

NATIONAL GALLERIES OF SCOTLAND
NGS
CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS (AND ANY RELATED SERVICES) AND/OR PURCHASE OF SERVICES

National Galleries of Scotland is a charity registered in Scotland (No. SC003728).

These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1.0 CONDITIONS

In these Conditions:

“Board” means The Board of Trustees for the National Galleries of Scotland (Scottish Charity Number SC003728) established under the National Galleries of Scotland Act 1906 (as amended by the National Heritage (Scotland) Act 1985) having their Administrative Office at The Scottish National Gallery of Modern Art Two, Seventy-Three Belford Road, Edinburgh, EH4 3DS, United Kingdom (“the Purchaser”);

“Contract” means the contract between the Purchaser and Supplier consisting of the Supplier's tender and the Purchaser's acceptance thereof (or the Supplier's acceptance of the Purchaser's order for the goods, as the case may be) together with any other documents referred to in them, including any Contract Award Letter, Purchase Order, Specification, these Conditions and any Schedules annexed but expressly excluding any Supplier terms of business or terms and conditions;

“Contract Price” means the sum to be paid by the Purchaser to the Supplier calculated in accordance with the prices and/or rates detailed under the Contract;

“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Requests” have the meanings given in the Data Protection Laws;

“Data Protection Laws” means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR;

“Goods” means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract;

“Good Industry Practice” means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances;

“Information Commissioner” means the Commissioner as set out in Part 5 of the Data Protection Act 2018;

“Intellectual Property Rights” means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials

or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed in connection with this Contract by or on behalf of the Supplier;

“NGS Trading” means the trading company called NGS Trading Limited (company number SC312797) which the Board has granted certain rights for the purposes of carrying on certain trading activities;

“NGS” means whichever of the Board or NGS Trading is described on the Purchase Order in question as the contracting party;

“Premises” means the location where the services are to be performed as specified in the Contract or Purchase Order;

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

“Purchaser” means whichever of the Board or NGS Trading is described on the Purchase Order in question as the contracting party;

“Purchase Order” means the document setting out the Purchaser's requirements for the Contract;

“Schedule” means a schedule annexed to and forming part of these conditions;

“Services” means the services provided as specified in the contract including (but not restricted to) the supply, installation or maintenance of goods and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder and in connection with any such services;

“Supervisory Authority” has the meaning given in the Data Protection Laws;

“Supplier” means the person, firm or company to whom the Contract is issued;

“Third country” means a country or territory outside the United Kingdom;

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; and

“Written notice” includes e-mail and letter but excludes faxes.

2.0 THE GOODS

- 2.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.
- 2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.

- 2.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

3.0 THE PRICE

- 3.1 The price of the Goods and any related Services shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed by the Purchaser in writing before the commencement of performance of the Contract.

3.2

3.2.1 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Contract. Payment shall be due 30 days after receipt of the Goods or the correct invoice therefor, whichever is the later.

3.2.2 In this Condition 3, 'invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

- 3.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

- 3.4 Notwithstanding Condition 29 (Assignment and sub-contracting) of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises its right of recovery under Condition 28 (Recovery of Sums Due) of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

4.0 TIME OF PERFORMANCE

- 4.1 The Supplier shall begin performing the Services on the date stated in the Purchase Order and shall complete the Services by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

5.0 CHANGE TO CONTRACT REQUIREMENTS- VARIATIONS, SUSPENSION AND POSTPONEMENT

- 5.1 The Purchaser may from time to time order any variation to any quantity or specification of the Goods or to any part of the Services that for any other reason shall in the Purchaser's opinion be desirable on giving the Supplier a minimum of 7 days' notice. Any such variations may include (but shall not be restricted to) additions, omissions, reductions, alterations, substitutions to the Goods or Services and changes in quality, quantity, form, character, kind, timing, method or sequence of the delivery of Goods or provision of Services.

- 5.2 Save as otherwise provided herein, no variation of the specification of Goods or of the Services as provided for in Condition 5.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period. The Supplier shall, when carrying out such variations, be bound by the Contract.
- 5.3 If the Supplier considers that any directions given under Conditions 5.1 and 5.2 above vary the Services and/or will then or later justify a change to the Contract Price, the Supplier shall promptly notify the Purchaser giving details thereof.
- 5.4 Any adjustment to the Contract Price shall be determined in accordance with the rates/prices specified in the Contract (if applicable). If the Contract shall not contain such rates/prices, then reasonable rates/prices shall be agreed by the parties and the Supplier shall provide whatever supporting evidence the Purchaser may reasonably require, to enable such reasonable rates/prices to be determined.
- 5.5 If: -
- 5.5.1 Following receipt of notice under Conditions 5.1 and 5.2 the Purchaser does not agree that its directions vary the Services or will reduce or increase the Contract Price, or
- 5.5.2 Reasonable rates/prices are not agreed between Purchaser and the Supplier under Condition 5.4,
- The Purchaser shall determine the Scope and rates and/or prices and notify the Supplier in writing of its reasons. Notwithstanding such disagreement the Supplier shall, unless otherwise notified by the Purchaser, carry out such variations.
- 5.6 The Supplier shall on receipt of notice from the Purchaser suspend with immediate effect the whole of the Services or any part thereof and shall take all measures necessary to protect and secure the same. Following such suspension any additional costs shall be notified to the Purchaser by the Supplier together with substantiation thereof to the satisfaction of the Purchaser. If, in the opinion of the Purchaser, such costs are reasonably and necessarily incurred by the Supplier, such suspension shall be treated as a variation in accordance with Condition 5. The Supplier shall use its best endeavours to mitigate the financial and other effects of such suspension.
- 5.7 Notwithstanding Condition 5.6, no additional costs shall be payable by the Purchaser if the suspension arises as a result of any act, omission, default or negligence on the part of the Supplier.
- 5.8 The Purchaser may at any time by written notice to the Supplier authorise resumption of all or any part of the suspended Services and the Supplier shall, on being given such notice, promptly resume performance of the Services or part thereof in accordance with the terms of such notice.

6.0 INSPECTION OF PREMISES AND NATURE OR SERVICES

- 6.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.

- 6.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.
- 6.3 Unless otherwise specified, the Supplier shall provide all plant, tools, material, labour, haulage and any other things necessary to complete the Contract.

7.0 SECURITY AND ACCESS TO THE PURCHASER'S PREMISES

- 7.1 Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 7.2 The Supplier must comply with the Purchaser's policies concerning Baseline Personnel Security Standard checks and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.
- 7.3 The Supplier must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.
- 7.4 At the Purchaser's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 7.5 The Supplier must ensure that any individual Supplier Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Supplier acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 7.6 In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Supplier Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 7.7 The Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Supplier Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 7.8 The Purchaser must provide advice and assistance acting reasonably to the Supplier to facilitate the Supplier's compliance with this Condition.
- 7.9 All decisions of the Purchaser under this Condition are final and conclusive.
- 7.10 Breach of this Condition by the Supplier is a material breach for the purposes of Condition 29.2 (Termination).
- 7.11 If cyber security requirements apply to this Contract:
- 7.11.1 then these are set out in a Schedule Part 2 (Cyber Security Requirements) to this Contract; and

7.11.2 in that case the Supplier shall comply with the provisions of Schedule Part 2 (Cyber Security Requirements) and this Condition 7.11 shall not apply where the Contract does not include a Schedule Part 2 (Cyber Security Requirements).

In this Condition 7 the following terms have the meanings given to them below:

“Baseline Personnel Security Standard” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

“Supplier Representatives” means all persons engaged by the Supplier in the performance of its obligations under the Contract including:

- ✦ its employees, workers, volunteers, interns and invitees (including persons employed by a third party but working for and under the control of the Supplier);
- ✦ its agents, suppliers and carriers; and
- ✦ any sub-contractors of the Supplier (whether approved under Condition 29 (Assignment and sub-contracting) or otherwise).

8.0 SUPPLIER'S STATUS

8.1 In carrying out any Services associated with the Contract the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

- (a) the Supplier shall not (and shall procure that his agents, servants, consultants, contractors, sub-contractors and invitees do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and
- (b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff agents, consultants, contractors, sub-contractors, volunteers or invitees.

9.0 SUPPLIER'S PERSONNEL

9.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier 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 performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any security pass issued to the person removed is surrendered. The giving of such notice by the Purchaser to the Supplier as aforesaid shall not entitle the Supplier to delay, suspend, terminate or withhold the performance of any of its obligation in terms of the Contract and it shall remain bound to timeously implement its obligations in full, whether or not it complies with the terms of the said notice or otherwise.

9.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them specifying the capacities in which they are so concerned; and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.

9.3 The decision of the Purchaser shall be final and conclusive 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 performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.

9.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

10.0 DELIVERY

10.1 The Supplier shall make no delivery of materials, plant or other things, nor commence any work on the Premises without obtaining the Purchaser's prior consent. The Supplier shall make delivery at a time agreed between the Supplier and Purchaser.

10.2 The Goods shall be delivered to the place named in the Contract. Any access to premises and any labour and equipment that may be provided by the Board and NGS Trading in connection with delivery shall be provided without acceptance by the Board and NGS Trading of any liability whatsoever and the Supplier shall indemnify the Board and NGS Trading, or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Purchaser of in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Board and NGS Trading or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading may suffer or incur as a result of or in connection with any damage (including but not limited to any damage to any properties owned by or leased to the Board, and damage to art works owned by the Board and/or any damage to art works lent to the Board from third parties) or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of the Supplier's agents, servants, consultants, sub-contractors or invitees. The provisions of this Condition 10.2 shall apply during the continuance of this Contract and after its termination howsoever arising.

10.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at the Purchaser's option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Purchaser's other rights and remedies.

11.0 ACCESS

11.1 The Supplier shall make no delivery of Goods, materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.

11.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with the reasonable requirements of the Purchaser's Head of Security.

11.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.

11.4 The Purchaser shall have the power at any time during the progress of the Services to order in writing:

- (a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract;
- (b) the substitution of proper and suitable materials;
- (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship, is not in the opinion of the Purchaser in accordance with the Contract.

The Supplier shall comply forthwith with the terms of any such order.

- 11.5 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

12.0 PROPERTY AND RISK

- 12.1 Without prejudice to the rights, remedies and obligations of the parties under this Contract (including the Purchaser's rights and remedies under Condition 14 (Inspection, etc) the property of the Goods or any part thereof shall pass to the Purchaser on delivery or on payment by the Purchaser (whichever is earlier) but the risk shall not pass to the Purchaser until the Goods have been delivered in accordance with the Contract Manager's Instructions.
- 12.2 Where the property in any of the Goods passes to the Purchaser before delivery, such Goods shall be clearly easily identifiable against the purchase order and invoice under which they were ordered/paid and marked as "the property of National Galleries of Scotland" or "the property of NGS Trading Co" (whichever is applicable) or in such manner as the Purchaser may require.
- 12.3 Where the property in any of the Goods or any part thereof passes to the Purchaser before delivery, the Purchaser has a right of entry to remove the Goods from the Supplier's premises on giving the Supplier 24 hours-notice of its intention to do so.
- 12.4 Where the Supplier purchases any Goods from any third parties to perform any part of this Contract, the Supplier shall ensure that the contracts it has with the third parties include identical provision to Conditions 12.1, 12.2 and 12.3 for the benefit the Supplier.

13.0 DAMAGE IN TRANSIT

- 13.1 On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:
- (a) in the case of damage to such Goods in transit the Purchaser shall within thirty days of delivery give notice to the Supplier that the Goods have been damaged;
 - (b) in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within 10 days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

14.0 INSPECTION, REJECTION AND GUARANTEE

- 14.1 The Supplier shall permit the Purchaser or the Purchaser's authorised representatives to make any inspections or tests of the Goods the Purchaser may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.
- 14.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:
- (a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or
 - (b) to obtain a refund from the Supplier in respect of the Goods concerned.
- 14.3 The guarantee period applicable to the Goods shall be 12 months from the putting into service or 18 months from delivery of the Goods, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.
- 14.4 Any Goods rejected or returned by the Purchaser as described in paragraphs 14.2 or 14.3 shall be returned to the Supplier at the Supplier's risk and expense.

15.0 LABELLING AND PACKAGING

- 15.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the number of the Purchase Order (if any), the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Board and NGS Trading, or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading against all actions, suits, claims, demands, losses, charges, costs and expenses which the Board and NGS Trading or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading may suffer or incur as a result of or in connection with any breach of this Condition.
- 15.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's Premises of empty packages returned by the Purchaser unless the Supplier shall within ten days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.

- 15.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

16.0 FREE-ISSUE MATERIALS

- 16.1 Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's servants, agents' contractors, sub-contractors, consultants or invitees shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

17.0 AUDIT

- 17.1 The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.
- 17.2 The provisions of this Clause 17 shall apply during the continuance of this Contract and after its termination howsoever arising.

18.0 CORRUPT GIFTS OR PAYMENTS

- 18.1 The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser 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 this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.
- 18.2 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

19.0 INTELLECTUAL PROPERTY RIGHTS

- 19.1 All Intellectual Property Rights in any material, including (but not limited to) reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by the Supplier on behalf of the Purchaser for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract are hereby assigned to and shall vest in the Purchaser absolutely.
- 19.2 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.

19.3 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. The Supplier shall indemnify the Board and NGS Trading or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading against all actions, claims, demands, losses, charges, costs and expenses which the Board and NGS Trading or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading may suffer or incur as a result of or in connection with any breach of this Condition 19.3.

19.4 The provisions of this Condition 19 shall apply during the continuance of this Contract and after its termination howsoever arising.

20.0 HEALTH AND SAFETY

20.1 The Supplier represents and warrants to the Purchaser that the Supplier is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Supplier has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods will be safe and without risk to health.

20.2 The Supplier 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 the 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 (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally.

20.3 With prejudice to the generality of Condition 20.1 hereof, the Supplier shall indemnify the Board and NGS Trading and any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the board and NGS Trading against all actions, suits, claims, demands, losses, charges, costs and expenses which the Board and NGS Trading or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading may suffer or incur as a result of or in connection with any breach of paragraphs 20.1 or 20.2 hereof.

20.4 The provisions of this Condition 20 shall apply during the continuance of this Contract and after its termination howsoever arising.

21.0 INDEMNITY, INSURANCE AND LIMITATION OF LIABILITY

21.1 Without prejudice to any rights or remedies of the Board and NGS Trading (including the Purchaser's rights and remedies under Condition 13 (Inspection etc.) hereof) the Supplier shall fully indemnify the Board and NGS Trading and or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading against all actions, suits, claims, demands, losses, charges, costs and expenses which the Board and NGS Trading or any servant, agent, contractor, subcontractor, consultant, volunteer or invitee of the Board and NGS Trading may suffer or incur as a result of or in connection with any damage to property (including but not limited to any damage to any properties owned by or leased to the Board, any damage to art works owned by the Board and/or any damage to art works lent to the Board from third parties) or in respect of any injury (whether fatal or otherwise) to any person and/or any claim against the Board and NGS Trading and or any servant, agent, contractor, sub-contractor, consultant, volunteer or invitee of the Board and NGS Trading by any third party which may result directly or indirectly from

any defect in the Goods or the negligent or wrongful act or omission of the Supplier, or the Supplier's servants, agents, contractors, subcontractors, consultants or invitees subject to the Supplier's total liability to the Purchaser for all matters arising under or in connection with this Contract, other than the excluded matters, is limited to £1,000,000 (one million pounds) per incident.

- 21.2 The Supplier 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; and
 - (b) public liability and/or professional indemnity insurance for such sum and range of cover as the Supplier 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 £1,000,000 (one million pounds) for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing; and
 - (c) Cyber liability insurance (first and third-party cover) in the sum of not less than £1,000,000 (one million pounds) for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing; and
 - (d) Such other insurances as are required by applicable law.
- 21.3 The Supplier shall: -
- (a) do nothing to invalidate any insurance policy or to prejudice the Purchaser's entitlement under it; and
 - (b) notify the Purchaser if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 21.4 The Supplier shall, if requested by the Purchaser at any time: -
- (a) ensure that the Purchaser's interest is noted on the policy or policies of insurance referred to in Condition 21.2;
 - (b) provide the Purchaser with copies of all or any such insurance policies, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder and the noting of the Purchaser's interest where applicable.
- 21.5 The Supplier's liabilities under this Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Condition 21.2.
- 21.6 The Purchaser's total aggregate liability in respect of all claims, losses or damages, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Contract shall in no event exceed the amount payable by the Purchaser for the Services supplied to it pursuant to this Contract the Purchaser shall not be liable to the Supplier (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

21.7 The Supplier acknowledges that in relation to any claim made by the Purchaser pursuant to this Contract the Purchaser shall be entitled to recover from the Supplier, in damages, any costs, losses or expenses incurred by the Purchaser which are in any way attributable to the Supplier's breach of this Contract including any costs incurred by the Purchaser in obtaining substitute services from a third party and any sums paid in advance by the Purchaser for Services not provided by the Supplier.

21.8 Notwithstanding any other provision of this Contract no party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute;
- (d) any other act or omission, liability for which may not be limited under any applicable laws; or
- (e) without prejudice to the foregoing terms of this Condition 21.8, any claim under any indemnity given under this Contract.

21.9 The provisions of this Condition 21 shall apply during the continuance of this Contract and after its termination howsoever arising.

22.0 DISCRIMINATION

22.1 The Supplier must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser.

22.2 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

23.0 BLACKLISTING

23.1 The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of data protection legislation by unlawfully processing personal data in connection with any blacklisting activities.

23.2 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

24.0 OFFENCES

24.1 The Supplier must not commit or attempt to commit any offence:

- 24.1.1 under the Bribery Act 2010;
- 24.1.2 under the Modern Slavery Act 2015;

- 24.1.3 under the Human Trafficking and Exploitation (Scotland) Act 2015;
 - 24.1.4 of fraud, uttering or embezzlement at common law; or
 - 24.1.5 of any kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 24.2 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

25.0 OFFICIAL SECRETS ACTS, CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION

- 25.1 The Supplier undertakes to abide and procure that the Supplier's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.
- 25.2 The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 25.3 All information related to the Contract with the Supplier will be treated as commercial in confidence by the parties except that:
- (a) The Supplier may disclose any information as required by law or judicial order to be disclosed.
 - (b) The Purchaser may disclose any information as required by law or judicial order to be disclosed. Further, the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall, if the Purchaser sees fit, disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Contract.
- 25.4 The provisions of this Condition 25 shall apply during the continuance of the Contract and after its termination howsoever arising.
- 25.5 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOISA, the content of the Contract is not confidential information and the Supplier hereby gives its consent for the Purchaser to publish the Contract in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOISA redacted) including any changes to the Contract agreed from time to time.
- 25.6 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

26.0 FREEDOM OF INFORMATION ACT (SCOTLAND) ACT 2002

- 26.1 The Supplier acknowledges that the Board and/or NGS Trading (as appropriate) are subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Board and NGS Trading (as appropriate) to enable the Purchaser to comply with FOISA and the Environmental Information Regulations.
- 26.2 If the Supplier receives a Request for Information the Supplier must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Board and/or NGS Trading (as appropriate), the Supplier must promptly inform the applicant in writing that the Request for Information can be directed to the Board and/or NGS Trading (as appropriate).
- 26.3 Where the Board and/or NGS Trading (as appropriate) receives a Request for Information concerning this Contract (including the Supplier Sensitive Information), the Board and NGS Trading (as appropriate) is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 26.4 The Supplier acknowledges that the Board and NGS Trading (as appropriate) may, acting in accordance with the Code of Practice on the Discharge of Functions of Public Authorities issued under section 60 of FOISA and regulation 18 of the Environmental Information Regulations (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Supplier or this Contract (including the Supplier Sensitive Information):
- 26.4.1 in certain circumstances without consulting the Supplier, or
- 26.4.2 following consultation with the Supplier and having taken its views into account.
- 26.5 Where clause 26.4.1 applies the Board and/or NGS Trading (as appropriate) must take reasonable steps, where practicable, to give the Supplier advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure.
- 26.6 Where a Request for Information concerns Supplier Sensitive Information (having regard to the justifications and durations set out there), the Board and/or NGS Trading (as appropriate) must take reasonable steps, where practicable, to consult with the Supplier before disclosing it pursuant to a Request for Information but (notwithstanding any other provision in this Contract) the Board or NGS Trading (as appropriate) shall be responsible for determining in its absolute discretion whether any Supplier Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOISA and/or the Environmental Information Regulations.

27.0 TAX EVASION AND TAX ARRANGEMENTS

- 27.1 The parties represent, warrant and undertake to each other that:
- 27.1.1 neither it nor any other group companies has been the subject of legal proceedings or regulatory action relating to tax evasion or the facilitation of Tax Evasion (as defined in the Criminal Finances Act 2017);
- 27.1.2 neither it nor any other group companies shall commit Tax Evasion nor undertake any activities which would facilitate any associated person (as defined in the Criminal

Finances Act 2017) committing Tax Evasion, in undertaking its obligations under this Agreement.

- 27.2 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 27.3 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations.
- 27.4 The Purchaser may, at any time during the Contract, request the Supplier to provide information which demonstrates how the Service Provider complies with sub-clauses 27.2 and 27.3 above or why those clauses do not apply to it.
- 27.5 Where the Supplier enters into any Sub-contract, the Supplier must ensure that a provision is included which is in the same terms as this clause 27.
- 27.6 The Supplier shall indemnify the Purchaser against 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 provision of the services by the Supplier.
- 27.7 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

28.0 MODERN SLAVERY ACT 2015

- 28.1 In performing its obligations under the agreement, the Contractor shall:
 - 28.1.1 comply with all applicable anti-slavery and human trafficking laws, statues, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
 - 28.1.2 have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance;
 - 28.1.3 Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 or the Human Trafficking and Exploitation (Scotland) Act 2015, if such activity, practice or conduct were carried out in the UK
 - 28.1.4 Include in its contracts with its subcontractors and suppliers' antislavery and human trafficking provisions that are at least as onerous as those set out in this Clause 26 to ensure compliance with the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015.
- 28.2 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

29.0 TERMINATION

29.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or
- (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
- (c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court or possession is taken of any of its property under the terms of a floating charge; or
- (d) Where the Supplier's financial position deteriorates to such an extent that in the Purchaser's opinion the Supplier's capability to adequately fulfil its obligations under this contract has been placed in jeopardy.

29.2 On the occurrence of any of the events described in paragraph 29.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual, if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may 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 Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier 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 Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

29.3 The Purchaser may terminate the Contract in the event that:

- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

- (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
 - (c) of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law or in the event of illegal conduct of a Supplier for example, where the Supplier shall act or act in concert with any person who has been convicted of any crime of theft, fraud, tax evasion, bribery or other dishonest act or offences against children or vulnerable people; or
 - (d) of other detrimental conduct by the Supplier where the Purchaser considers in its sole discretion that the Supplier's behaviour risks bringing either the Board and/or NGS Trading (as appropriate) into disrepute or causing any detriment to the Board's standing as a charity and as a non-departmental public body.
- 29.4 In addition to the Purchaser's rights of termination under paragraph 29.2 and 29.3, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days' notice to that effect.
- 29.5 Termination under paragraphs 29.2, 29.3 and 29.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 17 (Audit), 19 (Intellectual Property Rights), 21 (Indemnity and Insurance), 25 (Official Secrets Acts etc.), 32 (Notices), 34 (Dispute Resolution), 35 (TUPE), 37(Governing Law), 38 (Data Protection), 39 (Entire Agreement), 41 (Cyber Security), 43 (The Board & NGS Trading) and 44 (Safeguarding).

30.0 RECOVERY OF SUMS DUE

- 30.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Purchaser.

31.0 ASSIGNATION AND SUB-CONTRACTING

- 31.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.
- 31.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Contract.
- 31.3 Where the Supplier enters into a sub-contract must ensure that a provision is included which:
- 31.3.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the subcontractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

- 31.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the subcontractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and
- 31.3.3 in the same terms as that set out in this Condition 31.3 (including for the avoidance of doubt this Condition 31.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.
- 31.4 The Supplier shall also include in every sub-contract:
- 31.4.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law commits or attempts to commit any offence under the Bribery Act 2010; under the Modern Slavery Act 2015, the Human Trafficking and Exploitation (Scotland) Act 2015; fraud, uttering or embezzlement at common law; or any kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015 or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 29.3 occur; and
- 31.4.2 a requirement that the sub-contractor includes a provision having the same effect as 31.4.1 in any sub-contract which it awards.
- In this Condition 31.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.
- 31.5 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

32.0 NOTICES

- 32.1 Any notice or other communication given under or pursuant to the Contract shall be:
- 32.1.1 given in writing; and
- 32.1.2 sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), or e-mail to the address (including a valid e-mail address) of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor.
- 32.2 Provide the relevant notice or communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
- 32.2.1 2 Working Days after the day on which the letter was posted; or
- 32.2.2 4 Working Hours, in the case of e-mail.

33.0 COMPLIANCE WITH THE LAW ETC.

In performing the Contract, the Supplier must comply in all respects with:

- 33.1 all applicable law;
- 33.2 any applicable requirements of regulatory bodies; and
- 33.3 Good Industry Practice.
- 33.4 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

34.0 DISPUTE RESOLUTION

- 34.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract. In the event that a party considers there to be a dispute between it and the other party, the parties will agree, upon written request, to meet in good faith at least twice in order to resolve the dispute. Such meeting may be conducted in person, by videoconference or by telephone. Failure to reach a satisfactory resolution after such efforts will be considered a "Deadlock".
- 34.2 In the event of Deadlock arising in respect of a particular matter, the matter will be referred to an authorised representative of each party (or equivalent) (a "Representative") to meet in good faith to discuss and use best endeavours to reach resolution on the Deadlock within 30 days of the Deadlock arising. Such meeting may be conducted in person, by video- conference or by telephone.
- 34.3 If the relevant Representatives cannot reach resolution in respect of the Deadlock within those 30 days, with the agreement of each of the parties, they may refer the dispute for mediation, arbitration or other alternative form of dispute resolution, but no party shall be obliged to agree to do so. Subject to the provisions of clause 34.4, no party may commence any court proceedings in relation to any Deadlock arising out of this Agreement without first giving the other party a minimum of 14 days' notice of its intention to commence court proceedings.
- 34.4 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining any other party from doing any act or compelling the other party to do any act.
- 34.5 The deadlock procedure set out in this clause shall not apply to the termination rights set out in Clause 29.

35.0 TUPE

- 35.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Contract; (b) transfer to another supplier on the expiry of the Contract.
- 35.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the

Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

- (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
- (b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
- (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
- (d) details of pensions entitlements, if any.

35.3 The Supplier shall permit the Purchaser to use the information for the purposes of TUPE and of retendering, which shall include such disclosure to potential suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

35.4 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Condition.

35.5 In the event that the information provided by the Supplier in accordance with this Condition becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.

35.6 The provisions of this Condition 35 shall apply during the continuance of this Contract and after its termination howsoever arising.

36.0 HEADINGS

36.1 The headings to Conditions shall not affect their interpretation.

37.0 GOVERNING LAW

37.1 These Conditions shall be governed by and construed in accordance with Scots law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Board and NGS Trading to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

38.0 DATA PROTECTION

- 38.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.
- 38.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 38 are without prejudice to any obligations and duties imposed directly on the Supplier under the Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 38.3 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 38.4 The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 38.5 The Supplier must:
- 38.5.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data to a third country other than within the European Economic Area unless required to do so by European Union or domestic law or Regulatory Body to which the Supplier is subject; in which case the Supplier must inform the Purchaser of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;
 - 38.5.2 subject to Condition 38.5.1 only process or otherwise transfer any Personal Data in or to any third country other than within the European Economic Area with the Purchaser's prior written consent;
 - 38.5.3 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (a) are aware of and comply with the Supplier's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

- 38.5.4 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with Article 32 of the UK GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 38.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 38.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 38.8 The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR.
- 38.9 The Supplier must notify the Purchaser if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order; and
 - (f) such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.
- 38.10 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as

well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.

- (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
- (d) supporting the Purchaser with preparation of a data protection impact assessment;
- (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

38.11 At the end of the provision of Services relating to processing the Supplier the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless European Union or domestic law requires storage of the Personal Data.

38.12 The Supplier must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Condition 38;
- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 38 and contribute as is reasonable to those audits and inspections;
- (c) inform the Purchaser if in its opinion an instruction from the Purchaser infringes any obligation under the Data Protection Laws.

38.13 The Supplier must maintain written of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser. Such records must contain the information set out in Article 30(2) of the UK GDPR and may be kept in electronic form.

38.14 If requested, the Supplier must make such records referred to Condition 38.13 available to the Supervisory Authority on request and co-operate with the Information Commissioner in the performance of its tasks.

38.15 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 38.14 with minimum disruption to the Supplier's day to day business.

39.0 ENTIRE AGREEMENT

39.1 This Contract and any contract award letter, all invitation to tender documentation, tender response and purchase order/s contains the entire agreement of the parties with respect to the subject matter of this Contract and supersedes all prior agreements and arrangements (whether written or oral) in relation to such subject matter between the parties and is not intended to benefit or be enforceable by anyone else and no person who is not a party shall have any rights to enforce any term of this Agreement under the Contract (Third Party Rights) (Scotland) Act 2017 provided that regardless of which of the Board and NGS Trading is the Purchaser for the purpose of the

Purchase Order, either the Board or NGS Trading shall be entitled to enforce against the Supplier any provision of the Purchase Order and of this Contract that purports to confer any benefit on it.

40.0 SEVERABILITY

40.1 If any of the provisions of this Contract are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

41.0 CYBER SECURITY

41.1 The Supplier shall as a minimum have a valid Cyber Essentials Scheme Basic Certificate in place throughout the duration of this Contract. The Purchaser may at any time ask the Supplier for a copy of the Certificate.

41.2 The Supplier shall use throughout the duration of this Contract the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in relation to the Purchaser's System, the Supplier's System and/or the Supplier's Solution.

41.3 Notwithstanding clause 41.2, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Data, assist each other to restore the Services to their desired operating efficiency.

41.4 Where the Malicious Software originates from the Supplier's Software, the Third Party Software supplied by the Supplier or the Data (whilst the Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Purchaser when provided to the Supplier, the Supplier shall be responsible for any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 41.3.

41.5 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

42.0 ENVIRONMENTAL POLICY

42.1 The Supplier is expected to take environmental concerns into consideration throughout the whole process of service provided from development to delivery. The Supplier shall in the performance of this Contract have due regard to the Board's Sustainability and Environmental Management Policy, a copy of which is attached and in addition, shall assist the Board and/or NGS Trading (as appropriate) in meeting Scottish Government targets associated with the Climate Change Act.

43.0 THE BOARD AND NGS TRADING

43.1 The Supplier acknowledges that the Board sometimes retains staff and provides services through its trading company, NGS Trading and vice versa. The obligations of NGS under this Agreement may therefore be satisfied through either the Board or NGS Trading and the Supplier accepts that both the Board and NGS Trading shall have the same rights against the Supplier under this Contract.

43.2 Notwithstanding any subcontracting of the obligations of the Board to NGS Trading (or vice versa) whichever of the Board and NGS Trading is the NGS/Purchaser for the purposes of the Purchase

Order shall remain liable to the Supplier for all acts or omissions of the other as if they were their acts or omissions.

44.0 SAFEGUARDING

- 44.1 The Supplier warrants that it has adopted and will enforce an appropriate safeguarding policy and will make it available to the Purchaser on request.
- 44.2 The Supplier shall comply with the Purchaser's safeguarding policies and procedures, to protect children and vulnerable adults and if required, ensuring that relevant Supplier Personnel undertake training and Baseline Personnel Security Standard checks before being permitted access to the Purchaser's Site. The Supplier shall bear the costs of all required Baseline Personnel Security Standard checks that the Purchaser in its sole discretion, determines are necessary (on its own behalf, and on behalf of all Supplier Personnel).
- 44.3 The Supplier shall report immediately to the Purchaser any safeguarding incidents it becomes aware of in connection with the Services provided under the Contract and shall also report without delay any other incidents it becomes aware of concerning its own activities (or otherwise) which could have a detrimental effect on the Purchaser's reputation.
- 44.4 The Supplier shall, if requested, assist the Purchaser to prepare any incident reports other reports or notifications required by any authority or regulator (including OSCR) and shall assist all relevant authorities with any subsequent enquiries.
- 44.5 The Supplier acknowledges that any breach of this clause would constitute a material breach of contract for which the Purchaser would be entitled to terminate this Contract with immediate effect.

SCHEDULE (Data Protection)

Data Processing provision as required by Article 28(3) UK GDPR.

This Schedule includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data:

The subject matter and duration of the Processing of Personal Data are [insert description here].

The nature and purpose of the Processing of Personal Data:

[Include description here]

The type of Personal Data to be Processed:

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates:

[Include categories of data subjects here]

The obligations and rights of the Purchaser:

The obligations and rights of the Purchaser as the Data Controller are set out in Condition 38 of the Contract.

SUPPLEMENTARY NOTICE

1.0 PROTECTING THE ENVIRONMENT

Suppliers to the National Galleries of Scotland are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2.0 LATE PAYMENT OF INVOICES

Suppliers to the National Galleries of Scotland are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Finance Department, National Galleries of Scotland, 73 Belford Road, Edinburgh, EH4 3DS. Telephone 0131-624-6200. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved and is not intended to interfere with Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT.