnished to or made available to the Contractor by SNH, shall remain vested in SNH;
  - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract, are hereby (and in the case of future IPR shall be) assigned to and shall vest in SNH absolutely, and, without prejudice to this Condition 11, the Contractor shall not and shall procure that its agents, employees, consultants and subcontractors shall not (except to the extent necessary for the implementation of the Contract) without the prior Written consent of SNH, use or disclose any such reports, documents, data, results, specifications, instructions, plans, drawings, inventions, models, designs or other material as aforesaid, or any other information (whether or not relevant to the Contract) which the Contractor may obtain by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision.
- 11.3 All data collected or generated in the course of the provision of the Services shall be routinely recorded and/or stored on such media as SNH may reasonably request and promptly delivered to SNH on request. Such data shall belong to SNH exclusively and the Contractor shall have no rights of use or publication in respect thereof save as expressly approved in Writing by SNH.
- 11.4 Without prejudice to the generality of the foregoing provisions of this Condition 11, the Contractor and its agents, employees, consultants and sub-contractors shall not use work carried out under the Contract as a basis for a thesis for a higher degree without the prior Written approval of SNH, such approval not to be unreasonably withheld.

## **12. CONFIDENTIALITY, DATA PROTECTION AND FREEDOM OF INFORMATION**

- 12.1 The Contractor shall keep secret and not disclose, and shall procure that its agents, employees, consultants and sub-contractors keep secret and do not disclose, any information of a confidential nature obtained by it by reason of the Contract, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to SNH or the Contract in any advertisement without SNH's prior Written consent. The Contractor shall not disclose any Environmentally Sensitive Information which the Contractor may receive or have access to by reason of the Contract, irrespective of whether this Environmentally Sensitive Information is in the public domain or not.
- 12.2 Without prejudice to Condition 12.1, SNH may, at its sole discretion, consent to the dissemination of appropriate material by the Contractor through the publication of reports, papers, lectures, contributions, seminars or conferences, open days, exhibitions and other means. SNH's prior Written consent must be obtained to such dissemination at least 6 weeks in advance of the proposed date of presentation/publication and SNH may refuse consent, or attach such conditions to its consent as it sees fit, at its sole discretion. Any agreed dissemination shall contain an acknowledgement that the Services were carried out under contract to SNH and is made available with SNH's agreement.
- 12.3 The Contractor acknowledges and agrees:
- (a) that references may be sought by SNH from banks, existing or past clients, or other referees proposed by the Contractor; and
  - (b) that SNH must comply with obligations of disclosure relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Union or elsewhere in accordance with EU Directives or UK or Scottish Government policy on the disclosure of information regarding Government contracts: this disclosure may include the number of tenders received, the identity of the successful tenderer, the winning contract price, the specification of goods or services to be supplied, terms and conditions of contract, quality and performance standards and subsequent performance against those quality and performance standards.
- 12.4 The Contractor acknowledges that SNH is obliged to disclose information under Freedom of Information legislation, Directives and Regulations, including FOISA and the EIRs and codes and policies relative thereto. The Contractor shall assist and co-operate with SNH (at the Contractor's expense) to enable SNH to comply with these information disclosure requirements. SNH shall be responsible for determining at its absolute discretion whether any information: is exempt from disclosure in accordance with the provisions of the FOISA or the EIRs; and/or is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by SNH. Where reasonably possible and practical when SNH receives a Request for Information which includes information which the Contractor considers confidential, it shall give the Contractor notice thereof, but the Contractor acknowledges that SNH may be obliged under FOISA or the EIRs to disclose such information either without consulting with the Contractor, or following consultation with the Contractor and having taken its views into account.
- 12.5 The Contractor shall (and shall procure that its agents, employees, consultants and sub-contractors involved in the provision of the Services shall) comply with any notification requirements under the Data Protection Legislation and duly observe all its obligations under the Data Protection Legislation which arise in connection with this Contract.
- 12.6 The Contractor shall provide SNH with such information as SNH may reasonably require to satisfy itself that the Contractor is complying with its obligations under the Data Protection Legislation; promptly notify SNH of any breach of its obligations under the Data Protection Legislation; and ensure it does not knowingly or negligently do or omit to do anything which places SNH in breach of SNH's obligations under the Data Protection Legislation.

### 13. INDEMNITY AND INSURANCE

- 13.1 Without prejudice to any rights or remedies of SNH the Contractor shall indemnify SNH against all actions, claims, damages, demands, losses (direct and indirect), charges, costs and expenses which SNH may suffer or incur as a result of the breach by the Contractor of its obligations under the Contract, and in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Contractor.
- 13.2 The indemnity contained in Condition 13.1 shall not apply to the extent that the loss, damage or personal injury is caused by the negligent or wilful act or omission of SNH (except where the loss, damage or personal injury – including death – is suffered by an employee of the Contractor and in such a case, the indemnity in Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of SNH).
- 13.3 The Contractor shall have in force and shall require any sub-contractor to have in force:
- (a) employer's liability insurance in accordance with any legal requirements for the time being in force;
  - (b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than **£2 million** for any one incident and unlimited in the aggregate, unless otherwise agreed by SNH in Writing; and
  - (c) such other insurance as is specified in the Contract.
- 13.4 The policy or policies of insurance referred to in Condition 13.3 shall be shown to SNH whenever requested, together with satisfactory evidence of payment of premiums.
- 13.5 These Conditions constitute a contract for the provision of Services and not a contract of employment, and accordingly the Contractor shall be fully responsible for and shall indemnify SNH for and in respect of:
- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Contract, where the recovery is not prohibited by law. The Contractor shall further indemnify SNH against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by SNH in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
  - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor or any employee of the Contractor against SNH arising out of or in connection with the Contract.
- 13.6 SNH may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Contractor.

### 14. FORCE MAJEURE

14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it promptly notifies the other of the Force Majeure event and its expected duration; and uses best endeavours to minimise the effects of that event.

14.2 If, due to Force Majeure, a party is or will be unable to perform a material obligation; or is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days or for a total of more than 60 days in any 365-day period, the other party may, within 30 days, terminate the Contract on immediate notice.

## **15. TERMINATION**

15.1 SNH may, without prejudice to any other right or remedy which it may have, terminate the Contract with immediate effect by Written notice to the Contractor in the event that:

- (a) the Contractor commits (knowingly or otherwise) a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or if capable of remedy is not remedied within 15 days of Written notice to do so; or
- (b) if the Contractor is a limited company: it becomes unable to pay its debts or is otherwise insolvent; or a liquidator, administrator, administrative receiver, manager, or receiver is appointed to it, or over all or any part of its property and undertaking of it, or it passes a resolution or a Court makes an order that it be wound up; or
- (c) if the Contractor is an individual: if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984; or a petition is presented for bankruptcy or the sequestration of the estate of the Contractor; or he is apparently insolvent or makes any arrangement with or for the benefit of creditors; or makes any conveyance or assignation or composition for the benefit of creditors; or if a trustee is appointed to manage his estate or affairs;
- (d) if the Contractor is a partnership or firm or a number of persons acting in whatever capacity, any of the events referred to in Condition 15.1(b) or (c) occur in respect of the partnership or firm or any such person, or a petition is presented that the Contractor be wound up as an unlimited company; or
- (e) the Contractor takes or suffers any action similar to any of the above in any jurisdiction; or
- (f) there is a material change in the management, ownership or control of the Contractor; or
- (g) the Contractor suspends trading; ceases to carry out business, or threatens to do either.

15.2 In addition to its rights of termination under Condition 15.1, SNH shall be entitled to terminate the Contract by giving to the Contractor not less than 30 days' notice to that effect.

15.3 Upon termination of the Contract, the Contractor shall prepare and deliver to SNH a detailed report of the work done by it on, and results of, the Services, and, without prejudice to any other of its rights, SNH may itself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Contractor) all materials, plant and equipment on the Premises belonging to the Contractor. If termination is pursuant to Condition 15.1, SNH shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by SNH (including SNH's own costs). If the total cost to SNH exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by SNH from the Contractor.

15.4 Termination under this Condition 15 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to either party and shall not affect the continued operation of Conditions which expressly or by implication are to survive termination, including Conditions 11 and 12.

15.5 Upon termination for any reason, the Contractor will forthwith return any material of SNH then in its possession or control including any documents, papers, materials or information supplied by or obtained from SNH in connection with the Contract, or extracted from such documents, papers, materials or information; if it fails to do so, SNH may enter into any premises owned by or under the control of the Contractor and take possession of them.

15.6 Without prejudice to the generality of the foregoing, the Contractor may retain copies of any documents, papers, materials or information which shall be required by him to prepare any report required under Condition 15.3. Forthwith upon submission of the report to SNH, the Contractor shall return any documents, papers, materials or information which he may have retained in terms of this Condition 15.6.

## **16. CORRUPT GIFTS OR PAYMENTS**

The Contractor shall not offer or give, or agree to give, to any employee or representative of SNH any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of any contract with SNH or for showing or refraining from showing favour or disfavour to any person in relation to any contract. The attention of the Contractor is drawn to the criminal offences created by the Bribery Act 2010.

## **17. EQUALITY AND DIVERSITY**

17.1 The Contractor shall comply with the Human Rights Act 1998 and the Equality Act 2010, and so far as within its powers, shall ensure that SNH complies with the Public Sector Equality Duty.

17.2 The Contractor shall also take all reasonable steps to secure the observance of this Condition, and compliance with the Equality Act 2010 and the Human Rights Act 1998, by all agents, employees, consultants, sub-contractors and suppliers engaged by the Contractor in the execution of the Contract.

## **18. HEALTH AND SAFETY**

The Contractor shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation and any requirements imposed by a local or other regulatory authority in connection with the performance of Services of the type supplied to SNH, whether specifically or generally.

## **19. ASSIGNATION AND SUB-CONTRACTING**

- 19.1 The Contractor shall not assign or sub-contract any portion of the Contract without the prior Written consent of SNH. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract.
- 19.2 Where the Contractor enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such sub-contract which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice.

## 20. NOTICES

Any notice given under or pursuant to the Contract may be sent by pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery, to the party's address specified in the Contract or such other address as is notified to the other party from time to time and shall be deemed to be delivered at the time recorded by the delivery service or if not between 9 a.m. and 5 p.m. on a Working Day, at 9 a.m. on the next Working Day.

## 21. GOVERNING LAW

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law and the parties hereby irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any such dispute or claim.

## 22. CONSTRUCTION / WORKS CONTRACTS

- 22.1 The Contractor shall ensure that on-site staff are accredited under a competence scheme appropriate for the skills necessary to perform the Contract including, but not limited to, the Construction Skills Certification Scheme (CSCS) or Scottish Construction Operative Registration Executive (SCORE).
- 22.2 Where the Contractor enters into a sub-contract for the purpose of performing the Contract, the Contractor shall cause a term to be included in such sub-contract:
- (a) which requires the sub-contractor to ensure that on-site staff are accredited under a competence scheme appropriate for the skills necessary to perform the Contract, such as those named in 22.1 above and;
- (b) in the same terms as that set out in this Clause 22 (including, for the avoidance of doubt, this Clause 22.2) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor, as the case may be.
- 22.3 In this Clause 22 "on-site" means all persons engaged by the Contractor to undertake any works, or part thereof, on the site.

## 23. DEFINITIONS

- 23.1 In these Conditions:

**'Contract'** means the contract between SNH and the Contractor consisting of (in decreasing order of precedence) the Purchase Order and/or Contract Award Letter (and any documents explicitly referred to therein), the Statement of Requirements/Specification (if any), the Contractor's Tender Submission (if any) and these Conditions;

**'Contractor'** means the person, firm or company with whom the Contract is entered into, and where an obligation requires an action or obligation of an individual on behalf of a Contractor which is body corporate, reference to Contractor shall include the individual employee or officer of the Contractor whom SNH has approved for the purpose of performing the relevant act or obligation;

**'DPA'** means the Data Protection Act 1998;

**'Data Processor'** shall have the same meaning as set out in the DPA;

**'Data Protection Legislation'** means the DPA, the EU Data Protection Directive 95/46/EC, 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;

**'EIRs'** means the Environmental Information (Scotland) Regulations 2004;

**'Electronic Form'** means, in relation to the sending or supply of a document or information, the sending or supply by electronic means (such as by e-mail or facsimile) or by any other means while in an electronic form;

**'Environmentally Sensitive Information'** means data and other information on wildlife and their habitat and environment, the disclosure of which could harm, put at risk or otherwise prejudice wildlife and/or their habitat and environment and so is capable of being excluded from disclosure under the EIRs;

**'FOISA'** means the Freedom of Information (Scotland) Act 2002, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**'Force Majeure'** means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract, including an Act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest;

**'IPR'** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**'Premises'** means the location(s) where the Services are to be performed, as may be specified in the Contract;

**'Personal Data'** shall have the same meaning as set out in the DPA;

**'Purchase Order'** means a purchase order and any other document setting out SNH's requirements for the Contract;

**'Request for Information'** means a request for information or an apparent request under FOISA or the EIRs;

**'Services'** means the services to be provided as specified in the Contract;

**'Working Day'** means a day other than a Saturday, Sunday or Public Holiday where banks in Edinburgh are generally open for non-automated business; and

**'Writing' and 'Written'** shall incorporate the use of electronic forms of writing.

23.2 In these Conditions, a reference to statute is to it as amended, extended or re-enacted from time to time; reference to a statute or statutory provision shall include any subordinate legislation made from time to time thereunder; each gender includes the others; the singular includes the plural and vice versa; and general words are not limited by example..