



SRUC and SRUC Innovation Limited

thereunder), and the Privacy and Electronic Communications Regulations 2003 as amended.

Deliverables: any deliverables and results, provided by the Service Provider pursuant to the Services, as specified in the Commercial Terms.

Estimate: has the meaning given in clause 9.2.

Force Majeure Event: acts, events, omissions or accidents beyond a party's reasonable control, including strikes, lock-

- 4.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Client and/or the New Supplier.
- 4.4 To the extent lawfully permitted, the Service Provider shall, or shall procure that any sub-contractor of the Service Provider shall, not later than six months prior to the expiry of this Contract (or, if earlier, within 7 days of notice being given of termination of this Contract) provide the Client, or at the direction of the Client, any New Supplier, with the following details:
- 4.4.1 a list of all employees, staff, other workers, agents and consultants of the Service Provider and of any sub-contractor of the Service Provider who are engaged in the provision of the Services ("**Potential Returning Employees**");
 - 4.4.2 job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;
 - 4.4.3 terms and conditions of employment of the Potential Returning Employees, including any particulars that the Service Provider (or where relevant any sub-contractor of the Service Provider) is obliged to give under section 1 of the Employment Rights Act 1996;
 - 4.4.4 any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
 - 4.4.5 any claims, current or which the Service Provider (or where relevant any

- 4.5.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed as Potential Returning Employees;
 - 4.5.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Potential Returning Employees save for fulfilling assignments and projects previously scheduled and agreed with the Client;
 - 4.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed as Potential Returning Employees; and
 - 4.5.5 replace any of the personnel listed as Potential Returning Employees or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the list of Potential Returning Employees.
- 4.6 The Service Provider shall indemnify the Client (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Client and/or a New Supplier in connection with or as a result of:
- 4.6.1 any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, negligence, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Service Provider (or where relevant any sub-contractor of the Service Provider) or any other matter, event or circumstance occurring on or before the Subsequent Transfer Date;
 - 4.6.2 all and any claims in respect of all emoluments and outgoings in relation to the Returning Employees (including without limitation all wages, bonuses, PAYE, National Insurance, etc.)

- 5.1 The Service Provider shall:
- 5.1.1 supply the Services and the Deliverables to the Client in accordance with Applicable Laws and the Contract in all material respects;
 - 5.1.2 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Service Provider's industry, profession or trade;
 - 5.1.3 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - 5.1.4 co-operate with the Client in all matters relating to the Services, and comply with the Client's instructions;
 - 5.1.5 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises from time to time (where the Service Provider is present on the Client's premises);
 - 5.1.6 before the date on which the Services are to start, obtain and at all times maintain during the term of this Contract, all necessary licences and consents required in respect to the Services and comply with all Applicable Laws;
 - 5.1.7 not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
 - 5.1.8 hold all Client Materials and Client Data in safe custody at its own risk and maintain the Client Materials in good condition until returned to the Client, and not dispose of or use the Client Materials or Client Data other than in accordance with the Client's written instructions or authorisations; and
 - 5.1.9 notify the Client in writing immediately upon the occurrence of a change of control of the Service Provider (where the Service Provider is a company).

5.2

employees, agents, representatives, contractors, including sub-contractors, and Substitutes as if they were the acts and omissions of the Service Provider itself.

5.4 Nothing in this Contract shall prevent the Service Provider from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of the Contract provided that:

5.4.1 such activity does not cause a breach of any of the Service Provider's obligations under this Contract; and

5.4.2 the Service Provider shall not engage in any such activity which is directly in contradiction to or conflicts with the Services without the prior written consent of the Client.

6 Individual Service Provider

6.1

support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Deliverables or other materials, infringes the Service Provider's moral rights.

10.7 The Service Provider shall, promptly at the Client's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Client may from time to time require for the purpose of securing for the Client all right, title and interest in and to the Intellectual Property Rights assigned to the Client in accordance with clause 10.4.

10.8 The Service Provider:

10.8.1 warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Client Materials) by the Client or its customers shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

10.8.2 shall indemnify the Client in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or

Service Provider is required by Applicable Laws to otherwise process that Client Personal Data. Where the Service Provider is relying on Applicable Laws as the basis for processing Client Personal Data, the Service Provider shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Service Provider from so notifying the Client on important grounds of public interest. The Service Provider shall immediately inform the Client if, in the opinion of the Service Provider, the instructions of the Client infringe the Data Protection Laws;

12.4.1.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful

13.2.5 loss of or damage to goodwill; or

13.2.6 any indirect or consequential loss.

13.3 Subject to clause 13.1, the Client's total aggregate liability to the Service Provider, whether in contract, negligence, breach of statutory duty, or otherwise, arising under

15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

16 Consequences of termination

16.1 On termination or expiry of the Contract the Service Provider shall immediately deliver to the Client all Deliverables whether or not then complete, and return all of the Client Materials. If the Service Provider fails to do so, then the Client may enter the Service Provider's premises and take possession of them. Until they have been delivered or returned, the Service Provider shall be solely responsible for the safe keeping of all Deliverables and Client Materials in its possession and will not use them for any purpose not connected with this Contract.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

17 General

17.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event, provided that:

17.1.1 the other party is notified of such an event and its expected duration; and

17.1.2 it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for three months or more, the party not affected may terminate the Contract by giving not less than 30 days' written notice to the other party.

17.2 **No Partnership or agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.3 **Assignment and other dealings.**

17.3.1 The Client may at any time assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.3.2 The Service Provider shall not assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Client.

17.4 **Confidentiality.**

17.4.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years, unless otherwise stated in the Commercial Terms, after termination of the Contract,

Confidential Information concerning the business, affairs, company's or suppliers of the other party, except as permitted by clause 17.4.2.

17.4.2 Each party may disclose the other party's Confidential Information:

17.4.2.1 to its employees, officers, representatives, subcontractors, Substitutes or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors, Substitutes or advisers to whom it discloses the other party's confidential information comply with this clause 17.4; and

17.4.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.4.3

of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.8 Notices.

17.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

17.8.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

17.8.1.2 Sent by email to the email addresses stated in the Commercial Terms; or

17.8.1.3 as otherwise specified in the Commercial Terms.

17.8.2 Any notice or other communication shall be deemed to have been received:

17.8.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

17.8.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

17.8.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, at 09.00am on the next Business Day

17.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17.9 Counterparts

17.9.1 This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts, all as permitted by the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.

17.9.2 Transmission of an executed counterpart of this Contract (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Contract. If either method of delivery is adopted, without prejudice to the validity of the Contract thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

17.9.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

17.10

17.11 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.