

THE SKILLS DEVELOPMENT SCOTLAND CO. LIMITED

TERMS & CONDITIONS OF PURCHASE

(Applicable for contracts tendered from and after 1 March 2024 where estimated charges are expected to exceed £50,000)

The Skills Development Scotland Co. Limited, Floor 1 Monteith House, 11 George Square, Glasgow G2 1DY, a company registered in Scotland, registration number SC202659.

SKILLS DEVELOPMENT SCOTLAND TERMS AND CONDITIONS FOR PURCHASING GOODS AND SERVICES

1. Interpretation

- 1.1 In these terms and conditions some words have particular meanings. These are set out in Condition 27 below.
- 1.2 These terms and conditions and the other Contract Documents make up the whole agreement between you and us and supersede any previous agreement between you and us relating to the same subject matter. No other term or condition submitted, proposed or stipulated by you will apply to the contract between you and us.
- 1.3 If there is any conflict or inconsistency among the Contract Documents the terms of some of the documents take priority over other documents. The descending order of importance is as follows: firstly the Contract Award Letter; then these terms and conditions; then any clarifications to our Invitation to Tender and/or your response to any clarifications to our Invitation to Tender that are agreed in writing between you and us; then our Invitation to Tender; and then your tender response.
- 1.4 In these terms and conditions:
- 1.4.1 references to statutory provisions include those statutory provisions as amended, extended, re-enacted, consolidated or replaced;
 - 1.4.2 references to any gender include all genders;
 - 1.4.3 the words "include" and "including" shall each be construed without limitation to the words that appear before the words "include" and "including";
 - 1.4.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
 - 1.4.5 the headings shall not affect the interpretation of these terms and conditions; and
 - 1.4.6 except where the context otherwise requires, references to Conditions and appendices (if included) are to conditions and appendices set out in these terms and conditions and references to paragraphs are to paragraphs of the relevant appendix (if included).

2. The Contract

- 2.1 You will provide the Goods and/or Services to our reasonable satisfaction and you will act at all times in a diligent and professional manner. The Goods and/or Services must conform fully to the requirements set out in the Contract Documents and any variations thereto.
- 2.2 You will provide the Goods and/or perform the Services on and by the dates set out in the Contract Documents and, unless we specifically state differently in the Contract Documents, time of delivery or performance shall be of the essence of the Contract.
- 2.3 The relationship of you and Skills Development Scotland will be that of independent contractor. You are and must at all times act as an independent contractor and nothing in the Contract shall render you an employee, worker, agent, partner or representative of Skills Development Scotland and you shall not hold yourself out as such. You have no authority to act on our behalf. You will not act in any way which would give the impression that you are our employee, worker, agent, partner or representative. Save to the extent specifically provided in the Contract Documents, you specifically acknowledge that you are not the exclusive provider of Services to Skills Development Scotland nor is Skills Development Scotland your exclusive client.
- 2.4 The Contract constitutes a contract for the provision of services and not a contract of employment and accordingly you shall be fully responsible for and shall indemnify us for and in respect of:
- 2.4.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. You shall further indemnify us against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by us in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
 - 2.4.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by you against us arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of Skills Development Scotland.
- 2.5 We may at our option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to you pursuant to Condition 6.4.
- 2.6 If during the course of the Contract the engagement is one to which the off-payrolling rules apply you must inform us.
- 2.7 You warrant and represent that:-
- 2.7.1 you shall continue to pay all taxes due to HMRC and will not participate in disguised employment practices when delivering Services under the Contract;
 - 2.7.2 in performing Services under the Contract no Deemed Employment shall apply;
 - 2.7.3 you shall, as soon as reasonably practicable, inform us in the event that you become aware of any circumstances which may affect the Deemed Employment status; and
 - 2.7.4 you will co-operate and provide such information as may be required in order for us to confirm whether Deemed Employment shall apply when delivering Services under the Contract.
- 2.8 As you are our independent contractor, we will not be liable for anything you do or fail to do including anything you do which causes any person to make a claim against you.
- 2.9 You will not incur any liability on our behalf nor enter into any contracts or agreements on our behalf without our prior approval in writing.
- 2.10 You acknowledge that we rely on your skill and judgment in the supply of the Goods and/or the performance of the Services and your obligations under the Contract.

3. Goods and Services

- 3.1 You will ensure that you make available adequate resources for the provision of the Goods and/or the performance of the Services.
- 3.2 You shall perform your obligations under the Contract:-
- 3.2.1 with appropriately experienced, qualified and trained Personnel with all due skill, care and diligence; and
 - 3.2.2 in accordance with Good Industry Practice.
- 3.3 You will ensure that the Goods are fully compatible with any equipment, to the extent specified in the Contract Documents.

- 3.4 In providing the Goods and/or performing the Services, you will comply with all Rules and Regulations, including all environmental, packaging, labelling, health and safety and transportation Rules and Regulations and will maintain all the licences, permissions, authorisations, consents and permits that you require to carry out your obligations under the Contract.
- 3.5 If key personnel are specified in the Contract Documents, you will ensure that those key personnel perform the Services allocated to them in the Contract Documents. In the event that such key personnel are unable to provide the Services due to illness or injury, you shall advise us as soon as possible and shall advise of a suitably qualified and skilled substitute to perform the Services on your behalf. You may appoint a suitably qualified and skilled substitute to perform the Services on your behalf subject to our agreement (acting reasonably) in writing.
- 3.6 If we ask, you will give us detailed programmes of the order in which you will provide the Services and/or Goods and how you will provide the Services and/or Goods. We may tell you in what order to provide the Services and/or Goods and you will comply with that request.
- 3.7 If all or part of the Services are to be provided at the Premises we will be entitled to assume that you will be able to carry out the Services at the Premises. You will not be able to use the Premises as a reason for a failure or delay on your part to supply the Services. Any access to, or occupation of, our Premises which we may grant you from time to time is on a non-exclusive licence basis free of charge. You must use our Premises solely for the purpose of performing your obligations under the Contract and must limit access to our Premises to such individuals as are necessary for that purpose.
- 3.8 If we ask, you will give us access to your premises (and ensure that we have access to the premises of your sub-contractors) to inspect them, and to observe work being performed and/or Goods being produced there under the Contract. We will give you reasonable notice before making any such request, and will only ask for access during normal working hours.
- 3.9 You will comply with, and will ensure that all Personnel comply with, our security policy and any instructions we issue to you relating to security, health, safety or access to the Premises (including security clearance and the carrying, display and return of security passes).
- 3.10 You shall continue to perform your obligations under the Contract to the extent possible, notwithstanding that we may have delayed in performing any obligation (express or implied) we have under the Contract. We will not be liable for any costs or additional costs which arise because of any such delay or failure by us.
- 3.11 If we ask, you will give us a list of the names and contact details of Personnel involved in providing the Goods and/or performing the Services and the tasks which each person will be carrying out together with any other information or documents we may ask to see.
- 3.12 You will ensure that any Personnel working at the Premises only access those parts of the Premises where it is necessary for them to do so to perform the Services and/or provide the Goods and then only at times when they are actually performing the Services and/or providing the Goods. Access to the Premises shall not be exclusive to you, and you shall co-operate with such others as we may require.
- 3.13 You must get our permission before delivering to the Premises any materials, plant and equipment you may wish to use to perform the Services and/or provide the Goods. You will follow any instructions we give you about how, when and where materials, plant and equipment are to be delivered.
- 3.14 You will be responsible for the security of all the materials, plant and equipment you use in performing the Services and/or providing the Goods. We will not be liable if any property belonging to you or Personnel is stolen, lost or damaged.
- 3.15 You will be responsible for providing your own equipment for the provision of the Services unless we otherwise agree in writing. If we provide you with equipment or materials for you to perform the Services and/or provide the Goods, that equipment and/or those materials will still belong to us and you will keep such equipment and materials in good condition and use them only to provide the Goods and/or perform the Services and for no other purpose.
- 3.16 If we ask for any equipment or materials to be returned, you will return any such equipment and materials immediately in good working order, fair wear and tear excepted. You will bear any cost associated with returning such equipment or materials and/or returning them to good working order, fair wear and tear excepted. Such equipment and materials will be your responsibility and at your risk until we receive them.
- 3.17 If you have any equipment or materials belonging to us at the end of the Contract, you will return them to us immediately unless we tell you in writing to dispose of them in some other way in which case you will comply with our instructions.
- 3.18 We may at any time during the progress of the Services and/or provision of the Goods demand in writing that you:-
- 3.18.1 remove from the Premises any materials which are in our opinion, hazardous, noxious or not in accordance with the Contract; and/or
- 3.18.2 replace any materials which are in our opinion, hazardous, noxious or not in accordance with the Contract with proper and suitable materials; and/or
- 3.18.3 remove and properly re-execute any work, notwithstanding any previous test of such work, which, in respect of material or workmanship is not in our opinion in accordance with the Contract; and/or
- 3.18.4 remove and replace any Personnel engaged in the performance of the Services or delivery of the Goods at the Premises (or any other premises authorised by us for the performance of the Services and/or delivery of the Goods) in the event that we have concerns as to the suitability of such Personnel.
- You shall immediately comply with each such demand.
- 3.19 On completion of the Services you shall remove your plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and/or provision of the Goods, fully reinstate the Premises and leave it in a neat and tidy condition.
- 3.20 You shall perform the Services and/or provide the Goods in such a manner as to be safe and without risk to the health and safety of: (i) persons in the vicinity of that place at the time when the Services are being performed and/or the Goods are being provided and (ii) persons in the vicinity of that place after the Services are performed and/or the Goods have been provided.

4. Goods, Packaging and Safety

- 4.1 You warrant and undertake to us that the Goods will be of good construction, sound materials, satisfactory quality and free from defects in design, materials and workmanship, and will conform in all respects with any description contained in the Contract Documents and with any sample approved by us.
- 4.2 You must pack and mark the Goods in a suitable manner avoiding unnecessary packaging and in accordance with any statutory requirements and any requirements of any carrier. If we ask you to pack the Goods in a certain way you must do so. You will mark the package with the number of the relevant purchase order, the name of the contents and any special storage instructions.

All packaging materials will be considered non-returnable and will be destroyed unless otherwise stated in the Contract Documents.

- 4.3 You will mark each package in a consignment with the total number of packages in the consignment, and the number of that package, for example 3 of 7. You will do this even if there is only one package in a consignment.
- 4.4 You will make sure that all containers of hazardous goods (and any documents that relate to hazardous goods) have prominent and suitable warnings.
- 4.5 You will ensure that the Goods are suitable for the purpose to which they would normally be put and for any particular purpose mentioned in the Contract Documents.
- 4.6 You will carry out appropriate tests and checks before the Goods are delivered to us to make sure that the Goods are safe, that they meet all relevant health and safety Rules and Regulations, and that they will not put the health or safety of people who will be using them at risk.
- 4.7 You will tell us everything we need to do to make sure that when the Goods are being used, they can be used correctly and in a safe manner and will not put the health and safety of the people who will be using them at risk.
- 4.8 If we ask, you will give us progress reports on the manufacture of the Goods and/or provision of Services within the timescales specified by us (acting reasonably) and you will meet us to discuss and review the Goods and/or Services provided.

5. Delivery, Title and Risk

- 5.1 You will deliver the Goods to the location and at the time specified in the Contract Documents unless we have agreed in writing a change to our delivery requirements.
- 5.2 You must tell us in advance if you need to enter our premises to deliver the Goods and/or provide the Services.
- 5.3 You will ensure that each delivery is accompanied by a delivery note which shows at least the relevant purchase order number given to you by us, date of delivery and details of the number of packages and contents.
- 5.4 If we sign a delivery note for the Goods, this does not mean that we accept the Goods or that all of the correct Goods have been delivered.
- 5.5 Where a date and/or time of delivery has been specified in the Contract Documents and you fail to deliver on that date and/or time, we may refuse to accept the Goods. If we do so, we will not have to pay you and we will also be able to cancel all or any part of the Contract and/or any further deliveries. If you still deliver the Goods after you have been told by us that we will refuse to accept them, you must remove them within any timescale that we set you, and if you do not we will be entitled to dispose of them or destroy them and we will not be liable to pay for them. Even if we do any of these things, any other rights we have to take action against you for failure to deliver on time will not be affected.
- 5.6 If for any reason we cannot take delivery of the Goods on the date and/or at the time of delivery, you must keep the Goods safely and in environmentally appropriate conditions to prevent deterioration until we can take delivery of them, and have told you to deliver them to us. We will pay you for the amount you have had to pay to store them, provided this is a reasonable amount. We may require evidence of the amount you have paid to store the Goods, and if you do not have this evidence, we may not pay you these storage costs.
- 5.7 If we have to return any Goods to you, you will pay us the delivery costs. We will not be responsible if the Goods are damaged or destroyed in transit to you.
- 5.8 Following delivery we will inspect the Goods within a reasonable time and notify you of any Goods that are dangerous or unsafe and/or any defective or missing items.
- 5.9 If we find that Goods you have delivered to us are dangerous and/or unsafe, we will tell you and you must immediately do everything you can at your expense to make the Goods as safe as possible or, if we ask, remove the Goods from the premises where they are located. If we ask you to remove dangerous and/or unsafe products from such location you will do so at your expense. You will pay us a full refund of the price we paid for those Goods.
- 5.10 If in our reasonable opinion there are defective or missing Goods and/or Services then we may, at our option: (i) permit you at your cost to repair or deliver the missing or defective Goods and/or re-perform the Services within a specified time; (ii) require you at your cost to replace such defective Goods within a specified time; or (iii) refuse to pay for such defective or missing Goods and/or Services. You will uplift defective Goods at your expense at such times as we shall specify.
- 5.11 If Goods are delivered in excess of the quantity ordered, we will not be bound to pay for such excess and you will promptly uplift such excess Goods at your expense.
- 5.12 Ownership of the Goods and risk in the Goods will transfer to us when the Goods are delivered (and off-loaded) in accordance with the Contract Documents and we have signed a delivery note acknowledging safe receipt of them.
- 5.13 You guarantee that the Goods will continue to be free from defects for a minimum period of 12 months (or such longer period, if specified within the Contract Documents) from delivery and you will (at our option) fix any defect or replace any defective Goods at your expense within seven days of being notified of the defect.

6. Price and Payment

- 6.1 The price for the Goods and/or Services shall be as stated in the Contract Documents and shall be deemed to be inclusive of any and all expenses and charges.
- 6.2 No increase to the price or extra charges may be made without our prior written consent.
- 6.3 When you have supplied the Goods and/or Services to our reasonable satisfaction, you may invoice us for the applicable price in accordance with the invoicing terms set out in the Invitation to Tender (subject to any qualifications in the Contract Award Letter). Payment shall be due 30 days after receipt of the Goods and/or the Services or the valid, undisputed invoice therefor, whichever is the later.
- 6.4 We may set off any amount owing at any time by you to us (whether under the Contract or otherwise) against the price of the Goods and/or Services payable by us to you, including without prejudice to the foregoing generality any sums which are due pursuant to Condition 2.4.
- 6.5 Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by us, the sums referred to in this condition must be properly invoiced by you.
- 6.6 Invoices must be sent by email to finance@sds.co.uk (unless another address is specified for that purpose in the Contract Documents). Each invoice must clearly identify the purchase order and include our registered office address (namely Floor 1 Monteith House, 11 George Square, Glasgow, G2 1DY). If the purchase order or our address is not clearly identifiable on the invoice, the invoice may be returned to you without payment. In this Condition 6.6, 'invoice' includes an electronic invoice meeting the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015.

- 6.7 If there is more than one delivery of Goods under a purchase order, unless otherwise specified in the Contract Documents you must send a separate invoice for each delivery, and each invoice must identify the items to which that invoice relates. The last invoice in respect of a purchase order must be clearly marked to show that it is the last.
- 6.8 If any Value Added Tax is to be paid, you will show this separately within each invoice, which invoice shall be a valid VAT invoice.
- 6.9 You will maintain and you will ensure that your sub-contractors maintain complete and accurate records of the Goods and/or Services provided by you to us under the Contract including all payments made by us to you and by you to your sub-contractors for a minimum period of five years from the date of the last payment made by us to you. If we ask, you will give and you will ensure that your sub-contractors give us or our auditors access to and copies of your and your sub-contractors' records.
- 6.10 Unless otherwise specified within the Contract Documents, you shall submit each invoice to us for payment no later than the date occurring one month after the last date on which the Goods and/or Services for which payment is being claimed, are delivered to us (or performed, as appropriate) all in accordance with the Contract.
- 6.11 If the appointment under the Contract is determined as being Deemed Employment notwithstanding anything else in the Contract, we shall be entitled to deduct from the price any sums which we are required to pay as a result of the Deemed Employment including without prejudice to the foregoing generality, expenses, pension contributions, national insurance contributions (employee and employer) and income tax.

7. Change control

- 7.1 We may require any variation to any part of the Goods and/or Services that for any reason shall in our opinion be desirable. Any such variation may include additions, omissions, alterations, substitutions to the Goods and/or Services, and changes in quality, form, character, kind, timing, method or sequence of the delivery of the Goods and/or performance of the Services. For the avoidance of doubt, we shall not require any variation under this Condition 7.1 other than where it is permitted by Regulation 72 of The Public Contracts (Scotland) Regulations 2015. In particular, no variation shall be required that would alter the overall nature of the Contract as set out in the Contract Documents.
- 7.2 No variation of the Goods and/or Services as provided for in Condition 7.1 shall be valid unless given or confirmed in the form of a requirement given by us, except under the conditions we have set out in this Condition 7. All such requirements shall be given in writing by way of a variation letter provided that if for any reason we shall find it necessary to give any such requirement orally in the first instance you shall comply with such oral order given by us, which must be confirmed in writing by us within 5 Business Days of the date when we gave you the oral requirement, failing which the variation made by such oral requirement shall cease to have effect on the expiry of the said 5 Business Day period. Any variation under this Condition 7 shall take effect as stated by us in the variation letter.
- 7.3 Where any such variation of the Goods and/or Services made in accordance with Condition 7.1 and 7.2 has affected or may affect the costs incurred by you in providing the Goods and/or Services, you will provide us in writing with a note containing: (i) the title of the variation, (ii) the originator and date of the requirement for the variation, (iii) the reason for the variation, (iv) the details of the variation, including any specifications, (v) the effect which the variation has had or may have on the costs incurred by you in providing the Goods and/or Services, (vi) a timetable for implementation, (vii) a schedule of payments, if appropriate, (viii) details of the likely impact, if any, of the variation on other aspects of the Contract including: the timetable for the provision of the variation, the Personnel to be provided, the charges, the documentation to be provided, the training to be provided, working arrangements, other contractual issues and (ix) provision for signature by you and us (or such other information as may be requested by us). Such note shall be considered by us, taking all of the facts into account (including such information as may be provided by you in respect of the effect which such variation has had or may have on the costs incurred by you in providing the Goods and/or Services) and we may authorise such alteration to the sums to be paid to you in accordance with the provisions of the Contract as are, in our opinion, appropriate and reasonable in the circumstances. Where the Contract Documents include price rates, nothing in this Condition 7.3 shall permit you to increase those rates.
- 7.4 In accordance with Regulation 72(1)(a) of The Public Contracts (Scotland) Regulations 2015, the scope and nature of possible variations and the conditions in which they may be used are as set out in the Contract Documents.

7A Change of Law

- 7A.1 You shall neither be relieved of your obligations to provide the Goods and/or perform the Services under the terms of the Contract nor be entitled to an increase in the price as the result of:
- 7A.1.1 a General Change in Law; or
- 7A.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is known at the date of the Contract whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument or otherwise.
- 7A.2 If a Specific Change in Law occurs or will occur during the term of the Contract (as set out in the Contract Documents) (other than those referred to in Condition 7A.1.2), you shall notify us of the likely effects of that change, including:
- 7A.2.1 whether any change is required to the Goods and/or Services, the price or the Contract; and
- 7A.2.2 whether any relief from compliance with your obligations is required.
- 7A.3 As soon as practicable after any notification in accordance with Condition 7A.2 we shall discuss with you and agree the matters referred to in that Condition and any ways in which you can mitigate the effect of the Specific Change of Law, including:
- 7A.3.1 providing evidence that you have minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of sub-contractors;
- 7A.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account before it occurred;
- 7A.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
- 7A.3.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the price.
- 7A.4 Any increase in the price or relief from your obligations agreed pursuant to this Condition 7A shall be implemented in accordance with Condition 7.

8. Continuous Improvement and Sustainability

- 8.1 You shall have an ongoing obligation throughout the period of the Contract to identify new or potential improvements to the Goods and/or Services. As part of this obligation you shall identify and report to your designated contract manager at Skills Development Scotland in accordance with the timescales set out in the ITT and/or as agreed with your designated contract manager at Skills Development Scotland on:-
- 8.1.1 the emergence of new and evolving relevant technologies which could improve the Goods and/or the Services;
 - 8.1.2 new or potential improvements to the Goods and/or Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms, customer support services and any other relevant or related matter or as agreed with your designated contract manager at Skills Development Scotland in relation to the Goods and/or Services;
 - 8.1.3 new or potential improvements to the interfaces or integration of the Goods and/or Services with other services provided by third parties for us which might result in efficiency or productivity gains or in reduction of operational risk;
 - 8.1.4 changes in ways of working that would enable the Goods and/or the Services to be delivered at lower costs and/or bring greater benefits to us; and
 - 8.1.5 any proposal of which you ought reasonably to be aware, to reduce available support services to owners/users of any of the Goods and/or Services, or to replace or render obsolete any of the Goods and/or Services.
- 8.2 Any potential changes highlighted as a result of your reporting in accordance with Condition 8.1 shall be addressed in accordance with Condition 7.
- 8.3 In providing the Goods and/or performing the Services under the Contract, you shall perform your obligations in a manner so as to ensure where possible that all materials and processes used in the production and supply and delivery of the Goods and/or Services will minimise the impact on the environment, including minimising the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, reducing carbon emissions and conserving energy, water, wood, paper and other resources, reducing waste and phasing out the use of ozone depleting substances. You shall make all reasonable efforts to minimise your use of packaging and avoid the use of packaging which consumes a disproportionate amount of energy during manufacture, use, or disposal or which contains materials derived from threatened species or threatened environments. If requested by us, you shall provide us with a copy of your environmental policy and any further information reasonably requested by us in connection with your obligations under this Condition 8.3.
- 8.4 Prior to delivery, if you think that a change to the Contract or to the specification of the Goods and/or Services would reduce the overall environmental impact of the Contract or the Goods and/or Services then you will provide details of the proposed change. We will consider the proposed change and may ask for a change on the basis set out in Condition 7.
- 8.5 You are expected to have appropriate standards for your organisation and your supply chain regarding legal, ethical and social issues. This should include for example: health and safety, security of employment rights, equality and fair trade. If requested by us, you shall provide us with a copy of your ethical sourcing policy.

9. Fair Work

- 9.1 We are committed to the delivery of high quality public services, and recognise that this is critically dependent on a workforce which is well-rewarded, well-motivated, well-led, has access to appropriate opportunities for training and development, is diverse and inclusive, and can influence decision making. These factors are also important for workforce recruitment and retention, and thus continuity of service delivery. Any response submitted in relation to Fair Work as part of your response to our Invitation to Tender shall be contractually binding on you for the duration of the Contract. We reserve the right to audit Fair Work representations made at any point throughout the duration of the Contract.

10. Intellectual Property

- 10.1 You hereby grant us a perpetual, irrevocable, worldwide, royalty free, non-exclusive licence (with the right to transfer or assign the licence to another public sector body and the right to grant sub-licences) to use the Supplier Background IP for the purpose of using and receiving the Goods, Services and Foreground IP.
- 10.2 By signing any of the Contract Documents you hereby assign to us all right, title and interest in the Foreground IP with effect from their creation.
- 10.3 You will, if we ask and at no additional charge to us, sign any document and do anything that we require to transfer ownership of the Foreground IP to us.
- 10.4 You may make a written request to us to use the Foreground IP. We will respond in writing within 30 days, and if we agree to your request, you will be granted a non-exclusive, worldwide, personal, non-sublicensable, royalty free licence of the Foreground IP from the date of our agreement. We may amend or withdraw such licence at our discretion.
- 10.5 You warrant to us that neither the Supplier Background IP, nor the Foreground IP, nor any use of any of them will infringe the Intellectual Property Rights of any third party.
- 10.6 Unless the Contract Documents state that you can use the SDS Background IP, you shall not be permitted to use it for any purpose. If the Contract Documents state that you can use the SDS Background IP, your use shall be solely on the basis that we are granting to you a revocable, non-exclusive licence to use the SDS Background IP on such terms (if any) set out in the Contract Documents, and for the purposes and extent only, required by you to provide the Goods and/or perform the Services. You shall not permit any sub-contractors to use the SDS Background IP without our prior written consent.

11. Corrupt Gifts and Payments, Compliance with Anti-Bribery, Anti-Slavery and Human Trafficking Laws and Offences

- 11.1 You must not do anything that gives or offers any kind of inducement or reward to any of our employees or contractors in relation to the Contract including, offering any kind of corporate hospitality. Doing so may be a criminal offence.
- 11.2 Without prejudice to Condition 11.1 above, you will and will procure that all your Personnel, sub-contractors, agents, directors, and representatives will:-

- 11.2.1 comply with all Rules and Regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010;
- 11.2.2 not engage in any practice, activity or conduct which is an offence under the Bribery Act 2010 or which would constitute such an offence if such practice, activity or conduct had been carried out in the UK; and
- 11.2.3 notify us (in writing) if you become aware of any breach of this Condition 11.2.
- 11.3 In performing your obligations under the Contract, you shall:
 - 11.3.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
 - 11.3.2 not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 11.3.3 include in contracts with your direct sub-contractors and contractors provisions which are at least as onerous as those set out in this condition;
 - 11.3.4 notify us as soon as you become aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract; and
 - 11.3.5 maintain a complete set of records to trace the supply chain of all Goods and/or Services provided to us in connection with the Contract and provide us and our third party representatives access to such records.
- 11.4 You represent and warrant that you have not been convicted of any offence involving slavery and human trafficking nor have you been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 11.5 You must not commit or attempt to commit any offence: (i) of fraud, uttering or embezzlement at common law or (ii) of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 11.6 Any breach of this Condition 11 shall be deemed a material breach which is not capable of being remedied.
- 11.7 In the event that we terminate the Contract due to your breach of this Condition 11, we may also terminate any other contract we have with you, immediately and without incurring any liability.

12. Equal Opportunities

- 12.1 You must ensure that in providing the Goods and/or Services no person receives unlawful treatment contrary to the Equality Act 2010. You will also make sure that anyone acting on your behalf and your employees and sub-contractors involved in the Contract do not act contrary to the Equality Act 2010, and that those involved in the management or operation of the Contract have at all times received appropriate training on anti-discrimination legislation and associated good practice in relation to equality, diversity and inclusion.
- 12.2 You must carry out appropriate monitoring of your equality, diversity and inclusion policies and employment practices and provide us with evidence of this, if we ask.
- 12.3 You will take all reasonable steps to ensure that all Goods and/or Services supplied under the Contract are produced and/or performed in accordance with all employment Rules and Regulations, and all International Labour Organisation conventions that have been ratified by the country of their origin, in particular (but without limitation) in relation to working conditions and the use of child labour.
- 12.4 Should part or all of the Services be performed at your premises, you will ensure that your premises comply fully with the requirements of the Equality Act 2010.

13. Termination

- 13.1 We may tell you if we think you have breached any of your obligations or warranties under the Contract. If such a breach of contract is capable of remedy, we will give you an opportunity to remedy it to our satisfaction within 20 days.
- 13.2 If the breach cannot be remedied or if you fail to do so within 20 days, we may terminate the Contract in whole or in part, at any time by written notice.
- 13.3 If you believe that we have failed to pay a valid, undisputed invoice for sums properly due under the Contract, you should notify us in writing. We will have 30 days from receiving such notification to assess your claim and make payment if appropriate. If we have not paid your valid, undisputed invoice for sums properly due within 30 days of when we receive your written notification asking us to do so, you may terminate the Contract by written notice to us.
- 13.4 If any court proceeding is raised against you, or (where applicable) you make any resolution, in respect of: bankruptcy, sequestration, administration, winding up, insolvency, a moratorium, dissolution or the composition or arrangement with or for the benefit of creditors, or any arrangement similar to any of the above or you suspend, cease or threaten to suspend or cease to carry on all or a substantial part of your business, you must notify us in writing immediately.
- 13.5 On the occurrence of any of the events described in Condition 13.4, or if we believe that you are unable to pay, or if you cease to pay, your debts as they fall due, or where you are an individual, if you shall die or be adjudged incapable of managing your affairs within the meaning of applicable legislation, we may terminate the Contract, in whole or in part, at any time by written notice.
- 13.6 The term of the Contract shall be the term set out in the Contract Documents but, in addition to our rights of termination under Conditions 13.2, 13.5, 13.7, 13.8 and 13.9 or otherwise, we may terminate the Contract, in whole or in part, at any time by giving you at least 30 days' notice in writing.
- 13.7 We may terminate the Contract, in whole or in part, with immediate effect at any time by written notice if:
 - 13.7.1 the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts (Scotland) Regulations 2015;
 - 13.7.2 you fail to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law;
 - 13.7.3 any other agreement between us for goods and/or services which are similar to the Goods and/or Services supplied under the Contract is terminated prior to the expiry of its term by you or us for any reason;
 - 13.7.4 at the time of contract award, you were in one of the situations referred to in regulation 58(1) 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;
 - 13.7.5 we have reasonable cause to believe that you have committed an act or engaged in an activity listed in regulation 58(8) of The Public Contracts (Scotland) Regulations 2015, as read with regulation 58 paragraphs (13) – (17), in which case we shall also consider and apply any relevant guidelines or policy notes which may be issued by the

- Scottish Government from time to time (which shall include, but not be limited to, any guidelines or policy notes relating to blacklisting practices); or
- 13.7.6 you, as a result of any act or omission, in our sole opinion, cause damage or risk to our reputation.
- 13.8 The Contract may be terminated immediately by us on giving written notice and without payment of any compensation to you where Deemed Employment has occurred under the Contract.
- 13.9 You shall email procurement@sds.co.uk immediately if another individual or body, or individuals or bodies acquire(s) a Controlling Interest in you where they do not at the commencement date of the Contract hold that Controlling Interest (for the purpose only of determining Controlling Interest, disregard any change in the ownership / control of voting share capital, voting rights or powers or appointment / removal of directors where that change relates to your ultimate holding company or other parent undertaking of yours) ("Change of Control"). We may terminate the Contract and/or any other contract we have entered into with you, or any part of any such agreement, (as we may set out), without penalty to us by giving notice in writing to you with immediate effect within six (6) Months of:
- 13.9.1 being notified that a Change of Control has occurred; or
- 13.9.2 where no notification has been made, the date that we become aware of the Change of Control;
- but we cannot terminate under this Condition 13.9 where we approved the Change of Control prior to its implementation, in writing.
- 13.10 If we have the right to terminate the Contract, we may elect to suspend (for any period) the Contract or any part of it.

14. Consequences of Termination

- 14.1 On termination or expiry of the Contract you will provide us with a report on the work you have carried out under the Contract. We will pay you on a pro rata basis for work that you have completed in accordance with the Contract unless we have terminated the Contract (in part or in whole) under Conditions 13.2, 13.5 or 13.7 above, and we will have no further loss or liability to you.
- 14.2 On termination or expiry of the Contract you will stop using and, at our option, deliver to us (or another public sector body) or destroy any confidential information of ours which you hold whether in paper or electronic form.
- 14.3 On termination or expiry of the Contract (in part or in whole) you will assist us with any handover to another supplier and/or us (or another public sector body) if we so request (acting reasonably), at no extra charge to us and to our requirements.
- 14.4 If we terminate the Contract (in part or in whole) under Conditions 13.2, 13.5 or 13.7 or if you fail to provide the Goods and/or Services to our reasonable satisfaction, we may instruct somebody else to complete the Contract.
- 14.5 If we do instruct somebody else to complete the Contract, we will not pay you any money until the Contract has been completed. We will be entitled to deduct sums that we have had to pay to somebody else to complete the Contract from the money we are due to pay to you under the Contract or otherwise. If we pay somebody else more to complete the Contract than we would have paid to you under the Contract, we will not pay you anything further and you will pay us the difference on demand.
- 14.6 Any provisions which expressly or by implication are intended to survive termination of the Contract will continue in force beyond termination or expiry, including Conditions 2.4, 4.1, 5.5, 5.9 to 5.11, 5.13, 6.9, 10 (Intellectual Property), 14 (Consequences of Termination), 15 (Liability, Loss and Insurance), 16 (Confidential Information, Freedom of Information, Data Protection and Data Security), 17 (Employment Liabilities during the Contract), 18 (TUPE), 19 (Transfer Assistance), 23 (Publicity), 26 (Governing Law) and 27 (Definitions).

15. Liability, Loss and Insurance

- 15.1 You will pay to us on demand the amount of any Losses which we incur as a result of your negligence, any breach by you of the Contract (including any failure or delay in performance of the Contract), any actual or alleged infringement of a third party's Intellectual Property Rights, or any damage to property or personal injury or death caused by you, your Personnel or sub-contractors in the supply of the Goods and/or Services.
- 15.2 You will have in place at all times during the term of the Contract and for a period of 5 years after the end of the Contract, insurance with a reputable insurance company at an adequate level of cover in respect of all risks which may be incurred under the Contract. Such insurance must include cover in respect of any financial loss arising from any advice given or omitted to be given by you. You will show us evidence of such insurance when we request it.
- 15.3 Subject to Condition 15.4:
- 15.3.1 your total liability to us:
- (i) is unlimited in respect to any breach of Condition 10.5 (Intellectual Property) and/or Condition 16.7 (Data Protection);
- (ii) for damage to property caused or arising by reason of any act or omission of you or your employees and agents, shall not exceed the amount stated in the Invitation to Tender or Contract Award Letter in connection with this Condition 15.3.1(ii) for any one event or series of connected events; and
- (iii) for all other claims, losses or damages, which do not fall within Conditions 15.3.1(i) or (ii), in connection with the Contract shall not exceed the greater of the amount stated in the Invitation to Tender or Contract Award Letter in connection with this Condition 15.3.1(iii) and the percentage stated in the Invitation to Tender or Contract Award Letter in connection with this Condition 15.3.1(iii) of the total charges payable under the Contract;
- 15.3.2 our total liability to you for all claims, losses or damages in connection with the Contract shall not exceed the total charges payable under the Contract.
- 15.4 Neither party limits or excludes its liability for fraud or fraudulent misrepresentation, death or personal injury caused by its negligence (or the negligence of its personnel, agents or sub-contractors), any loss or corruption of data, breach of any obligation as to title implied by statute or any other liability for which may not be limited under any applicable law.
- 15.5 If you are an individual you will, if we ask, provide us with evidence of your self-employed status. We are entitled to assume that you are self-employed, and you will make sure that we do not have to bear the cost of paying HMRC, Revenue Scotland or any other Government Department any tax, national insurance or similar payments on the basis that you are not self-employed.

16. Confidential Information, Freedom of Information, Data Protection and Data Security

Confidential Information

- 16.1 Subject to any information specifically stated to be confidential information by us, the Contract and the Contract Documents will not be treated as confidential information and may be disclosed without restriction.
- 16.2 Unless we agree otherwise, all information which you obtain from us or which becomes known to you in connection with the Contract must be kept secret and only used by you to perform your obligations under the Contract. This does not apply to information which is already known to the public.
- 16.3 We do not expect that you will have to disclose your confidential information to us, however if there is specific information which you consider to be confidential, please notify us in writing and mark it as confidential. Subject to Conditions 16.4, 16.5 and 16.6, we will not use or disclose such information that we accept (acting reasonably) is confidential. This does not apply to information which is already known to the public.
- 16.4 Notwithstanding any other provision of the Contract, we may disclose all information submitted to us to our auditors, the Scottish Government, any other public sector body, or any agency acting on behalf of any of these organisations. Such disclosure shall not be a breach of the Contract. The purposes of such disclosure may include the prevention or detection of crime (including fraud), and any statutory purpose.
- 16.5 We may wish to disclose your confidential information to third parties as part of a competitive tender process for the future provision of all or part of the Goods and/or Services covered by the Contract. You hereby acknowledge and agree that we are entitled to disclose such information provided that such third parties sign up to confidentiality obligations no less onerous than we are subject to under this Condition 16.

Freedom of Information

- 16.6 You acknowledge and agree that we may disclose information held by us in compliance with the Freedom of Information (Scotland) Act 2002 (the "FOI Act") or any other legislation or as otherwise required by law. Such information may include information in relation to your response to our Invitation to Tender or the Contract. Information held by us may only be withheld as a result of the exemptions in the FOI Act. Information held cannot automatically be classified as "confidential" or "commercial in confidence" to enable it to be protected from disclosure, regardless of the basis on which it was provided.

Data Protection

- 16.7 To the extent that you are processing Personal Data on our behalf under the Contract you will comply with the following data protection conditions and process the Personal Data in accordance with Appendix 1 (Description of Processing, Personal Data and Data Subjects):
- 16.7.1 We and you will comply with all applicable requirements of the Data Protection Legislation. This Condition 16.7 is in addition to, and does not relieve, remove or replace, our or your obligations or rights under the Data Protection Legislation.
- 16.7.2 We and you acknowledge that for the purposes of the Data Protection Legislation, we are the Controller and you are the Processor. Appendix 1 sets out the scope, nature and purpose of processing by you, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 16.7.3 Without prejudice to the generality of Condition 16.7.1, we will ensure that we have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to you and/or lawful collection of the Personal Data by you on our behalf (if applicable) for the duration and purposes of the Contract.
- 16.7.4 Without prejudice to the generality of Condition 16.7.1, you shall, in relation to any Personal Data processed in connection with the performance by you of your obligations under the Contract:
- (i) process that Personal Data only on our documented written instructions unless you are required by Applicable Laws to otherwise process that Personal Data. Where you are relying on Applicable Laws as the basis for processing Personal Data, you shall promptly notify us of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit you from so notifying us. You shall immediately inform us if, in your opinion, our instructions infringe Data Protection Legislation;
 - (ii) ensure that you have in place appropriate technical and organisational measures, reviewed and approved by us, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by you);
 - (iii) ensure that all Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (iv) not transfer any Personal Data outside both the European Economic Area and the UK unless our prior written consent has been obtained and the following conditions are fulfilled:
 - (a) we or you have provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) you comply with your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) you comply with reasonable instructions notified to you in advance by us with respect to the processing of the Personal Data;
 - (v) notify us immediately if you receive:
 - (a) a request from a Data Subject to have access to that person's Personal Data;
 - (b) a request to rectify, block or erase any Personal Data; or
 - (c) any other request, compliant or communication relating to our or your obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

- (vi) assist us, in responding to any request from a Data Subject and in ensuring compliance with our obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (vii) notify us without undue delay on becoming aware of a Personal Data Breach including any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of the Contract;
 - (viii) at our written direction, delete or return Personal Data and copies thereof to us on termination or expiry of the Contract unless required by Applicable Law to store the Personal Data; and
 - (ix) maintain complete and accurate records and information to demonstrate your compliance with this Condition 16.7 and allow for audits by us or our designated auditor and immediately inform us if, in your opinion, an instruction infringes the Data Protection Legislation.
- 16.7.5 We do not consent to you appointing any third party processor of Personal Data under the Contract without our prior written consent. You shall remain fully liable for all acts or omissions of any third-party processor appointed by you pursuant to this Condition 16.7.5.
- 16.7.6 We and you agree to negotiate in good faith such amendments to this Condition 16.7 and Appendix 1 that may be required to ensure that we and you meet our respective obligations under the Data Protection Legislation.
- 16.7.7 The provisions of this Condition 16.7 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

Data Security

- 16.8 You will comply with our procedures and policies for the vetting of all Personnel whose role may involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures. You confirm that all Personnel employed or engaged by you at the start of the Contract were vetted and recruited on a basis that is equivalent to and no less strict than those procedures and policies.
- 16.9 You will not delete or remove any proprietary notices contained within or relating to our data.
- 16.10 You will ensure that any system on which you hold any of our data is a secure system that complies with our security policy. To the extent that our data is held and/or processed by you, you shall supply that data to us as requested by us and in the format specified by us. If we ask, you will perform secure back-ups of our data and shall ensure that up-to-date back-ups are stored securely off-site. You will ensure that such back-ups are available to us at all times and are delivered to us on request.
- 16.11 You will preserve the integrity of our data and prevent the corruption or loss of our data. If at any time you suspect or have reason to believe that our data has or may become corrupted, lost or degraded in any way, then you shall notify us immediately.
- 16.12 If our data is corrupted, lost or degraded as a result of any act or omission by you, any Personnel or any sub-contractor, (i) we may require you, at your expense, to restore or procure the restoration of our data and you shall do so as soon as practicable; and/or (ii) we may restore or procure the restoration of our data ourselves, and you will repay us any reasonable expenses incurred in doing so.
- 16.13 You will on an ongoing basis use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete malicious software from your systems. If malicious software is found on any systems, you will co-operate with us to reduce the effect of the malicious software and assist us to mitigate any losses and to restore our data and systems and the Services to their desired operating efficiency. If the malicious software originates from your, your sub-contractor's or your Personnel's systems or operated on your, your sub-contractor's or your Personnel's systems as a result of your failure to comply with the terms of this Condition 16.13, then you will repay us all costs incurred by us in taking the aforementioned action.

17. Employment Liabilities during the Contract

- 17.1 You shall indemnify us and keep us indemnified on demand from and against any Losses arising out of or in connection with: (i) the employment or engagement or the claimed employment or engagement and (ii) the termination of employment or engagement or the claimed termination of the employment or engagement, by you or any of your sub-contractors of any Personnel. This includes any Losses suffered by us in connection with or arising out of any claim made at any time by any Personnel that they are, or were during the term of the Contract, employed by us or are, or were during the term of the Contract, a Worker (as defined by section 230(3) of the Employment Rights Act 1996) engaged by us and/or any claim arising from or connected to such actual or alleged employment status or Worker status. The indemnity in this Condition 17 shall not apply to any claim by any Personnel to transfer to the employment of Skills Development Scotland or any New Supplier under TUPE as contemplated by Condition 18.

18. TUPE

- 18.1 If, on the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract, any contract of employment or engagement of any current or former Personnel has effect, or is claimed by such Personnel to have effect, as if originally made between (i) us and such person; and/or (ii) any New Supplier and such person by operation of TUPE or otherwise, then you shall pay us and/or any New Supplier the amount of Losses (whenever they are incurred, and whether or not such Losses are erroneous or unsuccessful) arising out of:
- 18.1.1 the employment or engagement; and/or
 - 18.1.2 the claimed employment or engagement; and/or
 - 18.1.3 the termination of the employment or engagement; and/or
 - 18.1.4 the claimed termination of employment or engagement
- of any such Personnel prior to the date of a relevant transfer for the purposes of TUPE.
- 18.2 If we ask, you shall promptly enter into an appropriate agreement with any New Supplier on the same terms as those in Condition 18.1 in order to give effect to Condition 18.1 and you shall pay us the amount of any Losses which arise from a failure to do so, including any Losses which may arise under any agreement with or undertaking we give to any New Supplier which would give the New Supplier the benefit of Condition 18.1.

19. Transfer Assistance

- 19.1 During any Transfer Assistance Period, you shall not and you shall make sure that your sub-contractors do not, in each case without obtaining our written agreement in advance:
- 19.1.1 materially change the rate of remuneration, hours to be worked or any other terms and conditions of employment or engagement of any Personnel;
 - 19.1.2 replace or re-deploy any Personnel; or
 - 19.1.3 materially increase the number of Personnel.
- 19.2 During any Transfer Assistance Period, you shall and you shall make sure that your sub-contractors shall:
- 19.2.1 fully and accurately disclose to us or to any person nominated by us, information relating to employees engaged in providing the Services in relation to the Contract for the purposes of TUPE and/or re-tendering or otherwise;
 - 19.2.2 permit us to use all information disclosed under Condition 19.2.1 for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as we consider appropriate in connection with any re-tendering;
 - 19.2.3 in the event that the information provided by you in accordance with Condition 19.2.1 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 you becoming aware that the information originally given was inaccurate) you shall notify us of the inaccuracies as soon as practicable and provide the amended information;
 - 19.2.4 allow us (or such other person as we may specify) access to the Personnel for training or for any other purpose that we specify, within 7 days of our request for such access; and
 - 19.2.5 do all such things as we may reasonably require to facilitate such access as intended under Condition 19.2.4 above; and
 - 19.2.6 provide within 7 days of any request by us, details of the terms and conditions of employment of the Personnel and any other information which we may reasonably specify relating to the employment or engagement of the Personnel.
- 19.3 You shall and you shall ensure that your subcontractors shall, employ each member of Personnel on terms which permit disclosure of the information disclosable under Condition 19.2.6:
- (i) to us; and/or
 - (ii) by us to any New Supplier; and/or
 - (iii) by us in any future invitation to tender in respect of the Services;
- in each case without having to obtain any further consent.

20. Business Continuity

- 20.1 You will ensure that you and your sub-contractors have in place, maintain and, if required, implement plans and procedures to ensure business continuity, and no disruption to the provision of the Goods and/or Services, both in relation to general day-to-day disruptions and disaster recovery.

21. Blacklisting

- 21.1 You must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Legislation by unlawfully processing Personal Data in connection with any blacklisting activities.
- 21.2 Breach of this Condition 21 shall be deemed a material breach which is not capable of being remedied.
- 21.3 In the event that we terminate the Contract due to your breach of this Condition 21, we may also terminate any other contract we have with you, immediately and without incurring any liability.

22. General

- 22.1 No failure or delay by you or us to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that, or of any other right or remedy nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.2 Unless otherwise provided in the Contract, no variation of the Contract will be effective unless it is in writing and signed by both your and our authorised representatives.
- 22.3 If any provision or part-provision of the Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal, ineffective or unenforceable, or is suspended or the subject of an equivalent order, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract and you and we shall each use reasonable endeavours in good faith to modify the Contract so that the intent of the Contract can be legally carried out.
- 22.4 Any rights and remedies provided under the Contract are in addition to, and not instead of, any other rights or remedies provided under the Contract or provided by law.
- 22.5 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 22.6 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") then you and we shall follow the procedure set out in this condition:
- 22.6.1 either you or we shall give to the other written notice of the Dispute, setting out its nature and full particulars (the "Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, your and our Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - 22.6.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Senior Representatives who shall attempt in good faith to resolve it; and
 - 22.6.3 if the Senior Representatives are for any reason unable to resolve the Dispute within 30 days of it being referred to them, we and you will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To

initiate the mediation, we or you (as appropriate) must serve notice in writing (the "ADR notice") to us or you (as appropriate) to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start no later than 21 days after the date of the ADR notice.

The commencement of mediation shall not prevent you or us commencing or continuing court proceedings in relation to the Dispute.

23. Publicity

- 23.1 You must agree with us in writing and in advance, any press release or public intimation about the Contract and/or the Goods and/or Services that you make. We may make reference publicly to the Contract and to your provision of Goods and/or Services.
- 23.2 We shall be entitled to publicise details of the Contract.
- 23.3 You (including your sub-contractors, agents, directors, Personnel and representatives) shall not do anything which may damage our reputation or the reputation of the Scottish Ministers or any Scottish Minister, or bring us, the Scottish Ministers or any Scottish Minister into disrepute. Without limitation, in the event that any of you, your directors, Personnel, sub-contractors and/or representatives is charged with any criminal offence which offence we consider in our entire discretion to be a serious criminal offence, such event shall constitute an irredeemable material breach of this Condition 23.3.
- 23.4 In the event that we terminate the Contract due to your breach of Condition 23.3, we may also terminate any other contract we have with you, immediately and without incurring any liability.

24. Notices

- 24.1 Any notice given under the Contract shall be in writing and shall be sufficiently served if delivered to us by email and to you by hand, first class recorded delivery post or email. Notices shall be sent to: (i) procurement@sds.co.uk for notices to us and (ii) the addresses shown in your response to our Invitation to Tender for you or the address included for you in the Contract Award Letter. We or you can change our respective address for notices by telling the other in writing.
- 24.2 If delivered or sent:
- 24.2.1 by hand to the correct address, notices shall be deemed given at the time the notice is left at the address;
- 24.2.2 by first class recorded delivery post to the correct address, notices shall be deemed given two Business Days after the date of posting; or
- 24.2.3 by pdf to the correct email address without getting an error message, notices shall be deemed given at 9am on the first Business Day after sending.
- 24.3 This condition does not apply to the service of any proceedings or other documents in any legal action.

25. Assignment and Sub-contracting

- 25.1 You may sub-contract to those sub-contractors named in the Contract Documents but you are not allowed to sub-contract to anyone else or to transfer or assign the Contract or any of your rights or obligations under the Contract or any part of it without our prior written consent. We will not unreasonably withhold such consent. Where we grant consent to you to sub-contract under this Condition 25.1, we reserve the right to withdraw our consent where we have reasonable grounds no longer to approve of the sub-contractor or the sub-contracting arrangement. If you sub-contract any work under the Contract, you will still be responsible to us for carrying out the Contract. We can take action against you if your sub-contractor does not do what it is meant to do.
- 25.2 We may assign or novate the Contract in whole or in part. If requested by us, you shall enter into a novation agreement, as soon as reasonably practicable after our request, with us and the relevant entity, in such form as we shall reasonably specify in order to transfer our rights and obligations under the Contract to such entity.
- 25.3 Where you enter into a sub-contract for any work under the Contract, you must ensure that provisions are included in that Sub-contract which:
- 25.3.1 requires payment to be made of all sums due by you to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined in the Sub-contract requirements and provides that, where we have made payment to you in respect of the Contract and the sub-contractor's invoice relates to the Contract then, to that extent, the invoice must be treated as valid and, provided you are not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to you, payment must be made to the sub-contractor without deduction;
- 25.3.2 notifies the sub-contractor that the Sub-contract forms part of a larger contract for the benefit of us and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to us;
- 25.3.3 requires a provision to be included in the same terms as that set out in Condition 25.3.1, Condition 25.3.2 and this Condition 25.3.3, subject only to modification to refer to the correct designation of the equivalent party as you and the sub-contractor as the case may be;
- 25.3.4 permits you 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 or if any of the termination events specified in Conditions 13.7.1, 13.7.4 or 13.7.5 occur;
- 25.3.5 require that the sub-contractor includes a provision having the same effect as Condition 25.3.4 in any Sub-contract which it awards; and
- 25.3.6 requires the sub-contractor to notify you if another individual or body, or individuals or bodies acquire(s) a Controlling Interest in the sub-contractor in terms similar to Condition 13.9.
- 25.4 You shall promptly make available to us a copy of any Sub-contract we request and shall email procurement@sds.co.uk to notify us of any acquisition of a Controlling Interest in a sub-contractor as envisaged by Condition 25.3.6 as soon as you become aware of such acquisition.

26. Governing Law

- 26.1 The Contract shall be governed by and construed in accordance with Scots law and you and we agree that any court action relating to the Contract will take place exclusively in the courts in Scotland.

27. Definitions

27.1 In these terms and conditions certain words and phrases have defined meanings as set out below:

"Applicable Laws"	means (for so long as and to the extent that they apply to you) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law;
"Authorised Representative"	means the authorised representative for you set out in your response to the Invitation to Tender or the Contract Award Letter and the authorised representative for us set out in the Invitation to Tender or the Contract Award Letter;
"Business Day"	means a day other than a Saturday, Sunday or public holiday in Scotland, when the banks in Glasgow are open for business;
"Change of Control"	has the meaning set out in Condition 13.9;
"Contract"	means the contract for the supply of the Goods and/or Services made up of the Contract Documents and concluded between you and us;
"Contract Award Letter"	means the contract award letter issued by us in relation to the Goods and/or Services;
"Contract Documents"	means any Contract Award Letter issued by us in relation to the Goods and/or Services, these terms and conditions, our Invitation to Tender, your response to our Invitation to Tender and any clarifications to our Invitation to Tender and/or your response to our Invitation to Tender that are agreed in writing between you and us and referenced in the Contract Award Letter;
"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "processing" and "appropriate technical and organisational measures"	have the meanings set out in the Data Protection Legislation;
"Controlling Interest"	means: (i) the ownership or control (directly or indirectly) of more than fifty per cent (50%) of the voting share capital of the relevant undertaking; (ii) the ability to direct the casting of more than fifty per cent (50%) of the votes exercisable by the partners, members or shareholders of the relevant undertaking; or (iii) the right to appoint or remove directors of the relevant undertaking holding a majority of the voting rights at meetings of the board on all, or substantially all, matters;
"Data Protection Legislation"	means the UK Data Protection Legislation, the EU GDPR (to the extent applicable) and all other legislation and regulatory requirements in force from time to time which apply to you or us relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to you or us;
"Deemed Employment"	means an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 as may be amended or any replacement provision thereto applies;
"Domestic UK Law"	means the UK Data Protection Legislation and any other law that applies in the UK;
"EU GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"Foreground IP"	means all Intellectual Property Rights arising as a result of your provision of the Goods or Services (as applicable) to us;
"General Change in Law"	means a change in law which comes into effect after the commencement of the Contract, where the change is of a general legislative nature (including, for the avoidance of doubt, a change arising as a result of the UK leaving the EU or otherwise) or which would affect or relate to a comparable supply of goods or services of the same or a similar nature to the supply of the Goods and/or Services;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to law and applicable regulation 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 under the same or similar circumstances;
"Goods"	means the goods detailed in the Contract Documents which are to be supplied to us under the Contract;
"Intellectual Property Rights"	means any patent, trade mark (registered or unregistered), registered design, unregistered design right, copyright, database right, domain name, invention, know how or other similar right or any application for any of the foregoing;

"Invitation to Tender"	means our invitation to tender or our correspondence to you requesting a quote referred to in the Contract Award Letter;
"Losses"	means all costs, liabilities, losses, damages, claims, demands or expenses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional fees and expenses) on a full indemnity basis;
"New Supplier"	means any person, firm, company or other entity which may on or following the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract, be engaged by us to provide all or any part of the Services or all or any part of services which formerly comprised the Services;
"Personnel"	means any individual who is employed or engaged by you or a sub-contractor to provide all or part of the Goods or Services to us, including any key personnel, permanent or temporary employee, officer, agency worker, temporary worker, sub-contractor or any personnel of a sub-contractor;
"Premises"	means the premises as set out in the Contract Documents and any other buildings or premises notified by us to you in writing from time to time;
"Rules and Regulations"	means all applicable legislation and regulations and standards and requirements set down under such legislation and regulations;
"SDS Background IP"	means all Intellectual Property Rights (if any) owned by and/or licensed to us and identified as such in the Contract Documents, which are required by you in order to provide the Goods and/or perform any of the Services;
"Senior Representative"	means the senior representative for you set out in your response to the Invitation to Tender or the Contract Award Letter and the senior representative for us set out in the Invitation to Tender or the Contract Award Letter;
"Services"	means the services detailed in the Contract Documents which are to be supplied to us under the Contract;
"Skills Development Scotland", "we", "us" or "our"	means The Skills Development Scotland Co. Limited, a company incorporated in Scotland (Registered Number SC202659) and having its registered office at Floor 1 Monteith House, 11 George Square, Glasgow G2 1DY;
"Specific Change in Law"	means a change in law which comes into effect after the commencement of the Contract that relates specifically to our business, and which would not affect a comparable supply of goods or services of the same or a similar nature to the supply of the Goods and/or Services;
"Sub-contract"	means a contract between two or more suppliers or service providers, at any stage of remoteness from us 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 the Contract;
"Supplier Background IP"	means all Intellectual Property Rights owned by and/or licensed to you and in existence prior to you first providing the Goods or Services (as applicable) to us;
"Transfer Assistance Period"	means the period beginning on the earliest of:- (i) the date that you or any of your sub-contractors become aware of the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract; or (ii) the date of us informing you of a re-tender in respect of the Services or any part of the Services; or (iii) the date we give or receive notice of the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract; or (iv) the date 6 months prior to expiry of the Contract; and expiring on the date of the whole or partial cessation or reduction of the Services or the expiry or termination of the Contract;
"TUPE"	means The Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, re-enacted or extended from time to time;
"UK Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and
"you"	means you, the party to whom the relevant Contract Award Letter from us is addressed.

Appendix 1
DATA PROTECTION

Description of Processing, Personal Data and Data Subjects

1. You shall comply with any further written instructions with respect to processing by us.
2. Any such further instructions shall be incorporated into this Appendix 1.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i> <i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i> <i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>

Categories of Data Subject

[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]

Plan for return and destruction of the data once the processing is complete unless there is a requirement under applicable law to preserve that type of data

[Describe how long the data will be retained for, how it be returned or destroyed]

Supplementary Notice:

Late Payment of Invoices

Suppliers to The Skills Development Scotland Co. Limited are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoices and, in the second instance, to the Head of Procurement at The Skills Development Scotland Co. Limited at procurement@sds.co.uk. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved and is not intended to interfere with the supplier's legal rights.

Sub-contractors of suppliers to The Skills Development Scotland Co. Limited 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 Head of Procurement at The Skills Development Scotland Co. Limited at procurement@sds.co.uk.

THIS NOTICE DOES NOT FORM PART OF THE TERMS AND CONDITIONS.