

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

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

### **1. THE SERVICES**

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

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

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

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

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

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

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

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

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

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

- 6.1 The level of reimbursable costs detailed in the Contract shall not be exceeded without the prior Written consent of SNH. The Contractor shall submit claims for payment in respect of reimbursable costs in line with the agreed repayment schedule, submitting evidence of actual expenditure and a certification of accuracy along with the invoices.
- 6.2 A capital item is any building installation, plant, equipment, vehicle or other item which is bought or fabricated at a cost of £5,000 or more (inclusive of VAT). The Contractor shall obtain at least 3 competitive quotations for any capital items, the lowest to be accepted unless otherwise agreed in Writing by SNH.
- 6.3 Capital items shall be the property of SNH and shall be safeguarded and maintained adequately by the Contractor. Any damage to such items during the period of the Contract, other than fair wear and tear, shall be made good at the Contractor's own expense.
- 6.4 On termination of the Contract, SNH reserves the right to take possession of capital items but may afford the Contractor the option to purchase all or any capital items at a valuation in line with SNH's own asset valuation procedures.
- 6.5 Any capital items supplied by SNH on loan shall similarly be recorded, safeguarded and maintained. On termination of the Contract, all such loaned items shall be returned to SNH or disposed of in accordance with SNH's Written instructions.

## **7. TIME OF PERFORMANCE**

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

## **8. PAYMENT**

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

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

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

## **10. AUDIT**

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

## **11. INTELLECTUAL PROPERTY**

- 11.1 Except in respect of designs furnished by SNH to the Contractor, the Contractor warrants and undertakes that nothing done or produced by the Contractor in the performance of the Services shall infringe any Intellectual Property Rights (IPR) of any third party and the Contractor shall indemnify SNH in respect of all actions, claims, demands, costs and expenses which SNH may suffer or incur as a result of or in connection with any breach of this Condition 11.
- 11.2 All rights (including IPR) in any reports, documents, data, results, specifications, instructions, plans, drawings, inventions, photographs (for avoidance of doubt including negatives and digital images), models or designs whether in writing or on magnetic or other media:
- (a) furnished to or made available to the Contractor by SNH, shall remain vested in SNH;
  - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract, are hereby (and in the case of future IPR shall be) assigned to and shall vest in SNH absolutely, and, without prejudice to this Condition 11, the Contractor shall not and shall procure that its agents, employees, consultants and subcontractors shall not (except to the extent necessary for the implementation of the Contract) without the prior Written consent of SNH, use or disclose any such reports, documents, data, results, specifications, instructions, plans, drawings, inventions, models, designs or other material as aforesaid, or any other information (whether or not relevant to the

Contract) which the Contractor may obtain by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision.

11.3 All data collected or generated in the course of the provision of the Services shall be routinely recorded and/or stored on such media as SNH may reasonably request and promptly delivered to SNH on request. Such data shall belong to SNH exclusively and the Contractor shall have no rights of use or publication in respect thereof save as expressly approved in Writing by SNH.

11.4 Without prejudice to the generality of the foregoing provisions of this Condition 11, the Contractor and its agents, employees, consultants and sub-contractors shall not use work carried out under the Contract as a basis for a thesis for a higher degree without the prior Written approval of SNH, such approval not to be unreasonably withheld.

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

12.1 The Contractor shall keep secret and not disclose, and shall procure that its agents, employees, consultants and sub-contractors keep secret and do not disclose, any information of a confidential nature obtained by it by reason of the Contract, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to SNH or the Contract in any advertisement without SNH's prior Written consent. The Contractor shall not disclose any Environmentally Sensitive Information which the Contractor may receive or have access to by reason of the Contract, irrespective of whether this Environmentally Sensitive Information is in the public domain or not.

12.2 Without prejudice to Condition 12.1, SNH may, at its sole discretion, consent to the dissemination of appropriate material by the Contractor through the publication of reports, papers, lectures, contributions, seminars or conferences, open days, exhibitions and other means. SNH's prior Written consent must be obtained to such dissemination at least 6 weeks in advance of the proposed date of presentation/publication and SNH may refuse consent, or attach such conditions to its consent as it sees fit, at its sole discretion. Any agreed dissemination shall contain an acknowledgement that the Services were carried out under contract to SNH and is made available with SNH's agreement.

12.3 The Contractor acknowledges and agrees:

- (a) that references may be sought by SNH from banks, existing or past clients, or other referees proposed by the Contractor; and
- (b) that SNH must comply with obligations of disclosure relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Union or elsewhere in accordance with EU Directives or UK or Scottish Government policy on the disclosure of information regarding Government contracts: this disclosure may include the number of tenders received, the identity of the successful tenderer, the winning contract price, the specification of goods or services to be supplied, terms and conditions of contract, quality and performance standards and subsequent performance against those quality and performance standards.

12.4 The Contractor acknowledges that SNH is obliged to disclose information under Freedom of Information legislation, Directives and Regulations, including FOISA and the EIRs and codes and policies relative thereto. The Contractor shall assist and co-operate with SNH (at the Contractor's expense) to enable SNH to comply with these information disclosure requirements. SNH shall be responsible for determining at its absolute discretion whether any information: is exempt from disclosure in accordance with the provisions of the FOISA or the EIRs; and/or is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by SNH. Where reasonably possible and practical when SNH receives a Request for Information which includes information which the Contractor considers confidential, it shall give the Contractor notice thereof, but the Contractor acknowledges that SNH may be obliged under FOISA or the EIRs to disclose such information either without consulting with the Contractor, or following consultation with the Contractor and having taken its views into account.

12.5 The Contractor shall (and shall procure that its agents, employees, consultants and sub-contractors involved in the provision of the Services shall) comply with any notification requirements under the Data Protection Legislation and duly observe all its obligations under the Data Protection Legislation which arise in connection with this Contract.

12.6 The Contractor shall provide SNH with such information as SNH may reasonably require to satisfy itself that the Contractor is complying with its obligations under the Data Protection Legislation; promptly notify SNH of any breach of its obligations under the Data Protection Legislation; and ensure it does not knowingly or negligently do or omit to do anything which places SNH in breach of SNH's obligations under the Data Protection Legislation.

12.7 The Contract shall confirm, usually in the Purchase Order and/or Contract Award Letter issued by SNH, whether the Contractor (in respect of any personal data processed by the Contractor in the course of providing the Services) is a Controller for such personal data or a Processor on behalf of SNH. If the Contractor is a Controller, Schedule Part 1 (*Data Protection - Controller*) shall apply. If the Contractor is a Processor, then Schedule Part 2 (*Data Protection - Processor*) shall apply.

12.8 In the event that the Contract does not specify whether the Contractor is a Controller or Processor, then the Contractor shall be deemed to be a Controller for any personal data processed by the Contractor in the course of providing the Services, and Schedule Part 1 (*Data Protection - Controller*) shall apply accordingly.

## **13. INDEMNITY AND INSURANCE**

13.1 Without prejudice to any rights or remedies of SNH the Contractor shall indemnify SNH against all actions, claims, damages, demands, losses (direct and indirect), charges, costs and expenses which SNH may suffer or incur as a result of the breach by the Contractor of its obligations under the Contract, and in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Contractor.

- 13.2 The indemnity contained in Condition 13.1 shall not apply to the extent that the loss, damage or personal injury is caused by the negligent or wilful act or omission of SNH.
- 13.3 The Contractor shall have in force and shall require any sub-contractor to have in force:
- (a) employer's liability insurance in accordance with any legal requirements for the time being in force;
  - (b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than **£2 million** for any one incident and unlimited in the aggregate, unless otherwise agreed by SNH in Writing; and
  - (c) such other insurance as is specified in the Contract.
- 13.4 The policy or policies of insurance referred to in Condition 13.3 shall be shown to SNH whenever requested, together with satisfactory evidence of payment of premiums.
- 13.5 These Conditions constitute a contract for the provision of Services and not a contract of employment, and accordingly the Contractor shall be fully responsible for and shall indemnify SNH for and in respect of:
- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Contract, where the recovery is not prohibited by law. The Contractor shall further indemnify SNH against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by SNH in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
  - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor or any employee of the Contractor against SNH arising out of or in connection with the Contract.
- 13.6 SNH may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Contractor.

#### **14. FORCE MAJEURE**

- 14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it promptly notifies the other of the Force Majeure event and its expected duration; and uses best endeavours to minimise the effects of that event.
- 14.2 If, due to Force Majeure, a party is or will be unable to perform a material obligation; or is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days or for a total of more than 60 days in any 365-day period, the other party may, within 30 days, terminate the Contract on immediate notice.

#### **15. TERMINATION**

- 15.1 SNH may, without prejudice to any other right or remedy which it may have, terminate the Contract with immediate effect by Written notice to the Contractor in the event that:
- (a) the Contractor commits (knowingly or otherwise) a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or if capable of remedy is not remedied within 15 days of Written notice to do so; or
  - (b) if the Contractor is a limited company: it becomes unable to pay its debts or is otherwise insolvent; or a liquidator, administrator, administrative receiver, manager, or receiver is appointed to it, or over all or any part of its property and undertaking of it, or it passes a resolution or a Court makes an order that it be wound up; or
  - (c) if the Contractor is an individual: if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984; or a petition is presented for bankruptcy or the sequestration of the estate of the Contractor; or he is apparently insolvent or makes any arrangement with or for the benefit of creditors; or makes any conveyance or assignation or composition for the benefit of creditors; or if a trustee is appointed to manage his estate or affairs;
  - (d) if the Contractor is a partnership or firm or a number of persons acting in whatever capacity, any of the events referred to in Condition 15.1(b) or (c) occur in respect of the partnership or firm or any such person, or a petition is presented that the Contractor be wound up as an unlimited company; or
  - (e) the Contractor takes or suffers any action similar to any of the above in any jurisdiction; or
  - (f) there is a material change in the management, ownership or control of the Contractor; or
  - (g) the Contractor suspends trading; ceases to carry out business, or threatens to do either.
- 15.2 In addition to its rights of termination under Condition 15.1, SNH shall be entitled to terminate the Contract by giving to the Contractor not less than 30 days' notice to that effect.
- 15.3 Upon termination of the Contract, the Contractor shall prepare and deliver to SNH a detailed report of the work done by it on, and results of, the Services, and, without prejudice to any other of its rights, SNH may itself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Contractor) all materials, plant and equipment on the Premises belonging to the Contractor. If termination is pursuant to Condition 15.1, SNH shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by SNH (including SNH's own costs). If the total cost to SNH exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by SNH from the Contractor.

- 15.4 Termination under this Condition 15 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to either party and shall not affect the continued operation of Conditions which expressly or by implication are to survive termination, including Conditions 11 and 12.
- 15.5 Upon termination for any reason, the Contractor will forthwith return any material of SNH then in its possession or control including any documents, papers, materials or information supplied by or obtained from SNH in connection with the Contract, or extracted from such documents, papers, materials or information; if it fails to do so, SNH may enter into any premises owned by or under the control of the Contractor and take possession of them.
- 15.6 Without prejudice to the generality of the foregoing, the Contractor may retain copies of any documents, papers, materials or information which shall be required by him to prepare any report required under Condition 15.3. Forthwith upon submission of the report to SNH, the Contractor shall return any documents, papers, materials or information which he may have retained in terms of this Condition 15.6.

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

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

## **17. EQUALITY AND DIVERSITY**

- 17.1 The Contractor shall comply with the Human Rights Act 1998 and the Equality Act 2010, and so far as within its powers, shall ensure that SNH complies with the Public Sector Equality Duty.
- 17.2 The Contractor shall also take all reasonable steps to secure the observance of this Condition, and compliance with the Equality Act 2010 and the Human Rights Act 1998, by all agents, employees, consultants, sub-contractors and suppliers engaged by the Contractor in the execution of the Contract.

## **18. HEALTH AND SAFETY**

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

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

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

## **20. NOTICES**

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

## **21. GOVERNING LAW**

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

## **22. CONSTRUCTION / WORKS CONTRACTS**

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

- 22.3 In this Clause 22 "on-site" means all persons engaged by the Contractor to undertake any works, or part thereof, on the site.

## **23. DEFINITIONS**

- 23.1 In these Conditions:

**'Conditions'** means these conditions of contract for the provision of services to SNH;

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

**'Contract Award Letter'** means a letter or other document from SNH confirming the award of a Contract to, and appointment for the purposes of providing the Services of, a Contractor;

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

**'Controller'** shall have the same meaning as set out in the GDPR;

**'Data Protection Legislation'** means the General Data Protection Regulation (Regulation (EU) 2016/679) ("**GDPR**"), the Data Protection Act 2018 and any other laws applicable in the United Kingdom from time to time that relate to data protection, privacy or the use of information relating to individuals;

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

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

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

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

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

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

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

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

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

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

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

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

**'SNH'** means Scottish Natural Heritage, established under the Natural Heritage (Scotland) Act 1991 and having their headquarters at Great Glen House, Leachkin Road, Inverness, IV3 8NW;

**'Statement of Requirements (or Specifications)'** means a statement of requirements or any other document setting out SNH's specifications for the Contract;

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

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

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

## Schedule Part 1: Data Protection - Controller

1. In this Schedule Part 1 (*Data Protection - Controller*):
  - 1.1. “**Contractor Personnel**” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-processor engaged in the performance of the Contractor’s obligations under this Contract.
  - 1.2. “**Shared Personal Data**” means any Personal Data relating to an identified or identifiable natural person which will be disclosed by SNH to the Contractor, processed by either SNH or the Contractor or otherwise shared between SNH and the Contractor.
  - 1.3. The terms “**appropriate technical and organisational measures**”, “**Controller**”, “**Processor**”, “**process**”, “**data subject**”, “**Personal Data**”, and “**personal data breach**” shall, unless the context otherwise requires, each have the respective meanings given to them in the GDPR.
2. SNH and the Contractor acknowledge that for the purposes of the Data Protection Legislation both are Controllers of the Shared Personal Data.
3. The Contractor will comply with all applicable requirements of the Data Protection Legislation. This Schedule Part 1 (*Data Protection - Controller*) is in addition to, and does not relieve, remove or replace, the Contractor’s obligations under the Data Protection Legislation.
4. Without prejudice to the generality of paragraph 3 of Schedule Part 1, the Contractor will ensure that it has all necessary and appropriate consents and notices in place (and has provided all relevant privacy information to the relevant data subjects) to enable lawful processing of the Shared Personal Data (including without limitation the lawful sharing of the Shared Personal Data with SNH) for the duration and purposes of the Services.
5. SNH and the Contractor agree that the purposes for which the Shared Personal Data may be processed and may be shared between SNH and the Contractor (the “**Approved Purposes**”) are the provision by the Contractor, and receipt by SNH, of the Services and any other purposes confirmed in writing by SNH (in the Statement of Requirements, Purchase Order or Contract Award Letter).
6. Without prejudice to the generality of paragraph 3 of this Schedule Part 1, the Contractor undertakes and warrants to SNH that, in relation to any Shared Personal Data processed in connection with the performance by the Contractor of its obligations under the Contract, it shall:
  - 6.1. inform the relevant data subjects, in accordance with the Data Protection Legislation, of the purposes for which the Contractor will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR;
  - 6.2. only use or process the Shared Personal Data for the Approved Purposes and not retain the Shared Personal Data for any longer than is necessary to carry out the Approved Purposes;
  - 6.3. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Shared Personal Data and against accidental loss or destruction of, or damage to, Shared 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 and including without limitation any specific technical and organisational measures set out in the Contract;
  - 6.4. ensure that the Contractor takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Shared Personal Data and ensure that such Contractor Personnel:
    - 6.4.1. only process the Shared Personal Data in accordance with the Contract (and in particular this Schedule Part 1);
    - 6.4.2. are aware of and comply with the Contractor’s duties under this Schedule Part 1 and the Data Protection Legislation;
    - 6.4.3. are obliged to keep the Shared Personal Data confidential and are subject to appropriate confidentiality undertakings with the Contractor; and
    - 6.4.4. have undergone adequate training in the use, care, protection and handling of the Shared Personal Data;
  - 6.5. maintain complete and accurate records and information to demonstrate its compliance with this paragraph 6 of Schedule Part 1; and
  - 6.6. notify SNH without undue delay (and in any event within 48 hours) on becoming aware of a personal data breach affecting the Shared Personal Data.
7. Without prejudice to the generality of paragraph 3 of Schedule Part 1, the Contractor agrees to provide reasonable assistance to SNH in responding to any request from a data subject (including any exercise of a data subject’s rights under the Data Protection Legislation) and in ensuring compliance with SNH’s obligations under the Data Protection Legislation with respect to security, breach notifications, and consultations with supervisory authorities or regulators.
8. If the Contractor appoints a third party Processor to process the Shared Personal Data, it shall comply with Articles 28 to 30 of the GDPR and it shall remain fully liable to SNH for the acts and/or omissions of such Processor.
9. The Contractor shall neither do or nor omit to do anything which puts SNH in breach of the Data Protection Legislation.

10. The Contractor hereby indemnifies, and keeps indemnified, SNH (including but not limited to any employees, agents or contractors engaged by SNH, excluding the Contractor) fully on demand against all losses and/or expenses reasonably incurred by SNH (or its employees, agents or contractors):
  - 10.1. arising from any breach of this Schedule Part 1 or any breach of the Data Protection Legislation by the Contractor or any Contractor Personnel, and/or
  - 10.2. as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of any unauthorised processing, unlawful processing, destruction and/or damage to any SNH Personal Data by the Contractor and/or any Contractor Personnel.
11. The provisions of the Schedule Part 1 will survive termination or expiry of the Contract.



## Schedule Part 2: Data Protection - Processor

1. In this Schedule Part 2 (*Data Protection - Processor*):
  - 1.1. “**Contractor Personnel**” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-processor engaged in the performance of the Contractor’s obligations under this Contract.
  - 1.2. “**Data Processing Schedule**” means the information relating to the Contractor’s processing activities as required by paragraph 4 of Schedule Part 2, which may be contained in the Statement of Requirements, Purchase Order and/or Contract Award Letter.
  - 1.3. “**SNH Personal Data**” means any Personal Data relating to an identified or identifiable natural person which will be processed (subject to the Data Protection Legislation) by the Contractor on behalf of SNH in connection with this Contract, including without limitation the Personal Data referred to in the Data Processing Schedule.
  - 1.4. The terms “**appropriate technical and organisational measures**”, “**Controller**”, “**Processor**”, “**process**”, “**data subject**”, “**Personal Data**”, “**personal data breach**” and “**supervisory authority**” shall, unless the context otherwise requires, each have the respective meanings given to them in the GDPR.
2. The Contractor will comply with all applicable requirements of the Data Protection Legislation. This Schedule Part 2 (*Data Protection - Processor*) is in addition to, and does not relieve, remove or replace, the Contractor’s obligations under the Data Protection Legislation.
3. SNH and the Contractor acknowledge that for the purposes of the Data Protection Legislation:
  - 3.1. SNH is the Controller and the Contractor is the Processor of the SNH Personal Data being processed for the purposes of the Services;
  - 3.2. SNH is a controller in respect of any personal data relating to the Contractor’s staff that it processes for the purposes of receiving the Services; and
  - 3.3. the Contractor will be a Controller in respect of any personal data relating to SNH’s staff that it processes for the purposes of providing the Services and in respect of any other personal data that it processes in connection with the Services that is not SNH Personal Data.
4. SNH and the Contractor agree that the following matters shall be confirmed by SNH in a Data Processing Schedule forming part of the Contract:
  - 4.1. the subject-matter and nature of the processing to be performed by the Contractor on behalf of SNH;
  - 4.2. the categories of data subjects to whom the SNH Personal Data relates; and
  - 4.3. the categories of Personal Data that will be processed by the Contractor on behalf of SNH as SNH Personal Data.
5. Without prejudice to the generality of paragraph 2 of this Schedule Part 2, the Contractor shall, in relation to any SNH Personal Data processed in connection with the performance by the Contractor of its obligations under the Contract:
  - 5.1. process the SNH Personal Data only on the written instructions of SNH unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process such SNH Personal Data (“**Applicable Data Processing Laws**”). Where the Contractor is relying on Applicable Data Processing Laws for processing such SNH Personal Data, the Contractor shall promptly notify SNH of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit the Contractor from so notifying SNH;
  - 5.2. notify SNH immediately if it considers that any of SNH’s instructions infringe the Data Protection Legislation;
  - 5.3. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of SNH Personal Data and against accidental loss or destruction of, or damage to, SNH 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 SNH Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to SNH 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 it) and including without limitation any specific technical and organisational measures set out in the Contract;
  - 5.4. ensure that the Contractor takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the SNH Personal Data and ensure that such Contractor Personnel:
    - 5.4.1. only process the SNH Personal Data in accordance with the Contract (and in particular this Schedule Part 2);
    - 5.4.2. are aware of and comply with the Contractor’s duties under this Schedule Part 2 and the Data Protection Legislation;
    - 5.4.3. are obliged to keep the SNH Personal Data confidential and are subject to appropriate confidentiality undertakings with the Contractor; and
    - 5.4.4. have undergone adequate training in the use, care, protection and handling of the SNH Personal Data;
  - 5.5. not transfer any SNH Personal Data outside of the European Economic Area unless the prior written consent of SNH has been obtained and the following conditions are fulfilled:

- 5.5.1. the Contractor or SNH has in place with the non-EEA receiving entity the EU model contractual clauses as set out in Decisions 2010/87/EU or 2004/915/EC or any alternative version of those clauses issued by the European Commission or such other supervisory authority from time to time;
- 5.5.2. the transfer is to a non-EEA country that is deemed to have an adequate level of protection from time to time by the European Commission or such other supervisory authority;
- 5.5.3. there is an approved code of conduct in place by an association or other body representing the Contractor or SNH that applies to the non-EEA territory or territories to which the SNH Personal Data is to be transferred;
- 5.5.4. there is an approved certification mechanism in place in respect of the non-EEA territory;
- 5.5.5. to the extent that the transfer is to an entity located in the United States, such entity participates in the EU-US Privacy Shield or such other mechanism that may replace or supersede it from time to time; or
- 5.5.6. SNH confirms that one of the derogations set out in Article 49 of the GDPR applies to such transfer of SNH Personal Data;
- 5.6. assist SNH in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, personal data breaches, impact assessments and consultations with supervisory authorities or regulators;
- 5.7. notify SNH without undue delay (and in any event within 72 hours) of receipt of any request from a data subject in connection with any SNH Personal Data;
- 5.8. notify the Customer without undue delay (and in any event within 48 hours) on becoming aware of a personal data breach affecting the SNH Personal Data;
- 5.9. at the written direction of SNH, delete or return SNH Personal Data and copies thereof to SNH on termination of the Contract unless required by Applicable Data Processing Law to store the SNH Personal Data;
- 5.10. maintain complete and accurate records and information to demonstrate its compliance with this paragraph 5 of Schedule Part 2; and
- 5.11. submit and contribute to audits and inspections carried out by SNH (or a third-party appointed by SNH to carry out such audits or inspections) for the purpose of ensuring the Contractor's compliance with this paragraph 5 of Schedule Part 2 and the Data Protection Legislation. Any such audit or inspection shall be subject to the following restrictions:
  - 5.11.1. SNH shall provide reasonable written notice of the date of inspections or audits;
  - 5.11.2. SNH may perform such audits no more than once per year unless required by the Data Protection Legislation or unless in response to a personal data breach affecting the SNH Personal Data;
  - 5.11.3. any third party appointed by SNH to perform such audit or inspection shall be required to execute a confidentiality agreement acceptable to the Contractor prior to such audit or inspection;
  - 5.11.4. audits must be conducted during regular business hours, subject to the Contractor's policies, and may not unreasonably interfere with the Supplier's business activities;
  - 5.11.5. SNH must provide the Contractor with any audit reports generated in connection with any audit at no charge unless prohibited by applicable law. SNH may use the audit reports only for the purposes of meeting its audit requirements under Data Protection Legislation and/or confirming compliance with the requirements of this paragraph 5 of Schedule Part 2. The audit reports shall be confidential;
  - 5.11.6. nothing in this paragraph 5.11 of Schedule Part 2 shall require the Contractor to breach any duties of confidentiality owed to any of its customers, employees or third parties; and
  - 5.11.7. the costs of any audits or inspections shall be borne by SNH, unless the audit or inspection uncovers material non-compliance by the Contractor with this paragraph 5 of Schedule Part 2 or with the Data Protection Legislation, in which case the Contractor shall contribute towards such costs.
- 6. SNH consents to the Contractor appointing sub-processor(s) as third party processors of SNH Personal Data. For the avoidance of doubt, this paragraph 6 of Schedule Part 2 is intended to be general authorisation under Article 28(2) of the GDPR to the appointment of sub-processors. Any sub-processors who are approved as at the data of the Contract shall be confirmed by SNH in the Contract (typically in the Purchase Order or Contract Award Letter). The following shall apply in respect of the appointment of any sub-processors:
  - 6.1. The Contractor may only authorise a sub-processor to process SNH Personal Data if:
    - 6.1.1. prior to such authorisation, SNH is notified of any change in any appointment of a sub-processor and is provided with an opportunity to object to the appointment (or any change in the appointment) of a sub-processor within 28 days after the Contractor supplies SNH with full details regarding such sub-processor; and
    - 6.1.2. the Contractor shall (prior to any processing of SNH Personal Data by the sub-processor) either:
      - 6.1.2.1. appoint the sub-processor under a binding written contract, with enforceable data protection obligations on equivalent terms as apply to the Contractor under the Schedule Part 2 ("**Processor Contract**"), with sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Data Protection Legislation, and with an obligation on each sub-processor to procure that

their sub-processors must comply with conditions equivalent to this paragraph 6 of Schedule Part 2; or

- 6.1.2.2. in respect of any sub-processors who were appointed prior to the date of the Contract, warrant to SNH that the Contractor has entered into an appropriate Processor Contract with such existing sub-processor.
  - 6.2. The Contractor shall not authorise a sub-processor to process SNH Personal Data if SNH has objected to such appointment pursuant to paragraph 6.1.1 of Schedule Part 2.
  - 6.3. The Contractor shall promptly upon request by SNH provide the relevant details of any such Processor Contract to SNH.
  - 6.4. As between the Contractor and SNH, the Contractor shall remain fully liable to SNH for any acts or omissions of a sub-processor.
  - 6.5. The Contractor shall immediately cease using a sub-processor upon receiving written notice from SNH requesting that the sub-processor ceases processing SNH Personal Data for security reasons or concerns about the sub-processor's ability to carry out the relevant processing in compliance with the Data Protection Legislation or the Processor Contract.
  - 6.6. On SNH's written request, the Contractor will audit a sub-processor's compliance with its obligations regarding the SNH Personal Data and provide SNH with the audit results.
7. The Contractor undertakes, warrants and represents that it shall:
- 7.1. process the SNH Personal Data in accordance with the terms of the Data Protection Legislation and the Contract;
  - 7.2. ensure that the SNH Personal Data is kept secret and confidential; and
  - 7.3. fully assist SNH in ensuring compliance with the obligations under the Data Protection Legislation and within the timescales required by the Data Protection Legislation.
8. The Contractor shall neither do or nor omit to do anything which puts SNH in breach of the Data Protection Legislation.
9. The Contractor hereby indemnifies, and keeps indemnified, SNH (including but not limited to any employees, agents or contractors engaged by SNH, excluding the Contractor) fully on demand against all losses and/or expenses reasonably incurred by SNH (or its employees, agents or contractors):
- 9.1. arising from any breach of this Schedule Part 2 or any breach of the Data Protection Legislation by the Contractor or any Contractor Personnel, and/or
  - 9.2. as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of any unauthorised processing, unlawful processing, destruction and/or damage to any SNH Personal Data by the Contractor and/or any Contractor Personnel.
10. SNH may, at any time on not less than 30 Working Days' notice, revise this Schedule Part 2 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
11. The provisions of Schedule Part 2 will survive termination or expiry of the Contract.