

**VISITSCOTLAND TERMS AND CONDITIONS (VSTC3)
CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES
(other than Works Consultancies)**

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

1. DEFINITIONS

In these Conditions:

'Client' means on behalf of the VisitScotland;

'Consultant' means the person, firm or company to whom the Contract is issued;
'Data Controller' has the meaning given in the Data Protection Laws;

'Contract' means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and other documents (or parts thereof) specified in the Purchase Order;

'Data Processor' has the meaning given in the Data Protection Laws;

'Data Protection Laws' means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR;

'Data Subject Access Request' has the meaning given in the Data Protection Laws;

'GDPR' means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

'Intellectual Property Rights' means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to

any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Supplier;

'Project' means the services to be provided as specified in the Purchase Order;

'Premises' means the location where the Project is to be performed, as specified in the Purchase Order;

'Personal Data' has the meaning given in the Data Protection Laws;

'Prohibited Act' means any of the following:

(a) to directly or indirectly offer, promise or give any person working for or engaged by VisitScotland a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; and/or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts; and/or

(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with VisitScotland; and/or

(d) defrauding, attempting to defraud or conspiring to defraud VisitScotland or any other Contracting Authority or Crown Body.

'Purchase Order' means the document setting out the Purchaser's requirements for the Contract.

'Supervisory Authority' has the meaning given in the Data Protection Laws.

2. THE PROJECT

- 2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.
- 2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.
- 2.3 The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 19 (Dispute Resolution).

3. CONSULTANT'S PERSONNEL

- 3.1 The Consultant shall make available for the purposes of the Project any individuals named on the Purchase Order as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all others regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this paragraph.
- 3.2 The Consultant shall take the steps reasonably required by the Client, to prevent unauthorised persons being admitted to the Premises. If the Client gives the Consultant notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from

involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice.

- 3.3 The decision of the Client shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of the Consultant by this Condition.
- 3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

4. CHANGE TO CONTRACT REQUIREMENTS

- 4.1 The Client may order any variation to any part of the Services that for any other reason shall in the Client's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 4.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 4.3 Where any such variation of the Services made in accordance with Clauses 4.1 and 4.2 has affected or may affect the costs incurred by the Consultant in providing the Services, the Consultant will notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account (including such information as may be provided by the Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in providing the service) and may authorise such alteration to the sums to be paid to the Consultant in

accordance with the provisions of the Contract as are, in the Client's opinion, appropriate and reasonable in the circumstances.

5. FEES AND EXPENSES

- 5.1 The Client shall pay to the Consultant fees and expenses at the rate specified in the Purchase Order. 1.1.1.
- 5.2 The Consultant shall be entitled to be reimbursed by the Client for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.
- 5.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.
- 5.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 5.5 Notwithstanding Condition 16 (Assignment and sub-contracting) of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 15 (Recovery of sums due) of this Contract and (ii) all the related rights of the Client under this Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary the Client's arrangements for payment of the fees or expenses or for handling invoices.

6. AUDIT

The Consultant shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for

by the Client on a time charge basis. The Consultant shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

7. PREVENTION OF CORRUPTION

- 7.1 The Supplier shall not, and shall procure that any sub-contractors and all Supplier Personnel shall not commit a Prohibited Act;
- 7.2 The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Purchaser, or that an agreement has been reached to that effect, excluding any arrangement of which full details have been disclosed in writing to the Purchaser before execution of this Contract.
- 7.3 The Supplier shall, if requested, provide the Purchaser with any reasonable assistance to enable the Purchaser to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 7.4 The Supplier shall have an anti-bribery policy (which shall be disclosed to The Purchaser on request) to prevent any sub-contractor or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate. The Supplier shall also comply (and ensure that its Sub-contractors and all Supplier Personnel comply) with the Purchaser's anti-bribery and corruption policy as notified by The Purchaser to the Supplier from time to time.
- 7.5 If any breach of this Clause 7 is suspected or known, the Supplier must notify The Purchaser immediately.
- 7.6 In the event of any breach or suspected breach of this Clause 7, the Supplier must respond promptly to the Purchaser's enquiries, co-operate with any investigation, and allow The Purchaser to audit the Supplier's books, records and any other relevant documentation. This obligation shall continue for two years notwithstanding the expiry or termination of this Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or

developed by the Supplier on behalf of the Purchaser for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract are hereby assigned to and shall vest in the Crown absolutely.

- 8.2 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.
- 8.3 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. The Supplier shall indemnify the Purchaser against all actions, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 8.3.
- 8.4 The provisions of this Condition 8 shall apply during the continuance of this Contract and after its termination howsoever arising.

9. INDEMNITIES AND INSURANCE

- 9.1 The Consultant shall indemnify and keep indemnified the Client, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client or the Crown, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents.
- 9.2 The Consultant (if an individual) represents that the Consultant is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Consultant by reason of this Contract.
- 9.3 The Consultant shall effect with an insurance company or companies acceptable to the Client a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Consultant contained in this Contract in the sum of £1 million at least in respect of any one

incident and unlimited in total, unless otherwise agreed by the Client in writing.

- 9.4 If requested, by the Client the Consultant shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

10. DISCRIMINATION

The Consultant 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 Client.

11. BLACKLISTING

The Consultant 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 Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Client to terminate the Contract.

12. OFFICIAL SECRETS ACTS, CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION

- 12.1 The Consultant undertakes to abide and procure that the Consultant's employees abide by the provisions of The Official Secrets Acts 1911 to 1989.
- 12.2 The Consultant shall keep secret and not disclose and shall procure that the Consultant's employees keep secret and do not disclose any information of a confidential nature obtained by the Consultant by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 12.3 All information related to the Contract with the Consultant will be treated as commercial in confidence by the Client except that:
- (a) The Consultant may disclose any information as required by law or judicial order to be disclosed.
 - (b) The Client may disclose any information as required by law or judicial order to be disclosed, further the Client may disclose all information obtained by the Client by virtue of the Contract to the Scottish or

United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Client shall if the Client sees fit disclose such information but is unable to impose any restrictions upon the information that the Client provides to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MP's). Such disclosure shall not be treated as a breach of this agreement.

12.4 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

13. TERMINATION

13.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

- (a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of the Consultant's estate or a criminal bankruptcy order is made against the Consultant, or the Consultant makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Consultant's affairs; or
- (b) where the Consultant is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or
- (c) where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of

its property under the terms of a floating charge.

13.2 On the occurrence of any of the events described in paragraph 13.1, or if the Consultant shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Client in writing to do so, or, where the Consultant is an individual, if the Consultant shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

13.3 The Client 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 Consultant 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 Consultant 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.

13.4 The Client may also terminate the Contract in the event of a failure by the Consultant to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.

13.5 In addition to his rights of termination under paragraph 13.2, 13.3 or 13.4, the Client shall be

entitled to terminate this Contract by giving to the Consultant not less than 7 days' notice to that effect. In the event of such termination, the Consultant shall, if required to do so by the Client, prepare and submit to the Client a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

13.6 Termination under paragraphs 13.2, 13.3, 13.4 or 13.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 6 (Audit), 8 (Patents, information and copyright) and 12 (Official Secrets Acts, etc.).

14. RETURN OF DOCUMENTS

14.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Client or any Government Department in connection with the Contract, or extracted from such documents, papers, materials or information.

14.2 Where the Contract has been terminated pursuant to paragraph 13.3, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant to prepare any report required under that paragraph. Promptly upon submission of the report to the Client, the Consultant will return any documents, papers, materials or information which the Consultant may have retained in terms of this paragraph.

15. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Consultant, that sum may be deducted from any sum then due or which at any later time may become due, to the Consultant under this Contract or under any other agreement or contract with the Client or with any department, agency or authority of the Crown.

16. ASSIGNATION AND SUB-CONTRACTING

16.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract or these Conditions.

16.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Consultant to the Client immediately it is issued.

16.3 Where the Consultant enters into a sub-contract must ensure that a provision is included which:

16.3.1 requires payment to be made of all sums due by the Consultant 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 Client 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 Consultant 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 Consultant, payment must be made to the sub-contractor without deduction;

16.3.2 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; and

16.3.3 in the same terms as that set out in this clause 16.3 (including for the avoidance of doubt this clause 16.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Consultant and sub-contractor as the case may be.

16.4 The Consultant shall also include in every sub-contract:

16.4.1 a right for the Consultant 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 condition 13.3 occur; and

16.4.2 a requirement that the sub-contractor includes a provision having the same effect as 16.4.1 in any sub-contract which it awards.

In this condition 16.4, 'sub-contract' means a contract between two or more contractors, 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.

17. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, teletext, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

18. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Consultant the servant of the Client or the Crown.

19. COMPLIANCE WITH THE LAW ETC.

In providing the services and otherwise when performing the Contract, the Consultant must comply in all respects with:

- 19.1 all applicable law;
- 19.2 any applicable requirements of regulatory bodies; and
- 19.3 Good Industry Practice.

In this condition, '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 Contractor under the same or similar circumstances.

20. DISPUTE RESOLUTION

20.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

20.2 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 good faith, 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.

20.3 Any arbitration under 20.2 is subject to the Arbitration (Scotland) Act 2010.

21. HEADINGS

The headings to Conditions shall not affect their interpretation.

22. GOVERNING LAW

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

23. TUPE

23.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned

(or any relevant part of the undertaking) shall
(a) transfer to the Supplier on the commencement of the Contract; (b) transfer to another supplier on the expiry of the Contract.

23.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

(a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and

(b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and

(c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and

(d) details of pensions entitlements, if any.

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

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

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

23.6 The provisions of this Condition 23 shall apply during the continuance of this Contract and after its termination howsoever arising.

24. DATA PROTECTION

24.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.

24.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 24 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.

24.3 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

24.4 The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

24.5 The Supplier must:

24.5.1 agree to comply with the terms of the data processing provisions set out in the Schedule (Data Protection);

- 24.5.2 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regards to transfers outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must inform the Purchaser of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;
- 24.5.3 subject to Condition 24.5.2 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
- 24.5.4 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
- (a) are aware of and comply with the Supplier's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 24.5.5 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with the Data Protection Laws 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.
- 24.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 24.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that the same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 24.8 The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with the Data Protection Laws, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Data as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Data Controller from time to time.
- 24.9 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with the Data Protection Laws. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and

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

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

24.10 At the end of the provision of Services relating to processing the Supplier must, on the written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

24.11 The Supplier must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself

of the Supplier's compliance with this Condition 24;

- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 24 and contribute as is reasonable to those audits and inspections;
- (c) inform the Purchaser if in its opinion an instruction from the Purchaser infringes any obligation under the Data Protection Laws.

24.12 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 28.14 with minimum disruption to the Supplier's day to day business.

24.13 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in the Data Protection Laws.

24.14 If requested, the Supplier must make such records referred to in Condition 24.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

SCHEDULE (Data Protection)

Data Processing provision as required by the Data Protection Laws.

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

Subject matter and duration of the Processing of Personal Data

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

The nature and purpose of the Processing of Personal Data

[Include description here]

The type of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Condition 28 of the Contract.

SUPPLEMENTARY NOTICE**LATE PAYMENT OF INVOICES**

Consultants to the VisitScotland are requested to address complaints regarding late payment of invoices to the Head of Finance, Ocean Point One, 94 Ocean Drive, Edinburgh EH6 6JH. Telephone 0131-472-2222. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT