

<b>Project Code</b>	project_9241
<b>Project Title</b>	Attracting High-Quality Graduates into Teaching
<b>Reference</b>	case/379894
<b>ITT Code</b>	itt_20596
<b>ITT Title</b>	Attracting High-Quality Graduates into Teaching

<b>1 Qualification Envelope</b>		
<b>1.1 Acceptance of Documentation</b>		
	<b>Note</b>	<b>Note Details</b>
1.1.1	BIDDER GUIDANCE	<p>Important – The buyer will typically expect bidders to answer all the questions – even those marked “optional”. Optional in this instance simply means that the PCS-Tender system will not actively stop a bidder from submitting a response if an “optional” question has not been answered. It is the bidder’s responsibility to ensure that all questions are answered prior to final submission.</p> <p>“Mandatory” questions are those which, if not answered in the right place and right format, then the PCS-Tender system will actively block you submitting your response. It is therefore especially important that you do not leave answering these types of questions to the last minute.</p>
1.1.2	BIDDER GUIDANCE	Bidders must navigate to the 'Attachment' area to download and view documents relating to this procurement exercise.
	<b>Question</b>	<b>Description</b>
1.1.3	Supplier Response Guides	(*) Please confirm that you have read and understood the supplier response guide
1.1.4	Confirmation - Date	(*) Please enter the date in which you have confirmed the above.
<b>1.2 European Single Procurement Document (ESPD)</b>		
	<b>Note</b>	<b>Note Details</b>
1.2.1	ESPD	<p>The European Single Procurement Document (ESPD) is a standard qualification questionnaire supplied by the European Commission for all regulated procurements. The ESPD is used to self-certify for the minimum requirements to tender and is tailored to the buyer’s specific project.</p> <p>Information on the selection criteria for participation can be found in the Contract Notice on Public Contracts Scotland. If you have previously submitted an ESPD some of your answers will be pre-populated and these can viewed in your Supplier Profile. Be aware that not all questions will apply to you or be valid for every tender.</p>

1.2.2	Important	You are able to update your Supplier Profile at any time. Information contained within your Profile is visible to buyers within contracting authorities using PCS-Tender and administrators of the system. It is not visible to other suppliers registered on the system. Submitted responses to standardised questions are automatically updated in your Profile when the buyer opens your response.
<b>1.3 Part 1: Information about the Procurement Procedure</b>		
	<b>Note</b>	<b>Note Details</b>
1.3.1	OJEU Number:	N/A
1.3.2	Date:	N/A
1.3.3	File reference number attributed by the public body:	case/379894
<b>1.4 Part 2A: Information about the bidder</b>		
	<b>Note</b>	<b>Note Details</b>
1.4.1	BIDDER GUIDANCE	This section seeks background information about the bidder; this section is not normally evaluated, however the public body may choose not to select bidders that cannot provide basic company information.
1.4.2	Data Protection	All personal information supplied will be treated as confidential and will be subject to the Data Protection Act 1998.
	<b>Question</b>	<b>Description</b>
1.4.3	2A.1	(*) Name:
1.4.4	2A.2	VAT number, if applicable:
1.4.5	2A.3	National Identification no (if required and applicable)
1.4.6	2A.4	D.U.N.S, if applicable:
1.4.7	2A.5.1	(*) Postal Address Line 1:
1.4.8	2A.5.2	Postal Address Line 2:
1.4.9	2A.5.3	(*) Postal Address Town/City:
1.4.10	2A.5.4	(*) Postal Address Region:
1.4.11	2A.5.5	Postal Address Postcode:
1.4.12	2A.5.6	(*) Postal Address Country:
1.4.13	2A.6	Contact person or persons:
1.4.14	2A.7	(*) Telephone (including dialling code):
1.4.15	2A.8	Mobile (including dialling code):
1.4.16	2A.9	(*) Email:
1.4.17	2A.10	Internet Address (web address) (if applicable):
1.4.18	2A.11	Name of parent company (if applicable):

1.4.19	2A.12	Name of ultimate parent company (if applicable):
1.4.20	2A.13	(*) Bidder legal status:
<b>1.5 Conditional Section: Other Legal Status</b>		
	<b>Question</b>	<b>Description</b>
1.5.1	2A.13.1	(*) 2A.13.1 - If you have answered 'Other' to question 2A.13 please provide details here:
<b>1.6 Part 2A: General Information</b>		
	<b>Note</b>	<b>Note Details</b>
1.6.1	BIDDER GUIDANCE	<p>For question ESPD 2A.14, please refer to the definition of a small or medium enterprise below:</p> <ul style="list-style-type: none"> <li>• Micro enterprises: enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed £1.57 million.</li> <li>• Small enterprises: an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed £7.86 million;</li> <li>• Medium enterprises: enterprises which are neither micro nor small and which employ fewer than 250 persons and which have an annual turnover not exceeding £39.28 million, and/or an annual balance sheet total not exceeding £33.78 million.</li> </ul>
	<b>Question</b>	<b>Description</b>
1.6.2	2A.14	For Micro/Small/Medium Enterprises only: Please confirm the size of your organisation:
1.6.3	2A.15	(*) Is the bidder a supported business or will it provide for the performance of the contract in the context of sheltered employment programmes?
<b>1.7 Conditional Section: Supported Business</b>		
	<b>Question</b>	<b>Description</b>
1.7.1	2A.15.1	What is the corresponding percentage of disabled or disadvantaged workers?
1.7.2	2A.15.2	Please specify which category or categories of disabled or disadvantaged workers the employees concerned belong to:
<b>1.8 Part 2A: Official Lists and Certification</b>		
	<b>Question</b>	<b>Description</b>
1.8.1	2A.16	(*) If applicable, is the bidder registered on an official list of approved economic operators (applicable to non-UK businesses only), or does it have an equivalent certificate (e.g. under a national (pre)qualification system)?
<b>1.9 Conditional Section: Official Lists and Certification</b>		
	<b>Question</b>	<b>Description</b>

1.9.1	2A.16.1	(* Please provide the name of the list or certificate and the relevant registration number, if applicable:
1.9.2	2A.16.2	If the certificate of registration or certification is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.9.3	2A.16.3	(* Please state the references on which the registration or certification is based, and, where applicable, the classification obtained in the official list:
1.9.4	2A.16.4	(* Does the registration or certification cover all of the required selection criteria?
	<b>Note</b>	<b>Note Details</b>
1.9.5	BIDDER GUIDANCE	If you have answered No to question 2A.16.4:  Please also complete the missing information from the Technical and Professional Ability sections.
	<b>Question</b>	<b>Description</b>
1.9.6	2A.16.5	Will the economic operator be able to provide a certificate with regard to the payment of social security contributions and taxes or provide information enabling the public body or Contracting Entity to obtain it directly by accessing a national database in any Member State that is available free of charge?
	<b>Note</b>	<b>Note Details</b>
1.9.7	BIDDER GUIDANCE	Only answer question 2A.16.5 if it is required in the Contract notice or procurement documentation.
	<b>Question</b>	<b>Description</b>
1.9.8	2A.16.6	If the certificate of registration or certification is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.10 Part 2A: Form of participation</b>		
	<b>Note</b>	<b>Note Details</b>
1.10.1	BIDDER GUIDANCE	Notably as part of a group, consortium, joint venture or similar:
	<b>Question</b>	<b>Description</b>
1.10.2	2A.17	(* Is the bidder participating in the procurement procedure together with others?
<b>1.11 Conditional Section: Form of participation</b>		
	<b>Question</b>	<b>Description</b>

1.11.1	2A.17.1	(* Please indicate the role of the bidder in the group (leader, responsible for specific tasks):
1.11.2	2A.17.2	(* Please identify the other bidder(s) participating in the procurement procedure together:
1.11.3	2A.17.3	Where applicable, name of the participating group:
1.11.4	2A.17.4	(* Please download and complete the ESPD attachment for each of the named participants.  Bidders should ensure that any other participants are also registered on PCS-Tender  Where you have multiple participants you should attach the completed ESPD responses as a single zip file against this question.
<b>1.12 Part 2B: Information about representatives of the bidder</b>		
	<b>Question</b>	<b>Description</b>
1.12.1	2B.1	(* Full name:
1.12.2	2B.2	(* Date of Birth:
1.12.3	2B.3	(* Place of Birth:
1.12.4	2B.4	(* Position/Acting in the capacity of:
1.12.5	2B.5.1	(* Postal Address Line 1:
1.12.6	2B.5.2	Postal Address Line 2:
1.12.7	2B.5.3	(* Postal Address Town/City:
1.12.8	2B.5.4	(* Postal Address Region:
1.12.9	2B.5.5	Postal Address Postcode:
1.12.10	2B.5.6	(* Postal Address Country:
1.12.11	2B.6	(* Telephone:
1.12.12	2B.7	Mobile:
1.12.13	2B.8	(* Email:
1.12.14	2B.9	If needed, please provide detailed information on the representation (its forms, extent, purpose):
<b>1.13 Part 2C: Reliance on the capacities of other entities</b>		
	<b>Question</b>	<b>Description</b>
1.13.1	2C.1	(* Does the bidder rely on the capacities of other entities in order to meet the selection criteria set out under Part 4 and the criteria and rules (if any) set out under Part 5 (if included)?
<b>1.14 Conditional Section: Reliance on the capacities of other entities</b>		
	<b>Note</b>	<b>Note Details</b>

1.14.1	BIDDER GUIDANCE	<p>Please provide a separate ESPD response for each of the entities concerned.</p> <p>Please note that this should also include any technicians or technical bodies, not belonging directly to the bidder's undertaking, especially those responsible for quality control and, in the case of public works contracts, the technicians or technical bodies upon whom the bidder can call in order to carry out the work.</p> <p>Insofar as it is relevant for the specific capacity or capacities on which the bidder relies, please include the information under Parts 4 and 5 for each of the entities concerned (e.g. for technical bodies involved in quality control).</p>
1.14.2	BIDDER GUIDANCE	<p>Each entity being relied on must complete the following sections of the ESPD:</p> <ul style="list-style-type: none"> <li>● Part 2A: Information about the bidder</li> <li>● Part 2B: Information about representatives of the bidder</li> <li>● Part 3: Exclusion Grounds</li> <li>● Part 4: Selection Criteria (only the sections that the entity is being relied upon)</li> <li>● Part 5: Reduction of the number of qualified candidates (where applicable)</li> </ul>
	<b>Question</b>	<b>Description</b>
1.14.3	2C.1.1	<p>Please download and complete the ESPD attachment for each of the entities.</p> <p>Bidders should ensure that any other entities are also registered on PCS-Tender.</p> <p>Where you have multiple entities you should attach the completed ESPD responses as a single zip file against this question.</p>
<b>1.15 Part 2D: Subcontractors on whose capacity the bidder does not rely</b>		
	<b>Question</b>	<b>Description</b>
1.15.1	2D.1	(*) Does the bidder intend to subcontract any share of the contract to third parties?
<b>1.16 Conditional Section: Subcontractors</b>		
	<b>Question</b>	<b>Description</b>
1.16.1	2D.1.1	In so far as known, please list the proposed subcontractors:
	<b>Note</b>	<b>Note Details</b>

1.16.2	BIDDER GUIDANCE	<p>The ESPD (Scotland) - Subcontractors - Supplier Response has been attached to the following question to allow you to submit an ESPD on behalf of subcontractors.</p> <p>Please ensure each subcontractor fills in the following sections:</p> <ul style="list-style-type: none"> <li>● Part 2A: Information about the bidder</li> <li>● Part 2B: Information about representatives of the bidder</li> <li>● Part 3: Exclusion Grounds</li> </ul>
	<b>Question</b>	<b>Description</b>
1.16.3	2D.1.2	<p>Please download and complete the ESPD attachment for each of the subcontractors concerned.</p> <p>Bidders should ensure that any listed subcontractors are also registered on PCS-Tender.</p> <p>Where you have multiple sub-contractors you should attach the completed ESPD responses as a single zip file against this question.</p>
<b>1.17 Part 3A: Grounds relating to criminal convictions</b>		
	<b>Note</b>	<b>Note Details</b>
1.17.1	BIDDER GUIDANCE	<p>Failure to disclose information relevant to this section or misrepresentation in relation to the information disclosed may result in exclusion of the bidder from this procurement process or the termination of any subsequent contract that is be awarded to them.</p> <p>The bidder may be asked to provide the relevant documentation or to state where the extract from the relevant register, for example judicial records, is available electronically to the public body so that it may retrieve this information. By indicating this information, the bidder agrees that the public body may retrieve the documentation subject to the national rules implementing Directive 95/46/EC on the processing of personal data, and in particular of special categories of data such as on offences, criminal convictions or security measure.</p> <p>The bidder uses the ESPD response as a self-declaration that they have not breached any of the mandatory and discretionary exclusion grounds (or, if they have, they can demonstrate to the public bodies satisfaction that they have taken self-cleansing measures) and that they meet the relevant selection criteria.</p>

1.17.2	Exclusion grounds	<p>For procurement exercises above OJEU threshold:</p> <ul style="list-style-type: none"> <li>● Regulation 58 (1) of The Public Contracts (Scotland) Regulations 2015 sets out the following reasons for exclusion.</li> </ul> <p>For procurement exercises below the OJEU threshold:</p> <ul style="list-style-type: none"> <li>● Regulation 8 of The Procurement (Scotland) Regulations 2016 sets out the following reasons for exclusion.</li> </ul> <p>For Part 3A: Has the bidder itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment within the last five years for one of the reasons listed below?</p>
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**1.18 Part 3A: Conspiracy**

	Question	Description
1.18.1	3A.1	<p>(*) The common law offence of conspiracy;</p> <p>Where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime or an offence under sections 28 or 30 of the Criminal Justice and Licensing (Scotland) Act 2010;</p>
1.18.2	3A.1.1	<p>If the relevant documentation is available electronically, please state:</p> <p>The web address The issuing authority or body The precise reference of the documentation</p>

**1.19 Conditional Section: Conspiracy**

	Question	Description
1.19.1	3A.1.2	(*) Date of conviction:
1.19.2	3A.1.3	(*) Reason(s) for the conviction:
1.19.3	3A.1.4	(*) Identify who has been convicted:
1.19.4	3A.1.5	<p>If the relevant documentation is available electronically, please state:</p> <p>The web address The issuing authority or body The precise reference of the documentation</p>



1.19.5	3A.1.6	(* In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.19.6	3A.1.7	If yes, please describe the measures taken:
<b>1.20 Part 3A: Corruption</b>		
	<b>Question</b>	<b>Description</b>
1.20.1	3A.2	(* Corruption:  Within the meaning of: section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906, where the offence relates to active Corruption as defined in Article 3 of the Council Act of 26th May 1997 and Article 3(1) of Council Joint Action 98/742/JHA;  Bribery or corruption within the meaning of sections 68 and 69 of the Criminal Justice (Scotland) Act 2003, where the offence relates to active bribery or corruption;  Bribery within the meaning of sections 1 or 6 of the Bribery Act 2010
1.20.2	3A.2.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.21 Conditional section: Corruption</b>		
	<b>Question</b>	<b>Description</b>
1.21.1	3A.2.2	(* Date of conviction:
1.21.2	3A.2.3	(* Reason(s) for the conviction:
1.21.3	3A.2.4	(* Identify who has been convicted;
1.21.4	3A.2.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.21.5	3A.2.6	(* In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.21.6	3A.2.7	If yes, please describe the measures taken:
<b>1.22 Part 3A: Fraud</b>		

	Question	Description
1.22.1	3A.3	(*) Fraud:  Where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities (a) the offence of cheating the Revenue; (b) the common law offence of fraud; (c) the common law offence of theft or fraud; (d) fraudulent trading within the meaning of section 458 of the Companies Act 1985, or section 993 of the Companies Act 2006; (e) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994; (f) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993; (g) the common law offence of uttering; or (h) the common law offence of attempting to pervert the course of justice;
1.22.2	3A.3.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.23 Conditional Section: Fraud</b>		
	Question	Description
1.23.1	3A.3.2	(*) Date of conviction:
1.23.2	3A.3.3	(*) Reason(s) for the conviction:
1.23.3	3A.3.4	(*) Identify who has been convicted:
1.23.4	3A.3.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.23.5	3A.3.6	(*) In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.23.6	3A.3.7	If yes, please describe the measures taken:

<b>1.24 Part 3A: Terrorist offences</b>		
	<b>Question</b>	<b>Description</b>
1.24.1	3A.4	(*) Terrorist offences or offences linked to terrorist activities:  Any offence listed in section 41 of the Counter-Terrorism Act 2008; or Schedule 2 to that Act where the court has determined that there is a terrorist connection.
1.24.2	3A.4.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.25 Conditional Section: Terrorist offences</b>		
	<b>Question</b>	<b>Description</b>
1.25.1	3A.4.2	(*) Date of conviction:
1.25.2	3A.4.3	(*) Reason(s) for the conviction:
1.25.3	3A.4.4	(*) Identify who has been convicted:
1.25.4	3A.4.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.25.5	3A.4.6	(*) In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.25.6	3A.4.7	If yes, please describe the measures taken:
<b>1.26 Part 3A: Money Laundering</b>		
	<b>Question</b>	<b>Description</b>
1.26.1	3A.5a	(*) Money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;
1.26.2	3A.5a.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.27 Conditional Section: Money Laundering</b>		
	<b>Question</b>	<b>Description</b>

1.27.1	3A.5a.2	(*) Date of conviction:
1.27.2	3A.5a.3	(*) Reason(s) for the conviction:
1.27.3	3A.5a.4	(*) Identify who has been convicted:
1.27.4	3A.5a.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.27.5	3A.5a.6	(*) In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.27.6	3A.5a.7	If yes, please describe the measures taken:
<b>1.28 Part 3A: Terrorist Financing</b>		
	<b>Question</b>	<b>Description</b>
1.28.1	3A.5b	(*) Money laundering or Terrorist financing:  An offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988;
1.28.2	3A.5b.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.29 Conditional Section: Terrorist Financing</b>		
	<b>Question</b>	<b>Description</b>
1.29.1	3A.5b.2	(*) Date of conviction:
1.29.2	3A.5b.3	(*) Reason(s) for the conviction:
1.29.3	3A.5b.4	(*) Identify who has been convicted:
1.29.4	3A.5b.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.29.5	3A.5b.6	(*) In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?

1.29.6	3A.5b.7	If yes, please describe the measures taken:
<b>1.30 Part 3A: Child Labour or Trafficking in Human Beings</b>		
	<b>Question</b>	<b>Description</b>
1.30.1	3A.6	(*) Child labour and other forms of trafficking in human beings:  Any offence under Part 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 or under any provision referred to in the Schedule to that Act;
1.30.2	3A.6.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.31 Conditional Section: Child Labour or Trafficking in Human Beings</b>		
	<b>Question</b>	<b>Description</b>
1.31.1	3A.6.2	(*) Date of conviction:
1.31.2	3A.6.3	(*) Reason(s) for the conviction:
1.31.3	3A.6.4	(*) Identify who has been convicted:
1.31.4	3A.6.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.31.5	3A.6.6	(*) In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.31.6	3A.6.7	If yes, please describe the measures taken:
<b>1.32 Part 3A: Drugs trafficking</b>		
	<b>Question</b>	<b>Description</b>
1.32.1	3A.7	(*) Drugs trafficking:  an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994:

1.32.2	3A.7.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.33 Conditional Section: Drugs trafficking</b>		
	<b>Question</b>	<b>Description</b>
1.33.1	3A.7.2	(*) Date of conviction:
1.33.2	3A.7.3	(*) Reason(s) for the conviction:
1.33.3	3A.7.4	(*) Identify who has been convicted:
1.33.4	3A.7.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.33.5	3A.7.6	(*) In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.33.6	3A.7.7	If yes, please describe the measures taken:
<b>1.34 Part 3A: Any Other Offence</b>		
	<b>Question</b>	<b>Description</b>
1.34.1	3A.8	(*) Any other offence within the meaning of Article 57(1) of the Directive as defined by the law of any EEA state or any part thereof:
1.34.2	3A.8.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.35 Conditional Section: Any Other Offence</b>		
	<b>Question</b>	<b>Description</b>
1.35.1	3A.8.2	(*) Date of conviction:
1.35.2	3A.8.3	(*) Reason(s) for the conviction:
1.35.3	3A.8.4	(*) Identify who has been convicted:

1.35.4	3A.8.5	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
1.35.5	3A.8.6	(* In the case of convictions, has the bidder taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion ("self-cleansing")?
1.35.6	3A.8.7	If yes, please describe the measures taken:
<b>1.36 Part 3B: Payment of taxes</b>		
	<b>Question</b>	<b>Description</b>
1.36.1	3B.1	(* Has the bidder met all its obligations relating to the payment of taxes, both in the UK, and in the country in which it is registered, if that is not the UK?
<b>1.37 Conditional Section: Payment of taxes</b>		
	<b>Question</b>	<b>Description</b>
1.37.1	3B.1.1	(* Please indicate:  The Country or Member State concerned
1.37.2	3B.1.2	(* What is the amount concerned?
1.37.3	3B.1.3	(* Has this breach of obligations been established: through a judicial or administrative decision?
1.37.4	3B.1.4	(* Is this decision final and binding?
1.37.5	3B.1.5	(* Please indicate the date of conviction or decision:
1.37.6	3B.1.6	Has this breach of obligations been established by other means? Please specify:
1.37.7	3B.1.7.1	(* Has the bidder fulfilled or will it fulfil its obligations by paying or entering into a binding arrangement with a view to paying the taxes due, including, where applicable, any interest accrued or fines?
1.37.8	3B.1.7.2	If yes, please provide details:
1.37.9	3B.1.8	If the relevant documentation concerning payment of taxes is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.38 Part 3B: Payment of social security contributions</b>		
	<b>Question</b>	<b>Description</b>
1.38.1	3B.2	(* Has the bidder met all its obligations relating to the payment of social security contributions, both in the UK, and in the country in which it is registered, if that is not the UK?

<b>1.39 Conditional Section: Payment of social security contributions</b>		
	<b>Question</b>	<b>Description</b>
1.39.1	3B.2.1	(*) Please indicate:  The Country or Member State concerned
1.39.2	3B.2.2	(*) What is the amount concerned?
1.39.3	3B.2.3	(*) How has this breach of obligations been established: through a judicial or administrative decision?
1.39.4	3B.2.4	(*) Is this decision final and binding?
1.39.5	3B.2.5	(*) Please indicate the date of conviction or decision:
1.39.6	3B.2.6	Has this breach of obligations been established by other means? Please specify:
1.39.7	3B.2.7.1	(*) Has the bidder fulfilled or will it fulfil its obligations by paying or entering into a binding arrangement with a view to paying the social security contributions due, including, where applicable, any interest accrued or fines?
1.39.8	3B.2.7.2	If yes, please provide details:
1.39.9	3B.2.8	If the relevant documentation concerning payment of social security contributions is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.40 Part 3C: Blacklisting</b>		
	<b>Question</b>	<b>Description</b>
1.40.1	3C.1	(*) Has the bidder committed an act prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010?
<b>1.41 Conditional Section: Blacklisting</b>		
	<b>Question</b>	<b>Description</b>
1.41.1	3C.1.1	(*) When did the breach occur?
1.41.2	3C.1.2	(*) Please give details about the breach:
1.41.3	3C.1.3	(*) Has this been established by a judicial decision having final and binding effect?
1.41.4	3C.1.4	(*) Has the bidder taken measures to demonstrate its reliability despite the existence of this ground for exclusion (“Self-Cleansing”)?
1.41.5	3C.1.5	Please describe the measures taken:
<b>1.42 Part 3D: Environmental Law</b>		



	Question	Description
1.42.1	3D.1	(* ) Has the bidder, to its knowledge, breached its obligations in the fields of environmental law?
<b>1.43 Conditional Section: Environmental Law</b>		
	Question	Description
1.43.1	3D.1.1	(* ) When did the breach occur?
1.43.2	3D.1.2	(* ) Please give details about the breach:
1.43.3	3D.1.3	(* ) Has the bidder taken measures to demonstrate its reliability despite the existence of this ground for exclusion (“Self-cleansing”)?
1.43.4	3D.1.4	Please describe the measures taken:
<b>1.44 Part 3D: Social Law</b>		
	Question	Description
1.44.1	3D.2	(* ) Has the bidder, to its knowledge, breached its obligations in the fields of social law?
<b>1.45 Conditional Section: Social Law</b>		
	Question	Description
1.45.1	3D.2.1	(* ) When did the breach occur?
1.45.2	3D.2.2	(* ) Please give details about the breach:
1.45.3	3D.2.3	(* ) Has the bidder taken measures to demonstrate its reliability despite the existence of this ground for exclusion (“Self-cleansing”)?
1.45.4	3D.2.4	Please describe the measures taken:
<b>1.46 Part 3D: Labour Law</b>		
	Question	Description
1.46.1	3D.3	(* ) Has the bidder, to its knowledge, breached its obligations in the fields of labour law?
<b>1.47 Conditional Section: Labour Law</b>		
	Question	Description
1.47.1	3D.3.1	(* ) When did the breach occur?
1.47.2	3D.3.2	(* ) Please give details about the breach:
1.47.3	3D.3.3	(* ) Has the bidder taken measures to demonstrate its reliability despite the existence of this ground for exclusion (“Self-cleansing”)?
1.47.4	3D.3.4	Please describe the measures taken:
<b>1.48 Part 3D: Bankruptcy</b>		
	Note	Note Details
1.48.1	Other grounds for exclusion	Is the bidder in any of the situations listed below?

	Question	Description
1.48.2	3D.4	(*) Bankrupt:
<b>1.49 Conditional Section: Bankruptcy</b>		
	Question	Description
1.49.1	3D.4.1	(*) Please provide details:
1.49.2	3D.4.2	(*) Please indicate the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances?
1.49.3	3D.4.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.50 Part 3D: Insolvency</b>		
	Question	Description
1.50.1	3D.5	(*) The subject of insolvency or winding-up proceedings:
<b>1.51 Conditional Section: Insolvency</b>		
	Question	Description
1.51.1	3D.5.1	(*) Please provide details:
1.51.2	3D.5.2	(*) Please indicate the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances?
1.51.3	3D.5.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.52 Part 3D: Arrangement with creditors</b>		
	Question	Description
1.52.1	3D.6	(*) In an arrangement with creditors:
<b>1.53 Conditional Section: Arrangement with creditors</b>		
	Question	Description
1.53.1	3D.6.1	(*) Please provide details:
1.53.2	3D.6.2	(*) Please indicate the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances?

1.53.3	3D.6.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.54 Part 3D: Analogous situation</b>		
	<b>Question</b>	<b>Description</b>
1.54.1	3D.7	(*) In any analogous situation arising from a similar procedure under national laws and regulations:
<b>1.55 Conditional Section: Analogous situation</b>		
	<b>Question</b>	<b>Description</b>
1.55.1	3D.7.1	(*) Please provide details:
1.55.2	3D.7.2	(*) Please indicate the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances?
1.55.3	3D.7.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.56 Part 3D: Liquidation</b>		
	<b>Question</b>	<b>Description</b>
1.56.1	3D.8	That its assets are being administered by a liquidator or by the court:
<b>1.57 Conditional Section: Liquidation</b>		
	<b>Question</b>	<b>Description</b>
1.57.1	3D.8.1	(*) Please provide details:
1.57.2	3D.8.2	(*) Please indicate the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances?
1.57.3	3D.8.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.58 Part 3D: Suspended business</b>		
	<b>Question</b>	<b>Description</b>

1.58.1	3D.9	(* That its business activities are suspended:
<b>1.59 Conditional Section: Suspended business</b>		
	<b>Question</b>	<b>Description</b>
1.59.1	3D.9.1	(* Please provide details:
1.59.2	3D.9.2	(* Please indicate the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances?
1.59.3	3D.9.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.60 Part 3D: Professional misconduct</b>		
	<b>Question</b>	<b>Description</b>
1.60.1	3D.10	(* Is the bidder guilty of grave professional misconduct?
<b>1.61 Conditional Section: Professional misconduct</b>		
	<b>Question</b>	<b>Description</b>
1.61.1	3D.10.1	(* Date when it happened:
1.61.2	3D.10.2	(* Please provide details:
1.61.3	3D.10.3	(* Has the bidder taken self-cleansing measures?
1.61.4	3D.10.4	Please describe the measures taken:
<b>1.62 Part 3D: Distortion</b>		
	<b>Question</b>	<b>Description</b>
1.62.1	3D.11	(* Has the bidder entered into agreements with other bidders aimed at distorting competition?
<b>1.63 Conditional Section: Distortion</b>		
	<b>Question</b>	<b>Description</b>
1.63.1	3D.11.1	(* Please provide details:
1.63.2	3D.11.2	(* Has the bidder taken self-cleansing measures?
1.63.3	3D.11.3	Please describe the measures taken:
<b>1.64 Part 3D: Conflicts of interest</b>		
	<b>Question</b>	<b>Description</b>
1.64.1	3D.12	(* Is the bidder aware of any conflict of interest due to its participation in the procurement procedure?
<b>1.65 Conditional Section: Conflicts of interest</b>		
	<b>Question</b>	<b>Description</b>
1.65.1	3D.12.1	(* Please provide details:

<b>1.66 Part 3D: Preparation of the procurement procedure</b>		
	<b>Question</b>	<b>Description</b>
1.66.1	3D.13	(* ) Has the bidder or an undertaking related to it advised the public body or otherwise been involved in the preparation of the procurement procedure?
<b>1.67 Conditional Section: Preparation of the procurement procedure</b>		
	<b>Question</b>	<b>Description</b>
1.67.1	3D.13.1	(* ) Please provide details:
<b>1.68 Part 3D: Early termination</b>		
	<b>Question</b>	<b>Description</b>
1.68.1	3D.14	(* ) Has the bidder experienced that a prior public contract, a prior contract with a public body or a prior concession contract was terminated early, or that damages or other comparable sanctions were imposed in connection with that prior contract?
<b>1.69 Conditional Section: Early termination</b>		
	<b>Question</b>	<b>Description</b>
1.69.1	3D.14.1	(* ) Please provide details:
1.69.2	3D.14.2	(* ) Has the bidder taken self-cleansing measures?
1.69.3	3D.14.3	If it has, please describe the measures taken:
<b>1.70 Part 3D: Misrepresentation</b>		
	<b>Note</b>	<b>Note Details</b>
1.70.1	BIDDER GUIDANCE	Can the bidder confirm that:
	<b>Question</b>	<b>Description</b>
1.70.2	ESPD.3D.15.1	(* ) 3D.15.1 - It has not been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria?
1.70.3	ESPD.3D.15.2	(* ) 3D.15.2 - It has not withheld such information?
1.70.4	ESPD.3D.15.3	(* ) 3D.15.3 - It has been able, without delay, to submit the supporting documents required by an organisation or contracting entity?
1.70.5	ESPD.3D.15.4	(* ) 3D.15.4 - It has not undertaken to unduly influence the decision making process of the organisation or contracting entity, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award?
<b>1.71 Part 4A: Trade Registers</b>		
	<b>Question</b>	<b>Description</b>

1.71.1	4A.1	The bidder is enrolled in the relevant professional or trade registers kept in the Member State of its establishment (as described in Schedule 5 of the Public Contracts (Scotland) Regulations 2015):
1.71.2	4A.1.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.72 Part 4A: Service Contracts</b>		
	<b>Note</b>	<b>Note Details</b>
1.72.1	BIDDER GUIDANCE	For service contracts:
	<b>Question</b>	<b>Description</b>
1.72.2	4A.2	Is it a requirement in the bidder's country of establishment to hold a particular authorisation or membership of a particular organisation needed in order to be able to perform the service in question?
<b>1.73 Conditional Section: Service Contracts</b>		
	<b>Question</b>	<b>Description</b>
1.73.1	4A.2.1	Please specify which authorisation or membership is required:
1.73.2	4A.2.2	Please indicate whether the bidder has the required authorisation or membership (as named above):
1.73.3	4A.2.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.74 Part 4B: Economic and Financial Standing</b>		
	<b>Note</b>	<b>Note Details</b>
1.74.1	BIDDER GUIDANCE	The bidder should only provide information where the selection criteria concerned have been specified by the organisation in the relevant Contract Notice.
	<b>Question</b>	<b>Description</b>
1.74.2	4B.4	The bidder confirms the name, value and/or range of the financial ratios specified in the relevant Contract Notice are as follows:

1.74.3	4B.4.1	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
	<b>Note</b>	<b>Note Details</b>
1.74.4	Insurance	The bidder confirms they already have or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated in the relevant contract notice:
	<b>Question</b>	<b>Description</b>
1.74.5	4B.5.1	Employer's (Compulsory) Liability Insurance:
1.74.6	4B.5.2	All other types of insurance listed in the Contract Notice
1.74.7	4B.5.3	If the relevant documentation is available electronically, please state:  The web address The issuing authority or body The precise reference of the documentation
<b>1.75 Part 6: Concluding statements</b>		
	<b>Note</b>	<b>Note Details</b>
1.75.1	Declaration	The undersigned formally declare that the information stated above is accurate and correct and that it has been set out in full awareness of the consequences of serious misrepresentation.  The undersigned formally declare to be able, upon request and without delay, to provide the certificates and other forms of documentary evidence referred to, except where the contracting authority or contracting entity has the possibility of obtaining the supporting documentation concerned directly by accessing a national database in any Member State that is available free of charge. On condition that the economic operator has provided the necessary information (web address, issuing authority or body, precise reference of the documentation) allowing the contracting authority or contracting entity to do so. Where required, this must be accompanied by the relevant consent to such access.  The undersigned formally consent to the above named Public Body, gaining access to documents supporting the information, which has been provided in this European Single Procurement Document response for the purposes of this procurement exercise.
	<b>Question</b>	<b>Description</b>
1.75.2	6.1	(*) Name, Position, Date, Place:

<b>2 Technical Envelope</b>		
<b>2.1 Understanding of Requirement</b>		
	<b>Question</b>	<b>Description</b>
2.1.1	Question 1	Tenderers should provide an introduction to their proposal, which demonstrates a clear and full understanding of the requirements and the policy context.
2.1.2	Question 2	Tenderers must provide a project delivery plan that sets out as a minimum: <ul style="list-style-type: none"> <li>• A project plan, which meets the Purchasers requirements (including provisional timescales) as detailed in the Specification of Requirements (Schedule 1). This should cover the Key Objectives/Outputs.</li> </ul>
<b>2.2 Programme Design</b>		
	<b>Question</b>	<b>Description</b>
2.2.1	Question 3	Tenderers should clearly set out their approach to the Programme Design. Your response should include a description of how you will ensure the timescales are met, how the programme will comply with the GTCS and what new innovative ways the programme will allow graduates to obtain the Standard of Full Registration in Scotland.
2.2.2	Question 4	Tenderers should set out how they intend to incorporate a leadership element to the programme. Your response must ensure that the programme has leadership within teaching and learning
2.2.3	Question 5	Tenderers must provide details of how they will ensure that the new route into teaching will be credit rated at SCQF level 11. Your response should include as a minimum: <ul style="list-style-type: none"> <li>• The level of academic award the programme will award to the successful graduate.</li> </ul> The controls and processes the suppliers will undertake to ensure this is completed timeously.
2.2.4	Question 6	Tenderers should set out clearly their strategy to ensure that graduates on the programme engage with schools with high levels of deprivation across Scotland. This should include placements covering both the student and probationer phases.
<b>2.3 Staffing, Skills and Resources</b>		
	<b>Question</b>	<b>Description</b>
2.3.1	Question 7	Tenderers should provide specific details of the individual they propose to manage this contract, a copy of their curriculum vitae (CV) and proposed job description, highlighting their experience and specific skill set in relation to this commission



2.3.2	Question 8	Tenderers should provide full details of the resources to be employed in the provision of this work, this should include as a minimum: <ul style="list-style-type: none"> <li>•CVs for each staff/team member proposed (1/2 to 1 page for each), highlighting their experience and specific skills in relation to this commission.</li> <li>•Job descriptions or role profiles for each staff/team member, detailing specific responsibilities and tasks in relation to this commission</li> </ul>
2.3.3	Question 9	Tenderers must provide details of their staff recruitment and retention policy. This should also include any internal systems they have in place for managing the absence of key staff (specifically the lead individual) or replacement of other team members involved in this particular commission during annual or sick leave etc.
<b>2.4 Recruitment and Marketing</b>		
	<b>Question</b>	<b>Description</b>
2.4.1	Question 10	Tenderers should clearly set out their proposed approach for the recruitment of the cohort required for this programme. Your response should include how you will identify and attract these graduates from a wide range of academic disciplines that are traditionally not attracted to a career in teaching.
2.4.2	Question 11	Tenderers will be required to present their marketing strategy for the recruitment of the graduate cohort. The tenderer must outline an overall marketing strategy including any initiatives such as social media and contact with professional bodies if applicable.
<b>2.5 Evaluation and Deployment</b>		
	<b>Question</b>	<b>Description</b>
2.5.1	Question 12	Tenderers should set out their approach for evaluation of the New Route into Teaching Programme. Your response should include how you will evaluate the following: <ul style="list-style-type: none"> <li>•Views from graduates, schools and employers;</li> <li>•Cost and sustainability of the programme;</li> <li>•Success of marketing and recruitment strategy; and</li> <li>•Analysis of applications and drop-outs rates</li> </ul>
2.5.2	Question 13	Tenderers must set out their contingent plans for graduates who do not finish the course within the pilot timescale.
<b>2.6 Risks and Issues</b>		
	<b>Question</b>	<b>Description</b>
2.6.1	Question 14	The Tenderer must provide a comprehensive risk assessment. It should have a minimum of four categories: description of the risk, likelihood of occurrence, mitigating action and recovery plan in the event of the risk materialising.

2.7 Community Benefits		
	Question	Description
2.7.1	Question 15	<p>The Scottish Government is committed to contributing to the social, economic &amp; environmental well-being of the people of Scotland. The Government has five objectives that underpin its core purpose - to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth =.</p> <p>Accordingly, while the following community benefit objectives will not be evaluated as part of the tender process, the successful contractor will be expected to present a community benefit proposal with their tender detailing how, in the event that they should be successful in winning the contract, they will address the following Community Benefit themes:</p> <ul style="list-style-type: none"> <li>• Targeted recruitment &amp; training for “disadvantaged” persons unemployed for over 6 months;</li> <li>• Work placement opportunities for 14-16 year olds</li> <li>• Graduate placements</li> <li>• Educational projects with a, b &amp; c secondary schools.</li> </ul> <p>If successful the winning bidder(s) will discuss the content of their Community Benefit proposal and agree a plan for the delivery of the agreed community benefits which will become a condition of the contract.</p>
2.8 Sustainable Development		
	Question	Description
2.8.1	Question 16	<p>Please provide details of how the contract will be managed in a way that ensures that its policies and processes will support the Scottish Ministers ‘Greener Scotland’ strategic objective. As a minimum your response should include details of proactive approaches to sustainable consumption, including use of any supported businesses, the efficient use of resources and the consideration given to social and environmental consequences.</p>
2.9 Fair Work		
	Question	Description
2.9.1	Question 17	<p>The Scottish Business Pledge is a Government initiative which aims for a fairer Scotland through more equality, opportunity and innovation in business. Information on this can be found at the following link:  <a href="https://scottishbusinesspledge-.scot/">https://scottishbusinesspledge-.scot/</a>,</p> <p>Tenderers are asked to confirm if they have signed up to the Scottish Business Pledge.</p>

2.9.2	Question 18	<p>The Scottish Living Wage Accreditation Initiative and the Living Wage Foundation recognise and celebrate the responsible leadership shown by Living Wage Employers and support employers to incorporate the Living Wage into organisational structures long term. More information can be found at the links below:</p> <p><a href="http://scottishlivingwage.org/">http://scottishlivingwage.org/</a>-  <a href="http://www.livingwage.org.uk/">http://www.livingwage.org.uk/</a></p> <p>Tenderers are asked to confirm if they are accredited as a Living Wage Employer.</p>
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**2.10 Additional Attachments Area**

**3 Commercial Envelope**

**3.1 Pricing Schedule**

	Note	Note Details
3.1.1	Pricing Schedule	Please complete the attached pricing schedule and upload under general attachments



**INVITATION TO TENDER**

**Attracting High-Quality Graduates into Teaching**

**CASE: 379894**

## **CONTENTS**

1. Cover Letter
2. Instructions to Tenderers
3. Model Services Contract - Comprising:
  - Schedule 1 Specification of Requirements
  - Schedule 2 Pricing Schedule
  - Schedule 3 Ordering Procedures [NOT USED]
  - Schedule 4 Management Arrangements
  - Schedule 5 Key Individuals
  - Schedule 6 Approved Sub-Contractors
  - Schedule 7 Service Provider Sensitive Information
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  - Schedule 9 Model Contract regarding Data Protection Directive 95/46/EC
  - Schedule 10 Exit Management
4. Evaluation Guide and Award Criteria
5. Form of Tender

3<sup>rd</sup> October 2017

**INVITATION TO TENDER**

**CASE REF: 379894**

**ATTRACTING HIGH-QUALITY GRADUATES INTO TEACHING**

Dear Sir / Madam

1. You are hereby invited by the Scottish Ministers to tender for the above requirement.
2. Your tender must be in accordance with all parts contained in the Invitation to Tender (ITT). Instructions for the completion and submission of tenders are contained in the Instructions to Tenderers document.
3. The contents of the ITT documents are confidential and must not be disclosed to any third party without prior written consent.
4. The closing date and time for submission of tenders is 1200 hours 16<sup>th</sup> November 2017. Tenders must be submitted through the Public Contracts Scotland e-Tendering system (PCS-T).
5. It is the responsibility of all tenderers to ensure that their tender is received no later than the appointed time. The Scottish Ministers may not consider tenders received after that time.
6. The Scottish Ministers are not bound to accept the lowest priced or any tender and shall not be bound to accept the contractor as a sole supplier.
7. Please contact the undersigned if you have any questions in relation to this Invitation to Tender.

Yours faithfully,

*Michael Brydon*

Michael Brydon  
Portfolio Specialist

## INSTRUCTIONS TO TENDERERS

### ATTRACTING HIGH-QUALITY GRADUATES INTO TEACHING

CASE: 379894

#### 1. Tender Information

- 1.1 Any expenditure or work undertaken in connection with this tendering exercise is a matter solely for the commercial judgement of the tenderer and the Scottish Ministers will not be responsible for any expenses or losses which may be incurred by any tenderer in connection with the submission of their tender.
- 1.2 It is the responsibility of the tenderer to obtain for themselves at their own expense any additional information necessary for the preparation of their tender.
- 1.3 All information supplied by the Scottish Ministers in connection with the Invitation to Tender shall be treated as confidential by tenderers except that such information may be disclosed for the purpose of obtaining sureties and quotations necessary for the preparation and submission of the tender.
- 1.4 Tenders must be submitted in accordance with these Notices and Instructions and accompanying ITT documents. Any tender that does not accord with all the requirements herein and in the covering letter may not be considered.
- 1.5 The closing date and time for submission of tenders is **12.00 noon on 16<sup>th</sup> November 2017.**
- 1.6 Tenderers may be required to provide a Parent Company Guarantee. Tenderers must make it clear in their tender submission if they are not able conform to this requirement.

#### 2. Award Criteria

- 2.1 This requirement will follow the Open Procedure.
- 2.2 The Scottish Ministers are not bound to accept the lowest or any tender. The evaluation criteria will include consideration of quality as well as price.
- 2.3 Each tender will be subjected to a Quality (Technical) and Price (Commercial) evaluation. The aim of the evaluation is to select the tender which represents the Most Economically Advantageous Tender (MEAT).
- 2.4 The Award Criteria which will be applied to determine the Most Economically Advantageous Tender are as follows:
  - **Quality (Technical) 80%**
  - **Price (Commercial) 20%**

- 2.5 The Quality evaluation will assess how well each tender has met the criteria set down in the Technical Envelope. The Price evaluation will assess how well each tender has met the criteria set down in the Commercial Envelope. Tenderers must therefore take care to ensure that in their tender they address and make clear how they propose to fulfil each aspect of the Invitation to Tender.
- 2.6 Full details of the Award Criteria, Sub-Weightings and Tender Evaluation methods are contained in the Evaluation Guide and Award Criteria.
- 2.7 Any contract awarded as a result of this tendering exercise will be subject to the Terms and Conditions.

### **3. Instructions for Completion and Submission of Tender Documentation**

- 3.1 Tenderers must submit their completed tenders via the Scottish Government's electronic tendering system, Public Contracts Scotland - Tender (PCS-T). The speed with which submissions are made is dependent on the size of the document and inclusion of graphics, logos, photographs etc should be omitted wherever possible. Large electronic files may take time to upload and tenderers should ensure that sufficient time is allowed for this to be done.
- 3.2 Full guidance on the submission process is provided within the System Guidance document within the attachments area for this ITT. No hard copies will be accepted.
- 3.3 Correspondence connected with this ITT that requires attention before the closing date must be submitted using the PCS-T messaging function.
- 3.4 All responses to questions must be entered into the answer facility within the PCS-T system and failure to do so may invalidate the bid. Treat each question and response in isolation and answer each question in full. Tenderers should not assume evaluators will read more than one answer so do not cross-refer between answers. Supporting information should not be sent in isolation, but only in support of specific questions where requested.
- 3.5 Please note that on questions where the instructions are to provide responses in attached documents, the attachments should be headed with the question number and the question itself. Tenderers should note that when uploading attachments, only one attachment per question is allowed. If Tenderers wish to upload more than one file for a particular question then this can be achieved by uploading a zipped file containing all of the necessary files.
- 3.6 Tenderers should respond to questions on the basis that the Scottish Ministers has no prior knowledge of your organisation. Information and detail which forms part of the general company literature of promotional brochures etc will not form part of the evaluation process. General or irrelevant marketing material should NOT be included.



- 3.7 Please note for all responses to questions (particularly where longer responses are required) it is helpful if Tenderers use plain English and punctuate their answers where appropriate and use headings, section and/or bullet points. This will assist evaluators in finding the information necessary to enable them to score accurately.
- 3.8 The Scottish Ministers will not enter into detailed discussions with Tenderers in relation to its requirements at this stage. All questions regarding the content of this ITT must be directed through the dedicated PCS-T messaging area by **6<sup>th</sup> November 2017 at 12 noon**. No other form of communication will be accepted. Any technical queries related to the system should be directed to the BravoSolution helpdesk on 0800 368 4850 or at [help@bravosolution.co.uk](mailto:help@bravosolution.co.uk)
- 3.9 If the Scottish Ministers consider any questions or requests for clarification to be of material significance, both the query and the response will be communicated to all Tenderers that have expressed interest in this ITT. The Scottish Ministers will take steps not to identify the source of the query. Tenderers should indicate if they do not want their question and response circulated. The Scottish Ministers reserves the right to circulate if not doing so would breach the principle of equal treatment.
- 3.10 Tenderers are asked to provide a single point of contact in their organisation for their response to the ITT in PCS-T. The Scottish Ministers shall not be responsible for contacting Tenderers through any route other than the nominated PCS-T contact. Tenderers must therefore keep their contact details on the PCS-T system up to date or they will be unable to receive communications from the Scottish Ministers. Tenderers must also undertake to notify any changes to their single point of contact promptly.
- 3.11 All submissions from Tenderers will remain sealed on the PCS-T system until after the deadline has passed. Please note that your response will not be submitted until you press the “submit response” button. You will then receive a confirmation email that your response has been received. The Scottish Ministers will not be able to see your response until the deadline date has passed.
- 3.12 We strongly advise that you submit your response well in advance of the deadline to allow sufficient time for uploading.
- 3.13 Tenderers are reminded that they can check and amend their submissions after they have been submitted and up until the deadline. In the event that a Tenderer submits their tender more than once, PCS-T will only accept the final version of the tender submission.
- 3.14 If you experience any technical difficulties, please seek advice through the BravoSolution helpdesk on 0800 368 4850 or at [help@bravosolution.co.uk](mailto:help@bravosolution.co.uk). The Scottish Ministers cannot assist you with technical matters and the Bravo Solution helpdesk cannot help you once the tender return deadline has passed.

- 3.15 Should you decline to tender, the Scottish Ministers would request that you provide a brief reason for doing so. This information will help us improve our tender processes in future. Any responses of this nature will be kept confidential.
- 3.16 All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, (the decisions of the Scottish Ministers in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the Scottish Government to order disclosure.
- 3.17 Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restrictions upon the information that they provide to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.
- 3.18 Accordingly, if you consider that any of the information included in your tender is commercially confidential please identify it and explain (in broad terms) what harm might result from disclosure and/or publication. It should be remembered though, that even where you have indicated that information is commercially sensitive, Scottish Ministers may disclose this information where they see fit. Receipt by the Scottish Ministers of any material marked "confidential" or equivalent should not be taken to mean that the Scottish Ministers accept any duty of confidence by virtue of that marking.
- 3.19 The Scottish Ministers reserve the right to reject any tender which, in their opinion, does not comply with the Specification.

#### **4. Right To Reject / Disqualify**

- 4.1 The Scottish Ministers reserve the right to reject or disqualify a tenderer where:
- a) The tenderer fails to comply fully with the requirements of this Invitation to Tender; and/or
  - b) The response to the ITT is submitted late, is completed incorrectly or is incomplete; and/or
  - c) The tenderer fails to respond in satisfactory terms to a request by the Scottish Ministers to provide supplementary information or to provide clarity in relation to the tenderers' response to the ITT; and/or

- d) The tenderer or any of its sub-contractors or consortium members is/are guilty of serious misrepresentation in relation to its tender and/or the tender process.

## **5. Tender Composition**

- 5.1 In the event that a Tenderer alters its composition during the procurement process (which shall include, but is not limited to, a change in the identity of any entity named in the ITT response whose capacity has been relied upon in responding to the ITT), the Scottish Ministers reserves the right to request that any proposed reconstituted Tenderer complete the selection part of the ITT, i.e. Business Probity, Criminal Convictions and Financial Standing for re-evaluation in accordance with the criteria used in relation to the evaluation of the original ITT response.

## **6. Late Tenders**

- 6.1 It is the responsibility of all Tenderers to ensure that their ITT response is submitted no later than the appointed date and time. Responses received after the deadline may not be considered. Completed tenders may be submitted at any time before the closing date.

## **7. Relevant and Appropriate Responses**

- 7.1 Tenderers must ensure that they read each question carefully, that all answers you provide are relevant, and that each question is completed in full. All information must be provided in English.
- 7.2 Once you have submitted your response to this ITT you will receive an automated system e-mail confirming receipt of your submitted and published response.

## **8. Requests for Clarification or Further Information**

- 8.1 Subject to the terms of the Regulations, the Scottish Ministers expressly reserve the right to require a Tenderer to provide additional written information supplementing or clarifying any of the information provided by that Tenderer in response to requests for information or questions contained in the ITT.
- 8.2 The Scottish Government may, as appropriate, enter into tender clarifications and commercial discussions with any tenderer(s). This may include a presentation and discussion by the tenderer at a central government organisational site and/or a meeting at the tenderers' premises to discuss the proposal further and to meet selected personnel proposed for the project.

## **9. Misleading or Falsification of Documents**

- 9.1 The Tenderer should be aware that should any of its responses be found to be deliberately misleading or falsified, the bidding organisation may be disqualified from the tender process. If the Tenderer provides false information regarding any criminal convictions or business probity the Tenderer may also be guilty of a criminal offence.

## **10. Freedom of Information**

- 10.1 Nothing in this ITT shall preclude the Scottish Ministers from making public, under the Freedom of Information (Scotland) Act 2002 ("FOISA") and/or the Environmental Information (Scotland) Regulations 2004 ("EIRS") or otherwise, details of all matters relating to this ITT and responses thereto unless such details fall within an exemption under FOISA and/or EIRS as may be applicable at the discretion of the Scottish Ministers and the Scottish Ministers (at sole discretion) consider that such exemption shall apply, and (in respect of commercially sensitive information only) a Tenderer has advised the Scottish Ministers in writing that disclosure of specified information would or would be likely to substantially prejudice the commercial interests of any person (including but not limited to the Tenderer or the Scottish Ministers).

- 10.2 Tenderers should detail commercially sensitive information at Schedule 7.

- 10.3 Tenderers should also note that the receipt of any material or document marked "confidential" or equivalent by the Scottish Ministers should not be taken to mean that the Scottish Ministers accepts any duty of confidence by virtue of that marking.

## **11. Constitution of Contracts**

- 11.1 No information contained in this ITT or in any communication made between the Scottish Ministers and any Tenderers in connection with this ITT shall be relied upon as constituting a contract, agreement, warranty or representation as to the Scottish Ministers' ultimate decision in relation to the subject matter of this ITT or that any contract shall be awarded or entered into pursuant to this ITT.

## **12. Canvassing**

- 12.1 Any tenderer who directly or indirectly canvasses any officer, member, employee, or agent of the Scottish Ministers concerning the award of the Contract and/or the process leading to that award or who directly or indirectly obtains or attempts to obtain information from any such officer, employee or agent or concerning any other tenderer, tender, or proposed tender may be disqualified.

### **13. Right to Cancel, Clarify or Vary the Process**

- 13.1 Subject to the terms of the Regulations, the Scottish Ministers expressly reserve the right to change, without notice, the basis of, or the procedures for, this procurement process or to terminate the process at any time.

### **14. Non-Conclusive**

- 14.1 The ITT does not purport to be all-inclusive or to contain all of the information that a Tenderer, or any of its sub-contractors or any consortium member, may require. Tenderers must make their own independent assessment in relation to the subject matter of this ITT and all matters relevant thereto after making investigation and taking such professional advice as they deem necessary. In no circumstances shall the Authority or its advisors, consultants, employees or agent incur any liability or responsibility arising out of or in respect of the issue of this ITT.

### **15. No Representation or Warranty**

- 15.1 The Scottish Ministers, its advisers, officers, members, employees, other staff and agents: make no representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information contained in this ITT; accept no responsibility for the information contained in this ITT or for its fairness, accuracy or completeness; shall not be liable for any loss or damage (other than in respect of fraudulent misrepresentation) as a result of reliance on the information contained in this ITT or any subsequent communication.

### **16. Collusive Behaviour**

- 16.1 The Tenderer certifies that this is a bona fide tender submission, intended to be competitive, and it has not fixed or adjusted the tender by, under or in accordance with any agreement or arrangement with any other person or Tenderer. The Tenderer also certifies that it has not done and it undertakes that it will not do at any time before the returnable date for this tender any of the following acts:-

16.1.1 Fixing or adjusting the amount of its tender by or in accordance with any agreement or arrangement with any other party; or

16.1.2 Communicating to any party other than the Scottish Ministers the amount or approximate amount of its proposed tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or insurance or any necessary security); or

16.1.3 Entering into any agreement or arrangement with any other party that such other party will refrain from submitting a tender; or

16.1.4 Entering into any agreement or arrangement with any other party as to the amount of any tender submitted; or

16.1.5 Paying or giving or offering or agreeing to pay or give any sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender, any act or omission, will (without prejudice to any other civil remedies available to the Scottish Ministers and without prejudice to any criminal liability which such conduct by a tenderer may attract) be disqualified.

## **17. Conflict of Interest**

17.1 Tenderers must disclose in their ITT response (by answering the conflict of interest questions found within the ITT's qualification envelope) any circumstances, including, without limitation, personal financial and business activities that would, or may be likely to, give rise to a conflict of interest between the Scottish Ministers and/or any sub-contractors or members of the Tenderer's consortium and the Tenderer. Where a Tenderer identifies any actual or potential conflicts of interest in their response to this ITT, it must state how it intends to avoid such conflicts. The Scottish Ministers reserve the right to reject any response to this ITT which, in the Scottish Ministers' opinion, gives rise, or may be likely to give rise to, a conflict of interest.

## **18. Consortium Bids**

18.1 If applying on behalf of a consortium, please confirm the names and addresses of all other members of the consortium below. Any contract will be entered into with the nominated lead organisation and all members of the consortium, who will in these circumstances each be required to execute said contract together with all ancillary documentation, evidencing their joint and several liability in respect of the obligations and liabilities of the contract. It will be for members of the consortium to sort out their respective duties and liabilities amongst each other. For administrative purposes, any associated documentation prior to and in regards to contract award will be made to the nominated lead organisation.

18.2 If sub-contractors are to be used to assist in the delivery of the service, the following information must be provided for each proposed sub-contractor, when available:

- Name and Address
- Company Registration
- Areas of the service to be provided

18.3 In respect of tenders which include consortia or sub-contractors, it is the lead organisation who completes the tender. However, the Scottish Ministers reserve the right to request further information in respect of the lead organisation and/or partnering organisations should it be deemed necessary for evaluation purposes.

## **19. No Inducement or Incentive**

19.1 The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Tenderer to submit a tender or enter into any contractual agreement.

## **20. TUPE (Information Only)**

20.1 TUPE - The Transfer of Undertakings (Protection of Employment) Regulations 2007 give effect to the EC Acquired Rights Directive 1977. The Scottish Ministers are not the employer and, therefore, are unable to comment on whether or not TUPE applies in this particular contract. Each tenderer must ensure that they comply in full with their responsibilities under TUPE.

20.2 Tenderers should note that TUPE may or may not apply to some or all of the personnel currently assigned to undertakings that are currently performing part or all of the duties described in the Specification of Requirements. Tenderers should, prior to submitting their tender, take their own specific legal advice to ascertain whether TUPE could be held to apply to such undertakings and, if so, how that would impact on their tender.

20.3 Tenderers must clearly state whether they have bid on the basis of TUPE applying. Tenderers should states any assumptions made in this respect.

## **21. Additional Information**

21.1 Tenders shall remain valid and open for acceptance for **6 months** after the tender return date. In exceptional circumstances, the Scottish Ministers' point of contact may request that the Tenderer extend the validity period for a specified additional period. Except for manifest error or as may otherwise expressly be agreed by both the Scottish Ministers and the tenderer, the contents of submitted tenders will be deemed to be binding upon the tenderer and open for acceptance by the Scottish Ministers for the duration of the validity period. The tenderer is therefore cautioned to verify its proposal before submission to the Scottish Ministers since it is the tenderers' responsibility to ensure that a full appreciation, understanding and comprehension of the Services required, stated or implicit has been achieved prior to tender submission. No claims will be accepted for items that arise from the tenderers' failure to meet these requirements.

21.2 Before the tender return date, the Scottish Ministers may modify the ITT by way of issuing addenda. The procedure for receiving submissions will be detailed in any such addenda.

21.3 This ITT and any associated correspondence are subject to the laws of copyright and must not be reproduced, whether in whole or in part, without the prior written consent of the Scottish Ministers.

- 21.4 You may not in any way advertise or publicly announce that you are entering into discussions with and/or undertaking work for the Scottish Ministers without the Scottish Ministers' prior written consent.
- 21.5 The ITT is issued on the basis that nothing contained in it will constitute an inducement or incentive nor will have in any other way persuaded a tenderer to submit a tender or enter into any contractual agreement.
- 21.6 Any tender that does not accord with all the requirements herein and in the ITT and covering letter may not be considered.



**CASE 379894**

**SERVICES CONTRACT**

**-between-**

**(1) THE SCOTTISH MINISTERS (THE “PURCHASER”)**

**-and-**

**(2) «F3: SERVICE PROVIDER NAME...» (THE “SERVICE PROVIDER”)**

**-relating to the supply of-**

**ATTRACTING HIGH-QUALITY GRADUATES INTO TEACHING**

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**PREAMBLE:**

- ONE The Purchaser requires the provision of services;
- TWO On «F10: date contract notice published» the Purchaser's contract notice relating to the Services was published on Public Contracts Scotland with reference number «F11: reference number»;
- THREE On «F12: date ESPD completed» the Service Provider completed its ESPD;
- FOUR On «F13: date ITT issued» the Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;
- FIVE On «F14: date Tender submitted» the Service Provider submitted its Tender;
- SIX On the basis of the Tender, the Purchaser has selected the Service Provider to supply the Services under the Contract;
- SEVEN The Contract establishes standard terms of supply for the provision of services;
- EIGHT The Contract also includes:
- a Specification setting out the Services that the Service Provider has undertaken to provide, including Service Levels setting out particular levels of service that the Service Provider has undertaken to meet;
  - a Pricing Schedule setting out details of the pricing of the Services;
  - «F17: details of Key Individuals involved in the provision of the Services»;
  - «F18: details of approved sub-contractors as at Contract award»;
  - «F19: details of the Service Provider's information which is deemed to be Service Provider Sensitive Information»;
  - Ordering Procedures prescribing the procedures for ordering particular Services; and
  - Management Arrangements for the strategic management of the relationship between the Parties.

## SUBSTANTIVE PROVISIONS:

### SECTION A: INTRODUCTORY PROVISIONS

#### 1. Definitions and Interpretation

1.1. In the Contract, unless the context otherwise requires, the following terms have the meanings given to them below:

“**Assignee**” has the meaning given in clause 32.2 (Assignment).

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

“**Commencement Date**” has the meaning given in clause 4.1 (Period).

“**Contract**” means this Contract between the Parties consisting of clauses and «F20: number of Schedules» Schedules.

“**Contracting Authority**” has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015;

“**Control**” has the meaning given in section 450 of the Corporation Tax Act 2010.

“**Default**” means any breach of the obligations of a Party (including material breach) or any negligent act, omission or statement of a Party in connection with or in relation to the Contract.

“**Deliverable**” means any thing to be delivered by the Service Provider to the Purchaser and identified as a deliverable in accordance with the Ordering Procedures.

“**Environmental Information Regulations**” means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.

“**ESPD**” means the European Single Procurement Document completed by the Contractor and sent to the Authority on «F12: date ESPD completed».

“**Equipment**” means equipment, plant, tackle, materials and other items supplied and used by the Service Provider’s Representatives in the performance of the Service Provider’s obligations under the Contract.

“**Exit Management**” means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Service Provider to the Purchaser or any Replacement Service Provider as set out in Clause 59 (Exit Management) and Schedule 10 (Exit Management).

“**Exit Plan**” means the exit management plan developed by the Service Provider and approved by the Purchaser in accordance with Clause 59 (Exit Management).

“**Exit Management Date**” means each of the following:

(a) the date of a Termination Notice; and

(b) if no Termination Notice has been served in relation to this Contract except for any Partial Termination, the expiry of the later of the Initial Term and any extension of the Contract agreed in writing.

“**FOISA**” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation.

“**Force Majeure**” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

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

“**Incoming Employees**” means individuals whose employment transfers to the Service Provider on the commencement of the provision of the Services by operation of TUPE.

“**Intellectual Property Rights**” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“**ITT**” means the Purchaser’s invitation to tender dated «F13: date ITT issued».

“**Judicial Order**” means an ineffectiveness order or an order shortening the duration of the contract made in relation to the Contract under Chapter 6 of the Public Contracts (Scotland) Regulations 2015.

“**Key Individuals**” means the Service Provider Representatives identified as being key individuals for the provision of the Services as set out in Schedule 5.

“**Management Arrangements**” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider’s compliance with the Specification, the Ordering Procedures and the terms of the Contract, set out in Schedule 4.

“**Milestone**” means any event or task which must be completed by a particular date, such as the delivery of a Deliverable, identified as a milestone in accordance with the Ordering Procedures.

“**Order**” means an order for particular Services placed in accordance with the Ordering Procedures.

“**Ordering Procedures**” means the procedures for ordering particular Services set out at Schedule 3.

**“Outgoing Employees”** means individuals whose employment transfers from the Service Provider on the ceasing of the provision of the Services by the Service Provider by operation of TUPE.

**“Party”** means either of the Purchaser or the Service Provider.

**“Pricing Schedule”** means the details of the pricing of the Services set out in Schedule 2.

**“Purchaser”** means the Scottish Ministers.

**“Purchaser Property”** means any corporeal moveable property issued or made available to the Service Provider by the Purchaser in connection with the Contract.

**“Purchaser Protected Information”** means any information provided by the Purchaser to the Service Provider which:

- carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
- is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

**“Relevant Transfer”** has the meaning given in regulation 2(1) of TUPE.

**“Replacement Service Provider”** means any third party service provider appointed to perform the Services by the Purchaser from time to time.

**“Request for Information”** means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.

**“Schedule”** means a schedule annexed to, and forming part of, the Contract.

**“Service Levels”** means the Service Levels identified as such in the Specification.

**“Service Provider”** means «F26: Service Provider legal name and details».

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

- its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);
- its agents, Service Providers and carriers; and
- any sub-contractors of the Service Provider (whether approved under clause 34 (Sub-contracting) or otherwise).

**“Service Provider Sensitive Information”** means any information provided by the Service Provider to the Purchaser (disregarding any protective marking or assertion of confidentiality) which:

- is specified as Service Provider Sensitive Information in Schedule 7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and

- is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

“**Services**” means the Services as are to be supplied by the Service Provider to the Purchaser as set out in the Specification and as may be ordered in accordance with the Ordering Procedures.

“**Specification**” means the Purchaser’s general requirements for the provision of services set out in Schedule 1.

“**Tender**” means the tender submitted by the Service Provider to the Purchaser in response to the ITT dated «F14: date Tender submitted».

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“**Working Day**” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

“**Working Hour**” means an hour between 0900 hours and 1700 hours on a Working Day.

1.2. The interpretation and construction of the Contract is subject to the following provisions:

- 1.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
- 1.2.2. words importing the masculine include the feminine and neuter;
- 1.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4. references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;
- 1.2.5. references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- 1.2.6. reference to “expiry or termination” of the Contract includes the making of a Judicial Order;
- 1.2.7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.8. headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

## 2. **Condition Precedent: Requirement for a Parent Company Guarantee**

It shall be a condition of this Contract that, if required by the Purchaser, the Service Provider shall deliver a validly executed parent company guarantee in the form set out in Schedule 8 to this Contract. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Purchaser. The parties acknowledge that if this condition has not been fulfilled any performance of this Contract by the Service Provider shall be at the risk of the Service Provider and the Purchaser shall not be liable for and the Service Provider irrevocably



waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Service Provider has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Purchaser shall have the right to terminate the Contract by notice in writing to the Service Provider.

### **3. Nature of the Contract**

- 3.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 3.2. The Service Provider acknowledges that it is not the exclusive Service Provider of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

### **4. Period**

- 4.1. The period of the Contract is from and including «F29 commencement date» (the “Commencement Date”) to and including «F30 initial expiry date», unless it is terminated earlier or extended under clause 4.2.
- 4.2. The Purchaser may, by giving notice to the Service Provider, extend the period of the Contract to a date falling no later than «F31 insert longstop expiry date». Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

### **5. Break**

The Purchaser may terminate the Contract at any time by giving not less than 3 months’ notice to the Service Provider.

### **6. Specification**

The Service Provider must comply with the Specification.

### **7. Pricing Schedule**

- 7.1. The Pricing Schedule sets out details of the pricing of the Services.
- 7.2. The prices in the Pricing Schedule are not to be increased for the period of the Contract.
- 7.3. Accordingly, the Service Provider may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents the Service Provider from improving on the prices in the Pricing Schedule for the purposes of a particular Order.

### **8. Ordering Procedures and Management Arrangements**

- 8.1. The Ordering Procedures may be invoked by the Purchaser at any time during the period of the Contract.
- 8.2. The Parties must comply with the Ordering Procedures.
- 8.3. The Service Provider must maintain the capacity to supply the Services throughout the period of the Contract.
- 8.4. The Parties must comply with the Management Arrangements.

**SECTION B: MISCELLANEOUS PROVISIONS INCLUDING THOSE RELATING TO PRICE, PAYMENT AND INFORMATION**

**9. Service Provider's Status**

At all times during the period the Service Provider is an independent service provider and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Purchaser and any Service Provider Representative. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

**10. Notices**

10.1. Any notice or other communication which is to be given by a Party to the other under the Contract must be:

10.1.1. given in writing;

10.1.2. addressed in accordance with clause 10.3; and

10.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.

10.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

10.2.1. 2 Working Days after the day on which the letter was posted; or

10.2.2. 4 Working Hours after the communication was sent, in the case of fax or email.

10.3. For the purposes of this clause, the address of each Party is:

10.3.1. For the Purchaser:

Scottish Government, Victoria Quay, The Shore, Edinburgh, EH6 6QQ

For the attention of: Scott Brand

Tel: 0131 244 0350

Fax: n/a

E-mail: [scott.brand@gov.scot](mailto:scott.brand@gov.scot)

10.3.2. For the Service Provider:

«F43: Service Provider address for notices»

For the attention of: «F44: Service Provider individual contact for notices»

Tel: «F45: Service Provider phone number»

Fax: «F46: Service Provider fax number for notices»

E-mail: «F47: Service Provider e-mail address for notices»

10.4. Either Party may change its address details by serving a notice in accordance with this clause.

10.5. Notices under clause 58.1 (Termination on Insolvency or Change of Control) may be sent to the Purchaser's trustee, receiver, liquidator or administrator, as appropriate.

## **11. Price**

- 11.1. In consideration of the Service Provider's performance of its obligations relating to an Order, the Purchaser must pay:
- 11.1.1. the price due in accordance with the Pricing Schedule and the Ordering Procedures; and
  - 11.1.2. a sum equal to the value added tax chargeable at the prevailing rate.
- 11.2. The Service Provider may not suspend the provision of services if it considers that the Purchaser has failed to pay the price due.

## **12. Payment and Invoicing**

- 12.1. The Purchaser must pay all sums due to the Service Provider within 30 days of receipt of a valid invoice.
- 12.2. The Service Provider must render invoices following satisfactory completion of Milestones.
- 12.3. The Service Provider must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Services provided. The Service Provider must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.
- 12.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 12.5. 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 the Purchaser, the sums referred to in this clause must be properly invoiced by the Service Provider.

## **13. Recovery of Sums Due**

- 13.1. Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider to the Purchaser, the Purchaser may deduct that sum from any sum due to the Service Provider whether under the Contract or otherwise.
- 13.2. The Service Provider must make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Service Provider.

## **14. Data Protection Act**

- 14.1. For the purposes of this clause, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" have the meanings given in section 1(1) of the Data Protection Act 1998.
- 14.2. Where the Service Provider Processes Personal Data as a Data Processor for the Purchaser the Service Provider must:
- 14.2.1. enter into a data processing agreement in the form set out in Schedule 9 annexed hereto, and process the Personal Data in accordance with any instructions as may be given by the Purchaser (which may be specific or of a general nature);

- 14.2.2. process the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under the Contract or as is required by the law;
  - 14.2.3. implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 14.2.4. obtain approval before transferring the Personal Data to any sub-contractor;
  - 14.2.5. not cause or permit the Personal Data to be transferred outside of the European Economic Area without approval;
  - 14.2.6. ensure that all Service Provider Representatives accessing the Personal Data are aware of and comply with the obligations set out in this clause; and
  - 14.2.7. not disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Purchaser.
- 14.3. The Service Provider must notify the Purchaser promptly, and in any event within 5 Working Days, if it receives:
- 14.3.1. a request from a Data Subject to have access to their Personal Data;
  - 14.3.2. a complaint or request relating to the Purchaser's obligations under the Data Protection Act 1998.
- 14.4 Where the Service Provider is collecting data the Service Provider must comply with all the fair processing provisions under the Data Protection Act 1998, including notification to Data Subjects that the information may be shared with the Purchaser.
- 14.5 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Purchaser publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Service Provider should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

## **15. Freedom of Information**

- 15.1. The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Purchaser to enable the Purchaser to comply with FOISA and the Environmental Information Regulations.
- 15.2. If the Service Provider receives a Request for Information the Service Provider must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Purchaser, the Service Provider must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.

- 15.3. Where the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4. The Service Provider acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60 of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Service Provider or the Contract:
- 15.4.1. in certain circumstances without consulting the Service Provider, or
- 15.4.2. following consultation with the Service Provider and having taken its views into account.
- 15.5. Where clause 15.4.1 applies the Purchaser must take reasonable steps, where practicable, to give the Service Provider advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Service Provider after such disclosure.
- 15.6. Where a Request for Information concerns Service Provider Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information.

## **16. Purchaser Protected Information**

- 16.1. The Service Provider must:
- 16.1.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
- 16.1.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;
- 16.1.3. only disclose the Purchaser Protected Information to such Service Provider Representatives that are directly involved in the performance of the Contract and need to know the information; and
- 16.1.4. not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.
- 16.2. The Service Provider must immediately notify the Purchaser of any breach of security concerning the Purchaser Protected Information. The Service Provider must fully co-operate with the Purchaser in any investigation that the Purchaser considers necessary to undertake as a result of any such breach of security.
- 16.3. Clause 16.1 does not apply to the extent that:
- 16.3.1. disclosure is required by law or by order of any competent court or tribunal;
- 16.3.2. information is in the possession of the Service Provider without restriction as to its disclosure prior to its disclosure by the Purchaser;
- 16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;

- 16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 16.3.5. information is independently developed without access to the Purchaser Protected Information.
- 16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

**17. Service Provider Sensitive Information**

- 17.1. The Purchaser must:
- 17.1.1. treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
  - 17.1.2. not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- 17.2. Clause 17.1 does not apply to the extent that:
- 17.2.1. disclosure is required by law or by order of any competent court or tribunal;
  - 17.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;
  - 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
  - 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 17.2.5. information is independently developed without access to the Service Provider Sensitive Information.
- 17.3. Nothing in this Contract prevents the Purchaser from disclosing any Service Provider Sensitive Information or any other information concerning the Service Provider or the Contract:
- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Freedom of Information));
  - 17.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
  - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
  - 17.3.4. in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;
  - 17.3.5. to any consultant, Service Provider or other person engaged by the Purchaser, for example to conduct a gateway review;
  - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such

information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;

- 17.3.7. in response to any inquiry of the European Commission concerning the Contract;  
or
  - 17.3.8. for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 17.4. The Service Provider consents to the publication of the Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser may consult with the Service Provider to inform its decisions concerning redaction (for example to exclude any Service Provider Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

**18. Audit**

- 18.1. The Service Provider must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.2. The Service Provider must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser's representatives, such access to those records as may reasonably be requested by the Purchaser in connection with the Contract.

**19. Publicity**

The Service Provider must not make any press announcement or otherwise publicise the Contract in any way, except with the written consent of the Purchaser.

**SECTION C: PROVISION OF SERVICES**

**20. Provision of the Services**

- 20.1. The Service Provider must provide the Services:
  - 20.1.1. in accordance with the Specification and the Ordering Procedures;
  - 20.1.2. in accordance with the particular requirements of each Order; and
  - 20.1.3. to the satisfaction of the Purchaser acting reasonably.
- 20.2. The Service Provider acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Service Provider in the supply of the Services and the performance of its obligations under the Contract.
- 20.3. For each Order for the provision of services, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures, the provisions of this Section C apply.

20.4. The period for any Order agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' notice by the Purchaser.

## **21. Deliverables and Milestones**

21.1. The Service Provider must provide the Services, including any Deliverables:

21.1.1. at the date(s), time(s) and location(s) required by the Purchaser; and

21.1.2. in good time to meet any Milestones required by the Purchaser.

21.2. When the Service Provider believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.

21.3. The Purchaser may thereafter by notice to the Service Provider:

21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or

21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.

21.4. Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, the Service Provider must at its expense immediately rectify or remedy any defects and/or delays.

21.5. Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.

21.6. Whether the defect or delay is due to the Purchaser or not, the Service Provider shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

## **SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES**

### **22. Key Individuals**

22.1. The Service Provider acknowledges that the Key Individuals are essential to the proper provision of the Services to the Purchaser.

22.2. The Key Individuals must not be released from providing the Services without the approval of the Purchaser, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Service Provider must immediately give notice of that fact to the Purchaser.

22.3. The Service Provider may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:

22.3.1. appropriate arrangements must be made to minimise any adverse impact on the Contract which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and



- 22.3.2. the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.
- 22.4. Any proposed replacement to a Key Individual is subject to the approval of the Purchaser. Subject to the Service Provider's compliance with this clause, the Purchaser must not unreasonably withhold such approval.

### **23. Offers of Employment**

- 23.1. For the duration of the Contract and for a period of 12 months thereafter the Service Provider must not employ or offer employment to any of the Purchaser's employees who have been associated with the Contract and/or the contract management of the Contract without the Purchaser's prior approval.
- 23.2. This clause does not prevent the Service Provider from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Purchaser's employees.

### **24. Staff transfer at commencement**

- 24.1. The Parties agree that the commencement of the provision of the Services by the Service Provider does not involve a Relevant Transfer.
- 24.2. The Parties agree that the commencement of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Incoming Employees.
- 24.3. The Service Provider is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 24.4. The Service Provider indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 24.3.

### **25. Information about Service Provider Employees**

- 25.1. The Purchaser may by notice require the Service Provider to disclose such information as the Purchaser may require relating to those of the Service Provider's employees carrying out activities under or connected with the Contract.
- 25.2. The Service Provider must disclose by notice all such information as is required by the Purchaser under clause 25.1, within such reasonable period specified by the Purchaser. The Service Provider acknowledges that the Data Protection Act 1998 does not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.

25.3. The Service Provider consents to the disclosure by the Purchaser of all information provided by the Service Provider under this clause to other service providers that the Purchaser may invite to tender or appoint for services to be provided in substitution for the Services.

**26. Staff transfer on expiry or termination**

26.1. The Parties agree that the ceasing of the provision of the Services by the Service Provider does not involve a Relevant Transfer.

26.2. The Parties agree that the ceasing of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Outgoing Employees.

26.3. The Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Purchaser or any replacement service provider may suffer as a result of or in connection with:

26.3.1. the provision of information pursuant to clause 25;

26.3.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Service Provider in respect of any Outgoing Employee on or before the date of the Relevant Transfer;

26.3.3. any failure by the Service Provider to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any replacement service provider to comply with its obligations under regulation 13 of TUPE; and

26.3.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Purchaser to comply with any legal obligation to such trade union, body or person.

26.4. The Service Provider is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).

26.5. The Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or replacement service provider may incur in respect of the emoluments and outgoings referred to in clause 26.4.

## **27. Security**

- 27.1 The Service Provider must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 27.2 The Service Provider must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

## **SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE**

### **28. Parties' pre-existing Intellectual Property Rights**

Except as expressly provided for in the Contract, neither Party acquires any interest in or license to use the other Party's Intellectual Property Rights as they subsist at the Commencement Date or as developed independently of the Contract.

### **29. Specially Created Intellectual Property Rights**

- 29.1. All Intellectual Property Rights and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Service Provider on behalf of the Purchaser for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract belong to the Purchaser.
- 29.2. The Service Provider assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1. This assignation takes effect on the Commencement Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Service Provider. The Service Provider must execute all documentation necessary to effect this assignation.

### **30. Licences of Intellectual Property Rights**

- 30.1. The Service Provider grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Purchaser reasonably requires in order to enjoy the benefit of the Services.
- 30.2. The Service Provider grants to the Purchaser a perpetual, royalty-free, irrevocable and exclusive license to use any Intellectual Property Rights in the Deliverables.
- 30.3. The Service Provider must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Purchaser an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

## **31. Claims relating to Intellectual Property Rights**

- 31.1. The Service Provider must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 31.2. The Service Provider must promptly notify the Purchaser if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.
- 31.3. Where a claim to which this clause applies is made, the Service Provider must, at its expense, use its best endeavours to:
- 31.3.1. modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or
  - 31.3.2. procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Purchaser, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 31.4. The Service Provider must not without the consent of the Purchaser make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

## **32. Assignment**

- 32.1. The Service Provider may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.
- 32.2. Notwithstanding clause 32.1, the Service Provider may assign to another person (an "**Assignee**") the right to receive the price due to the Service Provider under the Contract subject to:
- 32.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and
  - 32.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.
- 32.3. The Service Provider must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 32.4. Subject to clause 32.6, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Purchaser; or

- (c) any private sector body which substantially performs the functions of the Purchaser,

provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.

32.5 Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Purchaser.

32.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Purchaser such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

- (a) the rights of termination of the Purchaser in clauses 57 (Termination Rights) and 58 (Termination on Insolvency and Change of Control) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Service Provider.

32.7 The Purchaser may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

### **33. Change of Control**

The Service Provider must notify the Purchaser:

- 33.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and

- 33.2. immediately following a change of Control that has occurred.

### **34. Sub-Contracting**

- 34.1. The Purchaser approves the appointment of the sub-contractors specified in Schedule 6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.

- 34.2. The Service Provider may not sub-contract its obligations under the Contract to other sub-contractors without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall be responsible for the acts and omissions of its sub-Service Providers as though they are its own.

- 34.3. Where the Service Provider enters into a sub-contract the Service Provider must ensure that a provision is included which:

- 34.3.1. requires payment to be made of all sums due by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Service Provider in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Service Provider is 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 the Service Provider, payment must be made to the sub-contractor without deduction;
- 34.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser;
- 34.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Contract, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal ([www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
- 34.3.4. is in the same terms as that set out in this clause 34.3 (including for the avoidance of doubt this clause 34.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and sub-contractor as the case may be.

34.4. The Service Provider shall also include in every sub-contract:

34.4.1 a right for the Service Provider 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 (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 57.3 occur; and

34.4.2 a requirement that the sub-contractor includes a provision having the same effect as 34.4.1 in any sub-contract which it awards.

In this clause 34.4, 'sub-contract' means a contract between two or more service providers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

34.5. Where requested by the Purchaser, copies of any sub-contract must be sent by the Service Provider to the Purchaser as soon as reasonably practicable.

34.6. Where the Service Provider proposes to enter into a sub-contract it must:

34.6.1 advertise its intention to do so in at least one trade journal, [at least one newspaper circulating in [*refer to locality*]] and the Public Contracts Scotland Portal; and

34.6.2 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

**35. Amendment**

- 35.1. The Contract may be amended only by the written agreement of both Parties. Accordingly, the Service Provider may not unilaterally amend the Contract.

**SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS**

**36. Compliance with the Law etc.**

In providing the Services and otherwise when performing the Contract, the Service Provider must comply in all respects with:

- 36.1. all applicable law;
- 36.2. any applicable requirements of regulatory bodies; and
- 36.3. Good Industry Practice.

**37. Official Secrets Acts**

The Service Provider undertakes to abide and procure that the Service Provider's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

**38. Service Provider's responsibility for staff etc.**

- 38.1. The Service Provider is responsible for the acts and omissions of all Service Provider Representatives relating to the Contract as though such acts and omissions are the Service Provider's own.
- 38.2. The Service Provider must ensure that all Service Provider Representatives:
  - 38.2.1. are appropriately experienced, skilled, qualified and trained;
  - 38.2.2. carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and
  - 38.2.3. obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

**39. Access to the Purchaser's premises**

- 39.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Service Provider from time to time is on a non-exclusive licence basis free of charge. The Service Provider must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 39.2. The Service Provider must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 39.3. At the Purchaser's written request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.

- 39.4. The Service Provider must ensure that any individual Service Provider Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Service Provider acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 39.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Service Provider Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 39.6. The Purchaser may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 39.7. The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.
- 39.8. All decisions of the Purchaser under this clause are final and conclusive.

**40. Service Provider's Equipment**

- 40.1. The Service Provider must provide all Equipment necessary to perform any required activities on the Purchaser's premises or otherwise necessary for the provision of Services.
- 40.2. But the Service Provider must not, without the Purchaser's approval:
  - 40.2.1. bring Equipment onto the Purchaser's premises; or
  - 40.2.2. leave Equipment on the premises.
- 40.3. Any Equipment brought onto the Purchaser's premises:
  - 40.3.1. remains the property of the Service Provider; and
  - 40.3.2. is at the Service Provider's own risk and the Purchaser has no liability for any loss of or damage to the Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Purchaser's Default.
- 40.4. The Service Provider must keep all Equipment brought onto the Purchaser's premises in a safe, serviceable and clean condition. The Purchaser may at any time require the Service Provider to remove from the Purchaser's premises any Equipment which in the opinion of the Purchaser acting reasonably is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Service Provider's expense as soon as reasonably practicable.
- 40.5. On completion of any required activities on the Purchaser's premises or at the end of a Working Day (as appropriate), the Service Provider must at its own expense:
  - 40.5.1. remove all Equipment; and
  - 40.5.2. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Service Provider's activities.



40.6. The Service Provider is solely responsible for making good any damage to the Purchaser's premises or any objects contained therein, other than wear and tear, which is caused by the Service Provider.

#### **41. Purchaser Property**

41.1. Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.

41.2. The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:

41.2.1. keep the Purchaser Property in good order and condition (excluding wear and tear);

41.2.2. comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;

41.2.3. use any Purchaser Property solely in connection with the Contract and for no other purpose; and

41.2.4. store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.

41.3. The Purchaser Property is deemed for the purposes of clause 41.2.1 to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Purchaser otherwise within 5 Working Days of receipt.

41.4. The Service Provider must not:

41.4.1. modify or replace the Purchaser Property;

41.4.2. use the Purchaser Property as security for a loan or other obligation;

41.4.3. sell, or attempt to sell or part with possession of the Purchaser Property; or

41.4.4. allow anyone to obtain a lien over, or right to retain, the Purchaser Property.

41.5. The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.

41.6. The Service Provider undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Service Provider must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

#### **42. Health and Safety etc.**

42.1. While on the Purchaser's premises, the Service Provider must comply with the Purchaser's policies concerning health and safety and fire and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.

42.2. The Service Provider must immediately inform the Purchaser in the event of any incident occurring in the performance of its obligations under the Contract on the Purchaser's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The Service Provider must then promptly notify the Purchaser of that fact.

42.3. The Purchaser must promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Purchaser's premises and which may affect the Service Provider in the performance of its obligations under the Contract.

42.4. The Service Provider must promptly make available its statutory health and safety policy statement to the Purchaser on request.

#### **43. Offences**

43.1. The Service Provider must not commit or attempt to commit any offence:

43.1.1. under the Bribery Act 2010;

43.1.2. of fraud, uttering, or embezzlement at common law; or

43.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

43.2. Breach of clause 43.1 is a material breach for the purposes of clause 57.1.3 (Termination Rights).

#### **44. Tax Arrangements**

44.1. Where the Service Provider is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

44.2. Where the Service Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

44.3. The Purchaser may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.

44.4. A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.

44.5. The Purchaser may supply any information which it receives under clause 44 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

44.6. The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.

44.7. Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

**45. Discrimination**

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

**46. Blacklisting**

The Service Provider must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Purchaser to terminate the Contract.

**47. Sustainability etc.**

The Service Provider shall comply with the Purchaser's Sustainability Policy and shall use its best endeavours to minimise its impact on the environment whilst delivering the Services.

**48. Conflicts of interest**

48.1. The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under the Contract.

48.2. The Service Provider must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

48.3. Breach of this clause by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

**SECTION G FINAL PROVISIONS**

**49. Warranties and Representations**

The Service Provider warrants and represents that:

49.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;

49.2. in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;

49.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities;

49.4. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract;

- 49.5. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.6. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 49.8. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 49.9. in the 3 years prior to the Commencement Date:
  - 49.9.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - 49.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 49.10. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 49.11. it has made appropriate inquiries (for example as regards the Purchaser's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;
- 49.12. it is familiar with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;
- 49.13. it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;
- 49.14. there are no actual or potential conflicts between the interests of the Service Provider and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and
- 49.15. it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

## **50. General Indemnity**

The Service Provider shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Service Provider.

## **51. Limitation of Liability**

51.1. Neither Party is liable to the other Party under the Contract for any:

51.1.1. loss of profits, business, revenue or goodwill; or

51.1.2. indirect or consequential loss or damage.

51.2. But clause 51.1 does not exclude any liability of the Service Provider for additional operational, administrative costs or expenses or wasted expenditure resulting from the direct Default of the Service Provider.

51.3. The liability of either party for breach of this Contract or breach of duty or negligence or otherwise arising out of or in connection with this Contract shall be limited to £1 million for any one incident or for any series of claims arising from the same incident, but shall be unlimited in total.

51.4. But neither Party excludes or limits liability to the other Party for:

51.4.1. death or personal injury caused by its negligence;

51.4.2. misrepresentation; or

51.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

## **52. Insurances**

52.1. The Service Provider must effect and maintain with a reputable insurance company:

52.1.1. public liability insurance in the sum of not less than £1 million;

52.1.2. professional indemnity insurance in the sum of not less than £1 million; and

52.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.

52.2. Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.

52.3. The Service Provider must give the Purchaser, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## **53. Force Majeure**

53.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material

obligations under the Contract for a period in excess of 3 months, either Party may terminate the Contract with immediate effect by notice.

- 53.2. Any delay or other failure by the Service Provider in performing its obligations under the Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 53.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 53.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 53.4. The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

#### **54. Dispute Resolution**

- 54.1. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract in accordance with the Management Arrangements.
- 54.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 54.3. Any arbitration under clause 54.2 is subject to the Arbitration (Scotland) Act 2010.

#### **55. Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **56. Waiver and Cumulative Remedies**

- 56.1. Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.
- 56.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 10 (notices).
- 56.3. A waiver of any Default is not a waiver of any subsequent Default.
- 56.4. The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

## **57. Termination Rights**

57.1. The Purchaser may terminate the Contract by notice to the Service Provider with immediate effect if the Service Provider commits a Default and:

57.1.1. the Service Provider has not remedied the Default to the satisfaction of the Purchaser within 20 Working Days, or such other period as may be specified by the Purchaser, after issue of a notice specifying the Default and requesting it to be remedied;

57.1.2. the Default is not in the opinion of the Purchaser, capable of remedy; or

57.1.3. the Default is a material breach of the Contract.

57.2. The Purchaser may also terminate the Contract in accordance with any provisions of the Schedules.

57.3. The Purchaser may terminate the Contract in the event that:

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

(b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

(c) the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

57.4. The Purchaser may also terminate the Contract in the event of a failure by the Service Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.

## **58. Termination on Insolvency and Change of Control**

58.1. The Service Provider shall notify in writing immediately, and the Purchaser may terminate the Contract with immediate effect by notice, where in respect of the Service Provider:

58.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

58.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

- 58.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
  - 58.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 58.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 58.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 58.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
  - 58.1.8. a debt relief order is entered into; or
  - 58.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.
- 58.2. The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:
- 58.2.1. being notified that a change of Control has occurred in accordance with clause 33.2 (Change of Control); or
  - 58.2.2. where no such notification has been given, the date that the Purchaser becomes aware of the change of control.
- 58.3. But the Purchaser may not terminate the Contract under clause 58.2 where approval of the change of control has been granted by notice by the Purchaser.

## **59. Exit Management**

The Service Provider shall perform its relevant Exit Management obligations as part of the Contract whether applicable on either the expiry or early termination of this Contract.

59.1 The Service Provider agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Service Provider agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 54 (Dispute Resolution). If a court of competent jurisdiction finds that the Service Provider has breached (or attempted or threatened to breach) any such obligation, the Service Provider agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Service Provider shall not oppose the entry of an appropriate order compelling performance by the Service Provider and restraining the Service Provider from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

59.2 A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 59.3. The Purchaser shall provide to the Service Provider the Purchaser's comments on the plan within one (1) month of the Purchaser's



receipt of the plan. The Service Provider shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Purchaser's comments.

59.3 The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:

59.3.1 the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;

59.3.2 the activities necessary to support any Replacement Service Provider or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;

59.3.3 details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;

59.3.4 support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;

59.3.5 the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and

59.3.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Service Provider or the Purchaser.

59.4 No amendment of the Exit Plan shall be made without prior written consent of the Purchaser.

## **60. Consequences of Expiry or Termination**

60.1. Where the Purchaser terminates the Contract under clause 57 (Termination Rights) and makes other arrangements for the provision of services, the Service Provider indemnifies the Purchaser against all costs incurred in making those arrangements.

60.2. Where the Purchaser terminates the Contract under clause 5 (Break), the Purchaser indemnifies the Service Provider against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).

60.3. Any indemnity given by the Purchaser under clause 60.2 is subject to the Service Provider:

60.3.1. taking all reasonable steps to mitigate its loss;

60.3.2. taking all reasonable steps to recover its losses under any insurance policies held by it; and

60.3.3. submitting a fully itemised and costed list of losses which it seeks to recover from the Purchaser together with supporting evidence.

60.4. Except as provided for in clauses 50 (General Indemnity), 60.1 and 60.2 and the Management Arrangements, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.

60.5. On expiry or termination of the Contract the Service Provider must:

- 60.5.1. immediately return to the Purchaser all Purchaser Property and Purchaser Protected Information in its possession; and
  - 60.5.2. destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.
- 60.6. The following provisions survive the expiry or termination of the Contract:
- 60.6.1. clause 1 (Definitions and Interpretation);
  - 60.6.2. clause 13 (Recovery of Sums Due);
  - 60.6.3. clause 14 (Data Protection Act);
  - 60.6.4. clause 15 (Freedom of Information);
  - 60.6.5. clause 16 (Purchaser Protected Information);
  - 60.6.6. clause 17 (Service Provider Sensitive Information);
  - 60.6.7. clause 18 (Audit [and Records Management]);
  - 60.6.8. clause 19 (Publicity);
  - 60.6.9. clause 23 (Offers of Employment);
  - 60.6.10. clause 25 (Information about Service Provider Employees);
  - 60.6.11. clause 26 (Staff transfer on expiry or termination);
  - 60.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);
  - 60.6.13. clause 29 (Specially Created Intellectual Property Rights);
  - 60.6.14. clause 30 (Licences of Intellectual Property Rights);
  - 60.6.15. clause 31 (Claims relating to Intellectual Property Rights);
  - 60.6.16. clause 37 (Official Secrets Acts);
  - 60.6.17. clause 40 (Service Provider's Equipment);
  - 60.6.18. clause 41 (Purchaser Property);
  - 60.6.19. clause 44 (Tax arrangements);
  - 60.6.20. clause 47 (Sustainability);
  - 60.6.21. clause 49 (Warranties and Representations);
  - 60.6.22. clause 50 (General Indemnity);
  - 60.6.23. clause 51 (Limitation of Liability);
  - 60.6.24. clause 52 (Insurances);
  - 60.6.25. clause 54 (Dispute Resolution);
  - 60.6.26. clause 56 (Waiver and Cumulative Remedies);
  - 60.6.27. this clause 60; and
  - 60.6.28. clause 62 (Governing Law and Jurisdiction).
- 60.7. If a Judicial Order is made, the provisions of the Management Arrangements referring to that possibility apply.
- 60.8. Immediately upon termination of the Contract for any reason whatsoever the Service Provider shall render such reasonable assistance to the Purchaser or third party nominated by the Purchaser, if requested, as may be necessary to effect an orderly assumption by a Replacement Service Provider of the Services previously performed by the Service Provider under the Contract. The Service Provider shall be entitled to charge for such termination services in accordance with the management arrangements.

## **61. Entire Agreement**

- 61.1. The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the ESPD or Tender or otherwise).
- 61.2. In the event of, and only to the extent of, any conflict between the clauses of the Contract, the Schedules and any document referred to in the Contract, the following order of precedence applies:
  - 61.2.1. the clauses of the Contract;

61.2.2. the Schedules; and

61.2.3. any other document referred to in the Contract.

**62. Governing Law and Jurisdiction**

The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 54 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

**IN WITNESS WHEREOF** these presents typewritten on this and the «F71: number of pages before this page» preceding pages together with the «F20: number of Schedules» Schedules annexed are executed as follows:

**SIGNED** for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of «F3: Service Provider name...»

At.....

At.....

On.....

On.....

Signature.....

Signature.....

Full name .....

Full name.....

Position .....

Position.....

Address.....

Address.....

**In the presence of**

**In the presence of**

Signature.....

Signature.....

Full name .....

Full name.....

Address.....

Address.....

This and the following [ ] pages comprise Schedule 1 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

## **SCHEDULE 1 - SPECIFICATION**

### **ATTRACTING HIGH-QUALITY GRADUATES INTO TEACHING**

#### **Introduction**

1. The Scottish Government's Learning Directorate, wishes to commission, on behalf of People and Infrastructure Division, a project to develop a new route into teaching. This route should focus on attracting high-quality graduates and those with degrees considering a career change. The route should ensure that the programme is genuinely new and distinct and not simply a minor re-working or extension of the existing Scottish Initial Teacher Education (ITE) programmes. Accordingly the programme must have outstanding and distinctive features setting it apart from other forms of ITE.

#### **Background**

2. In Scotland we have a graduate teaching profession that includes a high number of teachers who have attended one of the universities providing teacher education. It is crucial that teachers in Scotland are prepared for the classroom by excellent programmes of ITE. The traditional routes to teaching have served, and continue to serve Scotland well. However, we wish to consider alternative routes that help to make a career in teaching more accessible to a wider range of graduates while raising the attainment of children and young people living in deprived areas, in order to close the equity gap and address current recruitment challenges for teachers of priority subjects.

3. We have recently introduced a number of high-quality, new and innovative routes into teaching that look to:-

- Help address current lack of teachers in some secondary subjects such as Chemistry, Computing, English, Engineering, Gaelic, Home Economics, Maths, Modern Languages, Technology Education and Physics;
- Allow for teachers to work between primary and secondary schools to support pupil transitions;
- Help to develop specialisms in the primary teaching workforce;
- Combine Post Graduate Diploma in Education (PGDE) with the probation year to allow teachers to reach the Standard for Full Registration;
- Support an increase in the availability of distance or work-based routes to teaching;

4. The document "Delivering Excellence and Equity in Scottish Education - A Delivery Plan for Scotland" committed the Scottish Government to "Developing a new route which is focused on getting high-quality graduates into priority areas and subjects." Link to document follows at <http://www.gov.scot/Resource/0050/00502222.pdf> .

5. In addition to the new routes (outlined in paragraph 3) we want the Service Provider to develop a route that is designed to specifically attract high quality graduates into the teaching profession to support the Scottish Government's key priority towards achieving excellence and equity in all Scottish schools with a particular focus on closing the poverty-related attainment gap. The First Minister launched the Scottish Attainment Challenge in February 2015 to bring a greater sense of urgency and priority to this issue. It is underpinned by The National Improvement Framework, Curriculum for Excellence and Getting it Right for Every Child. The Scottish Attainment Challenge will focus and accelerate targeted improvement activity in literacy, numeracy and health and wellbeing

in specific areas of Scotland. It will also support and complement the broader range of initiatives and programmes to ensure that all of Scotland's children and young people reach their full potential.

6. The route should appeal to new graduates and degree holders who are considering a career change. Service Providers will be expected to work with local authorities and schools supported by the Attainment Scotland Fund. We want to see a high quality, ambitious and sustainable programme that enhances the high standards of teacher education to the benefit of children and young people. The Service Provider needs to ensure that the programme of learning meets the Standard for Full Registration, which is part of the Standards for Registration: mandatory requirements for Registration with the General Teaching Council for Scotland (GTCS).

7. There is a system-wide need to identify and support the development of future school leaders. We expect the Service Provider to ensure that the programme goes beyond the traditional view of ITE (developing competence as a classroom leader) by also acting to ready participants to consider middle leadership positions in schools once they are established in the profession. The following link gives information on current teacher leadership initiatives.

<http://www.scelscotland.org.uk/what-we-offer/teacher-leadership/scel-teacher-leadership-programme/>

<http://www.gtcs.org.uk/professional-update/what-is-professional-learning.aspx>

### **Key Objectives/Outputs**

8. There are 5 key outputs to this specification. These are:-

- The development of an ambitious and innovative programme for high-quality graduates with a minimum of a 2:1 (honours) degree at SCQF level 10 that will provide them with an opportunity to develop their leadership skills;
- The programme must provide an academic award at Scottish Credit and Qualification Framework (SCQF) level 11;
- The programme must be accredited by GTCS and provide a teaching qualification that is recognised by the GTCS;
- Recruitment and selection of a cohort of students;
- Deployment of students to schools with levels of high deprivation;
- Evaluation of the programme;
- Handover of programme to the Scottish Government.

### The development of a programme for high-quality graduates

9. The Service Provider must gain accreditation for the programme from the GTCS. Under the Public Services Reform (General Teaching Council for Scotland) Order 2011 all programmes of ITE in Scotland require the accreditation of the GTCS. It is for the GTCS to determine what constitutes a recognised teaching qualification for individuals seeking registration as a school teacher. A determination may make such provision about the education and training required to attain such a qualification as the GTCS thinks fit. The overall aim of programmes of ITE is to prepare teachers to become competent, thoughtful, reflective and innovative practitioners, who are committed to providing high quality learning for all pupils. The means by which such professionals will be developed is through programmes whose design match with the Quality Assurance Agency for Higher Education's requirements and the Standard for Full Registration in Scotland.

10. The Service Provider must ensure that the programme results in an academic qualification at SCQF level 11. This award must be subject to validation and review processes under the auspices of a university or degree awarding institution.

11. The Service Provider must ensure that the programme is innovative and produces graduates who have achieved the Standard for Full Registration in the secondary sector. Proposals focused on teaching Gaelic must meet with the distinct requirements of Gaelic ITE.

#### Recruitment and selection of a cohort of students

12. The Service Provider should ensure that the new programme is high-profile and attractive to graduates from a wide range of academic disciplines. Graduates should have a minimum of a 2:1 (Honours) degree at SCQF level 10. It should emphasise teaching as a challenging, rewarding and multi-faceted career crucial to the future of Scotland and should attract some of the most talented new graduates available and those degree holders wishing to change careers. Innovative advertising and recruitment techniques will be necessary to engage groups of graduates that are traditionally not attracted to a career in teaching. The Service Provider must outline an overall marketing strategy including any initiatives such as social media and contact with professional bodies. The Service Provider is expected to recruit a cohort of between 20 and 50 students.

13. The GTCS sets minimum entry requirements for all teacher education programmes that lead to a recognised teaching qualification (see link below). The qualifications needed for entry to teacher education are set out in terms of the levels and credit value as defined in the SCQF. Any system of selection of student teachers must take into account available reports on individual applicants, their experience and interest and the extent to which they match the personal characteristics desirable in a teacher. Further information is available in the GTCS Memorandum on Entry Requirements to programmes of Initial Teacher Education in Scotland.

<http://www.gtcs.org.uk/web/files/about-gtcs/memorandum-on-entry-requirements-to-programmes-of-ite-in-scotland-0413.pdf>

#### Deployment of students to schools with levels of high deprivation

14. The Service Provider shall ensure that the student cohort engages with schools with high levels of pupils living in areas of multiple deprivation. This will include as a minimum, school placements, covering both the student and probationer phases.

#### Evaluation of the programme

15. The Service Provider shall produce an evaluation of the programme. This should include:-

- Views from students, schools who had student/probationer teachers on placement and employers;
- Analysis of cost and sustainability;
- Success of marketing and recruitment strategy; and
- Analysis of applications and drop-out rates

16. The Service Provider shall keep in regular contact with the Scottish Government on the project and be prepared to present their findings. This evaluation is separate and distinct from student assessment within the programme.

#### Handover of programme to the Scottish Government

17. The Service Provider shall have developed a programme that is fully accredited by the GTCS and validated by the appropriate bodies that can be provided to the Scottish Government no later than December 2020. The Scottish Government shall retain the Intellectual Property Rights for all content created specifically for this contract.

### **Features and characteristics of the programme**

#### **New and Distinct**

18. The Service Provider should ensure that the programme is genuinely new and distinct and not simply a minor re-working or extension of the existing Scottish ITE programmes. We are aiming to attract a group of high performing graduates that would not normally consider teaching and accordingly the programme must have outstanding and distinctive features setting it apart from other forms of ITE.

#### **Programme location**

19. The Service Provider should outline where the programme's base will be and what the learning approaches and mode of delivery, will be including options for distance learning. We expect that the cohort of students will engage with more than one local authority through the placement and probationer phases of the programme.

#### **Standards for Provisional and Full Registration**

20. The Service Provider must ensure that the programme meets both the Standard for Provisional Registration (that specifies what is expected of a student teacher at the end of ITE) and the Standard for Full Registration (which is the benchmark of teacher competence for all teachers) (see link below to GTCS Standards). The programme should also result in the award of an academic qualification at SCQF level 11 credit rated by a university or degree awarding institution. The Service Provider should ensure that the programme does not run over 24 months in total.

<http://www.gtcs.org.uk/web/FILES/the-standards/standards-for-registration-1212.pdf>

#### **Placements/classroom experience**

21. While safeguarding teacher quality, we believe that the most talented graduates should have the opportunity to engage in classroom practice and have responsibility for leading and delivering from an early stage, with appropriate support, relatively quickly after joining the programme. Students on this programme must be provided both with high quality and inspirational school placements, Gaelic students should always be placed in Gaelic medium classes and where possible, wider educational experiences such as developing a detailed understanding of allied professions including health and social work. The Service Provider should, therefore, ensure that school placements include challenging classroom experience with appropriate support in the form of both formal and high-quality mentoring and peer networks. The Service Provider must have agreements with local authorities regarding engagement with the programme.

22. The GTCS Guidelines for Initial Teacher Education Programmes in Scotland make clear that programmes must have an appropriate balance of professional studies, subject studies and relevant school educational placement experience (see link below). School experience placements must provide the practical context to illustrate and develop the skills, understanding and context being developed in the programme. Traditionally they are undertaken in blocks of time, but may also include a series of days. The guidelines state a minimum time by type of programme that needs to be devoted to placement experience and any alternative arrangements need to be agreed with the GTCS.

<http://www.gtcs.org.uk/web/FILES/about-gtcs/guidelines-for-ite-programmes-in-scotland-0413.pdf>

### **SCQF Level and qualification**

23. As mentioned earlier the programme must result in an academic qualification at SCQF level 11 (see paragraphs 10 and 20). The Scottish Government supports opportunities for teachers to study at Masters level and ultimately to gain Masters degrees (SCQF level 11). A commitment to studying at SCQF level 11 is a key element of the new route as it will help attract high performing graduates. Given the strong commitment to on-going professional learning within the teaching profession, we expect the Service Provider to ensure students entering this route display a personal commitment to learning and consider a formal link with appropriate professional bodies. The Service Provider should also consider innovative assessment strategies for students.

24. The SCQF sets out the characteristics expected of each level of qualification. For level 11 these include:-

- Knowledge and understanding;
- Practice applied knowledge, skills and understanding;
- Generic cognitive skills;
- Communication, ICT and numeracy skills; and
- Autonomy, accountability and working with others

25. Further information on the Framework is available at the following link:-  
<http://scqf.org.uk/>

26. As the programme will cover the probationer year then GTCS rules are that a prescribed number of teaching days require to be completed to meet the Standard for Full Registration. The Service Provider should engage with the GTCS to consider ways in which these requirements can be met.

### **Remuneration**

27. The Service Provider should ensure that where remuneration is paid during the programme then SNCT guidelines need to be followed. These are that teachers during their probationary period should be placed on Point 0 of the Main Grade Scale. Following full registration with the General Teaching Council for Scotland (GTCS) teachers should be moved on to Point 1 of the Main Grade Scale. Employers will be expected to cover salary costs during periods such as probation. The Scottish Government will also consider any innovative incentivisation that can assist recruitment. The following link gives information on teachers' pay.

[http://www.snct.org.uk/wiki/index.php?title=Part\\_2\\_Section\\_1](http://www.snct.org.uk/wiki/index.php?title=Part_2_Section_1)



## Size of cohort

28. The Service Provider should also ensure that the size of the cohort is between 20 and 50 students to ensure that it is both viable and manageable.

## Timetable/milestones

29. The following is a timeline for the project:-

Date	Action
November 2017	Deadline for bids to be submitted
January 2017	Scottish Government to award contract
January – May 2018 February 2018	Service Provider to undertake design of programme
February 2018	Service Provider to start marketing of programme
June 2018	Service Provider to gain GTCS Accreditation for the programme
June 2018	Service Provider to gain validation of academic qualification for the programme
December 2018 (no later)	Service Provider to start Programme
September 2018 (onwards)	Service Provider to undertake continuous evaluation of programme
August 2020 (no later)	Service Provider to end programme (all students will need to have completed the programme by then as no extensions can be given)*

\* extensions and re-sits are part of many programmes but as this is a pilot we need to end the programme at a specific date. Therefore, the Service Provider must detail plans to deal with students who have not yet finished by that date.

## Project costs

30. We have allocated between £150,000 to £250,000 for the development costs of this project excluding VAT. Student tuition fee costs, unit of teaching costs and student support costs will be met separately via the Scottish Funding Council and the Student Awards Agency Scotland while probationer salaries will be met by local authority employers.

31. These funds can be used to meet costs in the following areas:-

- Programme development;
- Programme materials;
- Student support for placement expenses (subject to Scottish Government agreement);
- Staff time;
- Stakeholder engagement;
- Marketing;
- Evaluation report writing;
- Administration;
- Travel and subsistence (Scottish Government rates apply).

## Pricing Instructions

Attracting High-Quality Graduates into Teaching - Case 379894

### General

1	It is the Tenderers responsibility to ensure prices are sustainable for the entirety of the contract.
2	Charges which appear elsewhere but which are not summarised in this pricing schedule will be presumed to have been waived.
3	All prices/charges must be quoted in Pounds Sterling (£) and must be exclusive of any VAT which may be chargeable.
4	All prices must be in line with the Specification of Requirements - detailed in Schedule 1 of the conditions of Contract.
5	The budget available for this project is between <b>£150,000 - £250,000</b> (ex VAT). Tenders submitted above this level may be deemed non-compliant.

### Charges

6	Tenderers must provide a firm fee for the full delivery of the Contract as described in Schedule 1 - 'Specification of Requirements'.
7	The firm fee must be entered in cell <b>D6</b> on the 'Contract Price' tab.
8	The total price entered in cell <b>D6</b> shall represent the total charges payable by the Purchaser to the Service Provider in respect of the Service Provider performing its obligations between the Commencement Date and the Contract Expiry Date.
9	A breakdown of the firm fee must be provided in the 'Cost Breakdown' tab.

### Milestones & Payment

10	Details of the Project Milestones are provided on the 'Contract Price' tab along with the corresponding payment percentage which shall apply.
11	The Purchaser will only make payment to the Contractor following successful completion of each corresponding milestone.
12	The Service Provider shall not submit an invoice for payment until the Purchaser has confirmed in writing that the corresponding Milestone has been completed to the satisfaction of the Purchaser.
13	The Service Provider must maintain all supporting documentation relating to the invoices and make these available on request to the Purchaser or its representatives.

**Contract Price**

**Firm Contract Price**

Reference	Output	Purpose/content	Provisional Timescale	% Payment Milestones	Fee Due	Project Stage
1	Inception Plan	This report will set out how the programme will be delivered including the basic design, project plan, project management and risk management processes.	Jan-18	3%	£0.00	Inception
2	Design of Programme	This report will detail in full the Service Provider's proposed innovative programme including assurances about GTCS accreditation being achieved.	May-18	20%	£0.00	Development
3a	GTCS Accreditation	The Programme must be able to meet the Standard for Full Registration. This is a mandatory requirement of the pilot.	Jun-18	35%	£0.00	
3b	Validation of Academic Qualification	The Programme must be able to award all Graduates who pass a Scottish Credit and Qualification (SCQF level 11). This is a mandatory requirement of the pilot.	Jun-18			
4a	Programme Marketing	The advertising of the Programme must as a minimum attract the appropriate level of Graduate.	Jul-18	10%	£0.00	Mobilisation
4b	Recruitment of Cohort	Graduates should have a 2:1 (honours) degree at level 10. The Service Provider is expected to recruit a cohort of between 20 - 50 individuals.	Jul-18			
5	Evaluation of Programme	The Service Provider is expected to produce an evaluation of the Programme. This should include; views from Graduates, Teachers and Employers. Analysis of Cost, Sustainability, Marketing and Recruitment Strategy.	Throughout 18-20	10%	£0.00	Implementation
6	Interim report (Year 1)	This report will provide a summary of progress to date (against the project plan), interim findings, and any implications these have for the remainder of the Contract.	Aug-19	5%	£0.00	
7	Final Report and Programme Handover	An in-depth final report on the findings of the Programme	Jul-20	10%	£0.00	Analysis and Reporting
	Satisfactory completion of all Milestones.	At the sole discretion of the Purchaser.	Aug-20	7%	£0.00	Analysis and Reporting
				<b>100%</b>	<b>£0.00</b>	

## Project Fee - Cost Breakdown

Tables 1 to 4 below are cross referenced with the " Contract Price" (tab2).  
The breakdown below should incorporate each of these elements.

**Table 1 - Programme Design Costs (Reference 1 & 2)**

Job Role	Number of Days Required	Day Rate	Total
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00

Sub-Total **£0.00**

**Table 2 - Accreditation / Validation (Reference 3a & 3b)**

Task	Breakdown	Cost
		£0 00
		£0 00
		£0 00
		£0 00
		£0 00

Sub-Total **£0.00**

**Table 3 - Marketing / Recruitment (Reference 4a & 4b)**

Job Role	Number of Days	Day Rate	Total
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00

Sub-Total **£0.00**

**Table 4 - Programme Evaluation (Reference 5,6 & 7)**

Job Role	Number of Days	Day Rate	Total
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00
			£0 00

Sub-Total **£0.00**

**Table 5 - Other Costs (this must include items from Tables 1-4)**

	Cost	Breakdown	Notes
<b>Office &amp; Overheads</b>	£0.00		Include costs for business operation
<b>Communications</b>	£0.00		Include costs for all forms of communication
<b>Travel &amp; Subsistence</b>	£0.00		Include any contract T&S
<b>Insurance</b>	£0.00		Include any cost associated with providing the insurance required for this contract
<b>Profit</b>	£0.00		Include all contract profit
<b>Miscellaneous</b>	£0.00		Include any other costs Specific details must be provided separately
	£0.00		

### Summary

<b>Project Fee (All Milestones)</b>	£0.00	<b>Match</b>
<b>Firm Contract Price (tab 2)</b>	£0.00	

This and the following [ ] pages comprise Schedule 3 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

**SCHEDULE 3 – ORDERING PROCEDURES – [NOT USED]**

This and the following [ ] pages comprise Schedule 4 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

## **SCHEDULE 4 - MANAGEMENT ARRANGEMENTS**

### **1. Reporting Requirements**

- 1.1. The Service Provider will be required to provide all Reports to the Scottish Government in electronic format and hard copy colour format (where requested). Reports must be clear and concise, and provide a top level summary with supporting documents.
- 1.2. The Service Provider will produce a monthly (or as otherwise instructed by the Purchaser) Highlight Report in a format acceptable to the Purchaser, to show progress against Schedule 1 and other relevant activities highlighting key risks and issues.
- 1.3. The Service Provider must provide the Purchaser with a Quarterly (or as otherwise instructed) Performance Report. The Monthly Highlight Report shall be in a form acceptable to the Purchaser.
- 1.4. The Performance Report must include information on performance against deliverables as set out in Schedule 1 and include any other details and metrics as set out in the Contract or as may otherwise be agreed between the Parties provided that such information is in the Services Provider's possession or control.
- 1.5. The Performance Report must be of a high quality (in terms of accuracy, format and presentation), subject to any redactions of the Service Provider's Sensitive Information. The Performance Report shall not include any Personal Data in terms of Data Protection Legislation unless expressly required by the Purchaser.
- 1.6. The Performance Report must be in an electronic form with appropriate graphical representation, or such other format as directed by the Purchaser's Contract Manager. The Performance Report must be no later than 10 Working Days immediately following the last reporting period to which it relates.
- 1.7. The Service Provider shall promptly provide to the Purchaser further information in relation to the Performance Report as the Purchaser may request.
- 1.8. Where the Monthly Highlight or Quarterly Performance Report shows a negative trend, the Service Provider will be expected to provide quantitative analysis or narrative explanation, as appropriate along with a mitigation / improvement plan.
- 1.9. The ownership of any material and/or Reports and any other outputs produced as a result of this contract will rest with the Scottish Government.

### **2. Meetings**

- 2.1. Meetings will be held between the Purchaser and the Service Provider, and anyone else nominated by the Purchaser (e.g. members of a Research Advisory or Steering Group) on a quarterly basis normally at the Scottish Government premises in Edinburgh. Any change to the frequency or location of the meetings will be agreed between both parties with as much notice as reasonably practicable.
- 2.2. The meetings will cover, amongst other topics, the most recently submitted Performance Report. The Purchaser reserves the right to alter the agenda of any meeting but will endeavour to give attendees as much notice as reasonably practicable.
- 2.3. Meetings will also be held between the Purchaser and the Service Provider, and anyone else nominated by the Purchaser (e.g. members of a Technical Working Group) on a monthly basis normally at the Scottish Government premises in Edinburgh. Any change to the frequency or location of the meetings will be agreed between both parties with as much notice as reasonably practicable.

- 2.4. The meetings will cover, amongst other topics, the most recently submitted Highlight Report, with a focus on methodological and ethical issues. The Purchaser reserves the right to alter the agenda of any meeting but will endeavour to give attendees as much notice as reasonably practicable.
- 2.5. The Purchaser will determine who must attend from the Service Provider's Key Personnel at these meetings in discussion with the Service Provider.
- 2.6. All costs incurred by the Service Provider in attending such meetings will be the responsibility of the Service Provider.
- 2.7. The Service Provider will provide a fortnightly (or as required) telephone call with the Purchaser's Contract Manager to discuss progress, risks, issues, and any other activities relevant to the delivery of the Contract.
- 2.8. The Service Provider may be required by the Purchaser to attend ad hoc meetings at the Purchaser's premises (Edinburgh) and other organisations as required by the Purchaser from time to time to discuss or promote the operation of the Contract.

### **3. Communication with Candidates**

- 3.1. The Service Provider must have in place a customer care commitment which applies to all personnel likely to come into contact with service users, or their nominated third party contact. In particular, personnel will be required at all times to be:
  - polite;
  - honest;
  - respectful;
  - courteous;
  - reasonable; and
  - professional.
- 3.2. The Service provider must have robust processes in place to manage service users throughout the course of the service delivery.

### **4. Dispute resolution**

- 4.1. The Parties shall attempt to resolve any dispute between them arising out of, or in connection with, the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute as follows.
- 4.2. Any dispute will, in the first instance, be presented to the Service Provider's Contract Manager and the Purchaser's Contract Manager for resolution.
- 4.3. If the Service Provider's Contract Manager and Purchaser Contract Manager cannot agree on a resolution, then a separate meeting will be held between the senior management of the Service Provider and the Purchaser for resolution.
- 4.4. If the dispute cannot be resolved by the Parties pursuant to this paragraph, the Parties shall refer it to arbitration pursuant to the procedure in terms of clause 54 (Dispute Resolution) of the Contract.
- 4.5. The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to arbitration in terms of clause 54 (Dispute Resolution) of the Contract and the Service Provider shall comply fully with the requirements of the Contract at all times.

### **5. Data handling**

- 5.1. All data and reports which are supplied electronically will be supplied in a format which is compatible with the software utilised by the Purchaser. The Service Provider must ensure all electronic files to be submitted to the Purchaser are free of viruses. The

Service Provider must provide data and reports to the Purchaser in an editable electronic format, on request.

- 5.2. For the purposes of the Data Protection Act, the Purchaser is the Data Controller and the Service Provider the Data Processor for the purposes of this Contract.
- 5.3. The Service Provider must make customers aware of this use through the provision of a data protection statement to be agreed with the Purchaser.
- 5.4. The cost of data management and reporting is deemed to be included by the Contractor at no additional cost to the Purchaser.

## **6. Quality assurance**

- 6.1. The Service Provider must comply with any relevant legislation, rules or regulations as in force at the time in the delivery of the service.

## **7. Invoicing**

- 7.1. In accordance with clause 18.2 of the Contract, the Service Provider must maintain records of all invoices submitted by any Sub-Contractors and make these available on request to the Purchaser, or their representatives, for audit purposes.
- 7.2. The Service Provider must put in place arrangements for secure electronic transfer of invoices to the Purchaser (such as a secure web portal) in compliance with the reasonable requirements of the Purchaser.
- 7.3. The Service Provider must ensure that invoices are validated prior to submission to the Purchaser, meaning that the data fields on the invoices are compliant with reasonable requirements of the Purchaser. For example, that dates are expressed in a particular format.
- 7.4. The Service Provider must put in place arrangements for ensuring that invoices are compliant with the Contract prior to submission.



This and the following [ ] pages comprise Schedule 5 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

**SCHEDULE 5 – KEY INDIVIDUALS**

1. e.g. Joe Bloggs, Contract Manager
2. e.g. Jane Doe, Software Specialist

This and the following [ ] pages comprise Schedule 6 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

**SCHEDULE 6 – APPROVED SUB-CONTRACTORS**

<b>approved Sub-Service Provider(s)</b>	<b>Relevant obligations</b>
1. e.g. Subco Limited (SC123456)	e.g. high risk consultancy services
2.	

This and the following [ ] pages comprise Schedule 7 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

**SCHEDULE 7 – SERVICE PROVIDER SENSITIVE INFORMATION**

Type of information specified as Service Provider Sensitive Information	Reason why information is sensitive	Duration of sensitivity

This and the following [ ] pages comprise Schedule 8 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

## **SCHEDULE 8 – PARENT COMPANY GUARANTEE**

1. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number [ ]) and having our Registered Office at [ ] refer to the Contract dated [ ] and [ ] between the Scottish Ministers and [insert name of contractor], a company incorporated under the Companies Acts (Company number [ ] and having its Registered Office at [ ]) (“the Company”) of which we are the ultimate holding company, for the provision [specify nature of the services] (“the Contract”) and in security of the Company's obligations thereunder guarantee the same in the following manner:-

1.1 We guarantee that the Company shall perform all its obligations contained in the Contract.

1.2 If the Company shall in any respect fail to perform its obligations under the Contract or shall commit any breach thereof, we undertake, forthwith on first demand by the Scottish Ministers, to perform or to take whatever steps may be necessary to achieve performance of said obligations under the Contract and shall indemnify and keep indemnified the Scottish Ministers against any loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Company.

1.3 Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:

1.3.1 any waiver or forbearance by the Scottish Ministers of or in respect of any of the Company's obligations under the Contract whether as to payment, time, performance or otherwise howsoever, or by any failure by the Scottish Ministers to enforce the Contract or this instrument, or

1.3.2 any alteration to, addition to or deletion from the Contract or the scope of the work to be performed under the Contract, or

1.3.3 any change in the relationship between ourselves and the Company; or

1.3.4 the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,

and our guarantee and undertakings shall continue in force until all the Company's obligations under the Contract and all our obligations hereunder have been duly performed.

2. This Guarantee shall be construed and take effect in accordance with Scots Law.

3. Our obligations under this Guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.

4. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this Guarantee.

5. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.

6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.

8. All notices and other communications required or permitted to be given in terms of this Contract, or any proceedings relating to it, shall be in writing and will be sufficiently served:

8.2 if delivered by hand; or

8.2 if sent by fax; or

8.3 if sent by prepaid recorded or special delivery post; or

8.4 if sent by email

to the address specified below or to such other address as is from time to time notified to the other party in accordance with the provisions of this Clause 8:

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

9. Any such notice or communication shall be deemed to have been served,

9.1 if delivered by hand, on the date of delivery;

9.2 if sent by fax, 4 working hours after the time at which the fax was sent;

9.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or

9.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,

9.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

9.6 For the purposes of this Clause 9:

‘working day’ means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971; and

‘working hour’ means an hour between 0900 hours and 1700 hours on a working day.

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice

or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

SIGNED for and on behalf of [DN: insert name of the Company]

At.....

On.....

Signature.....

Full name .....

Position .....

Address.....

.....

In the presence of

Signature.....

Full name .....

Address.....

.....

This and the following [ ] pages comprise Schedule 9 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

## **SCHEDULE 9 – MODEL CONTRACT REGARDING DATA PROTECTION DIRECTIVE 95/46/EC**

# **Model Contract**

### **STANDARD FORM CONTRACT TO ASSIST COMPLIANCE WITH OBLIGATIONS IMPOSED BY ARTICLE 17 OF THE DATA PROTECTION DIRECTIVE 95/46/EC**

#### **(FOR USE BY DATA CONTROLLERS AND DATA PROCESSORS LOCATED WITHIN THE EUROPEAN ECONOMIC AREA WHERE THE PARTIES HAVE ENTERED INTO A SEPARATE DATA PROCESSING AGREEMENT)**

THIS AGREEMENT is made on.....and .....20[ ].

BETWEEN:

**(1)** THE SCOTTISH MINISTERS (the “Controller”); and

**(2)** [drafting note: insert name] (incorporated in, or existing and established under the laws of, [ COUNTRY WITHIN THE EEA] [drafting note: if the Processor is a company insert the registered number given at Companies House] whose registered office is at [drafting note: insert registered office address] (the “Processor”).

#### **BACKGROUND**

**(A)** The Controller processes Personal Data in connection with its business activities;

**(B)** The Processor processes Personal Data on behalf of other businesses and organisations;

**(C)** The Controller wishes to engage the services of the Processor to process personal data on its behalf in relation to [drafting note: insert scheme name];

**(D)** Article 17(2) of the Data Protection Directive 95/46/EC (as hereinafter defined) provides that, where processing of personal data is carried out by a processor on behalf of a data controller the controller must choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out, and must ensure compliance with those measures;

**(E)** Articles 17(3) and 17(4) of the Data Protection Directive require that where processing is carried out by a processor on behalf of a controller such processing shall be governed by a contract or legal act binding the processor to the controller stipulating, in particular, that the processor shall act only on instructions from the controller and shall comply with the technical and organisational measures required under the appropriate national law to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing;

**(F)** In compliance with the above-mentioned provisions of Article 17 of the Data Protection Directive the Controller and Processor wish to enter into this processing security Agreement.

#### **THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:**

##### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and phrases shall have the following meanings, unless inconsistent with the context or as otherwise specified:

“**Data Protection Directive**” shall mean Directive 95/46/EC of the European Parliament and Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data

and on the free movement of such data;

“**national law**” shall mean the law of the Member State in which the Processor is established;

“**personal data**” shall mean any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity;

“**processing of personal data**” shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

“**sub-contract**” and “**sub-contracting**” shall mean the process by which either party arranges for a third party to carry out its obligations under this Agreement and “**Sub Contractor**” shall mean the party to whom the obligations are subcontracted; and

“**Technical and organisational security measures**” shall mean measures to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing.

## **2. CONSIDERATION**

**2.1** In consideration of the Controller engaging the services of the processor to process personal data on its behalf the Processor shall comply with the security, confidentiality and other obligations imposed on it under this Agreement.

## **3. SECURITY OBLIGATIONS OF THE PROCESSOR**

**3.1** The Processor shall only carry out those actions in respect of the personal data processed on behalf of the Controller as are expressly authorised by the Controller.

**3.2** The Processor shall take such Technical and Organisational Security Measures as are required under its own national law to protect personal data processed by the Processor on behalf of the Controller against unlawful forms of processing. Such Technical and Organisational measures shall include, as a minimum standard of protection, compliance with the legal and practical security requirements set out in Appendix 1 of this Agreement.

## **4. CONFIDENTIALITY**

**4.1** The Processor agrees that it shall maintain the personal data processed by the Processor on behalf of the Controller in confidence. In particular, the Processor agrees that, save with the prior written consent of the Controller, it shall not disclose any personal data supplied to the Processor by, for, or on behalf of, the Controller to any third party.

**4.2** The Processor shall not make any use of any personal data supplied to it by the Controller otherwise than in connection with the provision of services to the Controller.

**4.3** The obligations in clauses 4.1 and 4.2 above shall continue for a period of five years after the cessation of the provision of services by the Processor to the Controller.

**4.4** Nothing in this agreement shall prevent either party from complying with any legal obligation imposed by a regulator or court. Both parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

## **5. SUB-CONTRACTING**

**5.1** The Processor shall not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Controller.

**5.2** Where the Processor, with the consent of the Controller, sub-contracts its obligations under this



agreement it shall do so only by way of a written agreement with the Sub-Contractor which imposes the same obligations in relation to the security of the processing on the Sub-Contractor as are imposed on the Processor under this Agreement.

**5.3** For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub-processing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement

## **6. TERM AND TERMINATION**

**6.1** This Agreement shall continue in full force and effect for so long as the Processor is processing personal data on behalf of the Controller.

**6.2** Within [drafting note: insert the number of days agreed by the parties] days following termination of this Agreement the Processor shall, at the direction of the Controller, (a) comply with any other agreement made between the parties concerning the return or destruction of data, or (b) return all personal data passed to the Processor by the Controller for processing, or (c) on receipt of instructions from the Controller, destroy all such data unless prohibited from doing so by any applicable law.

## **7. GOVERNING LAW**

**7.1** This Agreement shall be governed by and construed in accordance with the national law of the Member state in which the Controller is established.

**AS WITNESS** this Agreement has been signed on behalf of each of the parties by its duly authorised representative on the day and year first above written.

SIGNED on behalf of [CONTROLLER]

(Authorised signatory)

(Print name and title)

SIGNED on behalf of [PROCESSOR]

(Authorised signatory)

(Print name and title)

## **APPENDIX 1<sup>1</sup>**

### **1. Legal requirements**

**1.1** The Processor shall, in respect of the processing of personal data on behalf of the Controller, identify and comply with any specific security provisions imposed by its national law.

### **2. Practical security measures**

2.1 In compliance with its obligations under clause 3.2 with regard to the processing of personal data on behalf of the Controller, the Processor, as a minimum requirement, shall give due consideration to the following types of security measures:

2.1.1 Information Security Management Systems;

2.1.2 Physical Security;

2.1.3 Access Control;

2.1.4 Security and Privacy Enhancing Technologies;

2.1.5 Awareness, training and security checks in relation to personnel;

2.1.6 Incident/Response Management/Business Continuity; and

2.1.7 Audit Controls/Due Diligence;

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<sup>1</sup> The Practical Security Measures outlined in Schedule 1 are taken from the OECD Working Party on Information Security and Privacy's draft paper of 30-31 March 2004 entitled "Information Security Issues and Resources for Small and Entrepreneurial Companies – A business companion to the 2002 OECD Guidelines for the Security of Networks and Information systems: Towards a Culture of Security"

# Annex A (normative): **Article 17 Security Contract - Implementation Guide**

## **AA.1 Scope**

The Article 17 Security Contract has been prepared to assist businesses wishing to use the services of another company to process personal data on their behalf. The Article 17 Security Contract is appropriate for use where the company which is to provide the data processing service is located either in the same Member State as the business wishing to use its services or, is located another Member State of the European Union.

Article 17 of the Directive sets out the security requirements in relation to the processing of personal data where a party that controls the content and use of personal data (the Data Controller) wishes to use the services of a third party (the Data Processor) for the processing of such data. Article 17 addresses processing arrangements where both the Data Controller and the Data Processor are established within one of the member states of the European Economic Area.

Where the Data Processor is located outside the European Economic Area consideration will need to be given to the provisions of Articles 25 and 26 of the Directive (Transfer of Personal Data to Third Countries) and the possible use of the Standard Contractual Clauses for the transfer of personal data to third countries under the Directive approved by the European Commission.

The Article 17 Security Contract has been prepared with the needs of Small and Medium-sized Enterprises in mind, however, it may in addition provide a useful starting point for larger organisations wishing to ensure that they are satisfying their obligations as to security of processing where they sub-contract data processing to another company.

The Article 17 Security Contract has been drafted to satisfy the requirements of Article 17 and is unlikely to require amendment in the absence of any changes to that Article. The contractual provisions set out in the Security Contract ensure the basic minimum level of protection for personal data and do not preclude the inclusion of more detailed provisions in the light of the legal and factual circumstances of each particular case.

However, the practical security measures suggested in this Implementation Guide are likely to require amendment in the light of physical and technological security developments and the adoption of enhanced management functions in relation to information security. This Implementation Guide, therefore, sets out the current practical security measures identified at the time of drafting, taking into account the most common technical security measures currently available, but may subsequently require updating to incorporate future developments.

The Article 17 Security Contract is designed to accompany a service agreement detailing the non-security related processing arrangements between the Data Controller and the Data Processor. The Contract may be used in its entirety or the operative clauses may be extracted and incorporated into the processing service agreement.

Before entering in an Article 17 Security Contract, or the data processing services agreement into which the operative of the Security Contract have been incorporated, the parties should obtain the assistance of professional legal advisers (in-house or external lawyers) for advice on the requirements of the national law (including any sector specific regulatory arrangements) to which the contract and the associated processing will be subject.

This guide provides assistance with regard to the use of the Article 17 Security Contract between Data Controller and Data Processor.

## **AA.2 Background**

The Initiative for Privacy Standardisation in Europe (IPSE) was launched to analyse the current status of

privacy protection arrangements and to determine whether standardisation of actions could assist business in implementing the European Data Protection Directive 95/46/EC (the Directive). The report, approved by the IPSE steering group, concluded that specific standardisation initiatives would aid implementation of the Directive. Seven standardisation initiatives were proposed, one of which was the development of a generic set of contract clauses and terms for use within the EEA to assist business in complying with Article 17 of the Directive.

The work on the standardisation initiatives identified by IPSE was taken on by the CEN/ISSS Work Shop on Data Protection and Privacy (CEN/ISSS WS-DPP) which has produced the Article 17 Security Contract between Data Controller and Data Processor.

## AA.3 Applicable Laws

Clause 6 of the Security Contract provides that the Agreement is to be governed by the national law of the Member State in which the Data Controller is located.

Where the Data Processor is located in a different Member State from the Data Controller the Controller should note that the security of the processing may be governed by the laws of a different Member State. This situation arises as (in accordance with the provisions of Article 17) the security of the processing must be conducted in accordance with the national law of the Member State in which the Data Processor is located.

Where the Data Processor is located in a Member State other than that of the Data Controller, prior to entering into contractual relations with the Data Processor, the Data Controller may need to obtain legal advice as to the specific foreign law data protection obligations imposed on the Data Processor under Clause 3 of the Model Contract. Where the Data Controller fails to obtain foreign legal advice the Data Controller may struggle to assess the Data Processor's compliance with its Clause 3 obligations. While the obligations of the Data Processor, in each Member State, derive from Article 17 of the Directive, Member States have each implemented these obligations slightly differently. For example, in many Member States (such as Austria, Belgium, Ireland, Italy, Luxembourg and Spain) the security provisions under the national law are more detailed than in the Data Protection Directive. The Data Processor will, therefore, need ensure that it complies with the provisions under the applicable national law.

In certain Member States there are regulations detailing mandatory security measures which identify three differing levels of security determined by the nature of the data being processed.

High level security measures required in Spain include, amongst other requirements, strict obligations regarding the encryption of personal data in specified circumstances as well as the maintenance of an exhaustive access registry. The Spanish access register requires a Controller to specify the data accessed by any user and the date and time of such access so as to enable the reconstruction of an audit trail in relation to access to sensitive personal data.

In Belgium, national data protection legislation stipulates and number of issues that must be covered in any sub-contracting agreement between Data Controller and Data Processor. Such issues include a requirement that the agreement shall explicitly include details of the processors liability under the agreement. The Belgium law also provides that a Royal Decree may be enacted to establish standards for information security for specified categories of data processing.

In Greece the national data protection law requires the Data Controller to check the professional credentials, qualifications and personal ethics with regard to confidentiality of persons entrusted with data processing duties or functions.

In addition to these specific national legal requirements some national data protection authorities (for example Greece and Denmark) have established rules, instructions and guidelines translating into more practical terms some of the requirements of Article 17.