

**VISITSCOTLAND**

**TERMS AND CONDITIONS (VSTC2) FOR THE PURCHASE OF SERVICES**

**These Conditions may only be varied with the written agreement of VisitScotland. 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 VisitScotland.**

**1. DEFINITIONS**

In these Conditions:

'Award Letter' means the award letter issued by VisitScotland to the Supplier in respect of the Contract together with the documents referred to in any such letter of award;

'Contract' means the contract between VisitScotland and the Supplier consisting of the Award letter, these Conditions and other documents (or parts thereof) specified in the Award Letter;

'Data Controller' 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 regards to the processing of Personal Data to which a Party is subject as relates to the performance of the Contract, including the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6), the Data Protection Act 2018 and the UK GDPR each as amended, updated or re-enacted from time to time)), and all applicable guidance and codes of practice issued by the Information Commissioner from time to time;

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

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

'Intellectual Property Rights' or 'IPRs' means:

- (a) copyright, rights related to or affording protection similar to copyright (including moral rights), rights in databases, patents and rights in inventions, semi-conductor topography

rights, trademarks, service marks, rights in internet domain names and website addresses, goodwill and rights to sue for passing off or unfair competition and other rights in trade names, designs, know-how, trade secrets and other rights in confidential information;

- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) above that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction and subsisting as at the date of the Contract or at any other time;

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

'Premises' means the location(s) where the Services are to be performed, as specified in the Award Letter or as may be specified by VisitScotland to the Supplier from time to time;

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

'Processor' has the meaning given in the Data Protections 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 2010;
  - (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 of VisitScotland's subsidiaries or affiliates;

'Services' means the services to be provided by the Supplier (or by any of the Supplier's permitted sub-contractors) pursuant to or in connection with this Contract, including the services specified in the Award Letter. Where applicable,

the provision of the Services shall include the supply of any related materials, articles and goods by the Supplier;

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

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

'Supplier Personnel' means all employees, workers (including persons employed by a third party but working for and under the control of the Supplier), agents, consultants, suppliers, carriers and contractors of the Supplier, its authorised affiliates and/or any permitted sub-contractors that are engaged from time to time by the Supplier in connection with the performance of the Services and/or its obligations under this Contract;

"UK GDPR" means 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 (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and as supplemented by section 205(4) of the Data Protection Act 2018); and

'VisitScotland' means VisitScotland, a body corporate established under the Development of Tourism Act 1969 and having its principal place of business at Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG

## **2. PERFORMANCE OF THE SERVICES AND CHANGES TO CONTRACT REQUIREMENTS**

- 2.1 The Supplier shall perform the Services in accordance with the terms of the Contract.
- 2.2 VisitScotland may order any variation to any part of the Services that for any reason shall in VisitScotland'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.
- 2.3 Unless otherwise stated in this Contract or as agreed otherwise, no variation of the Services (whether as provided for in Condition 2.2 or otherwise) shall be valid unless given or confirmed in the form of an order given by VisitScotland. All such orders shall be given in writing by email provided that if for any reason VisitScotland shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by VisitScotland within 2 working days of the giving of such oral order by VisitScotland, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 2.4 Where any such variation of the Services made in accordance with Condition 2.2 and 2.3 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify VisitScotland in writing of the effect which it has had or may have on the said costs and such notification shall be considered by

VisitScotland, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in VisitScotland's opinion, appropriate and reasonable in the circumstances.

2.5 The arrangements contemplated in this Contract do not constitute a commitment by VisitScotland to use the Supplier exclusively for the supply of services which are the same or similar to any of the Services.

2.6 The Supplier is requested to satisfy themselves that no product will be supplied or used in the supply of Services to VisitScotland which will endanger the health of consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

### **3. INSPECTION OF PREMISES AND NATURE OF SERVICES**

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

3.2 VisitScotland shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

### **4. SECURITY AND ACCESS TO VISITSCOTLAND'S PREMISES**

4.1 Any access to, or occupation of, VisitScotland's premises which VisitScotland may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use VisitScotland's premises solely for the purpose of performing its obligations under the Contract and must limit access to VisitScotland's premises to such individuals as are necessary for that purpose.

4.2 The Supplier must observe all health and safety rules and regulations and any other security requirements that apply at any of VisitScotland's premises as may be communicated from time to time.

4.3 VisitScotland may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, VisitScotland's premises any Supplier Personnel whose admission or continued presence would, in the opinion of VisitScotland acting reasonably, be undesirable.

4.4 All decisions of VisitScotland under this Condition are final and conclusive.

4.5 Breach of this Condition by the Supplier is a material breach for the purposes of Condition 19.2 (Termination).

- 4.6 If cyber security requirements apply to this Contract then these are set out in the Award Letter and the Supplier shall comply with those provisions.
- 4.7 Where requested, the Supplier shall complete a VisitScotland cloud solutions assessment pertaining to the Supplier's information security and data protection. A copy of any such assessment will be annexed to the Award Letter.

## **5. SUPPLIER'S STATUS**

- 5.1 In carrying out the Services the Supplier shall be acting as principal and not as the agent of VisitScotland. Accordingly:
- (a) the Supplier shall not (and shall procure that the Supplier's agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of VisitScotland; and
  - (b) nothing in this Contract shall impose any liability on VisitScotland in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of VisitScotland to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of VisitScotland, or VisitScotland's staff or agents.

## **6. SUPPLIER'S PERSONNEL**

- 6.1 The Supplier shall take the steps reasonably required by VisitScotland to prevent unauthorised persons being admitted to the Premises. If VisitScotland gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by VisitScotland the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 6.2 If and when instructed by VisitScotland, the Supplier shall give to VisitScotland a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as VisitScotland may reasonably require.
- 6.3 The decision of VisitScotland shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 6.4 The Supplier shall bear the cost of any notice, instruction or decision of VisitScotland under this Condition.

6.5 The Supplier will use a sufficient number of Supplier Personnel (engaged under appropriate written contracts) who possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and the performance which they are required to achieve and who shall perform those tasks in a professional manner.

6.6 The Supplier warrants to VisitScotland that:

6.6.1 all Supplier Personnel are (and will remain throughout the period they are employed or engaged in providing the Services) employed or engaged directly with the Supplier under a contract of employment under which their income is taxed in full under pay as you earn;

6.6.2 the Supplier Personnel do not (and will not any time during the period they are employed or engaged in providing the Services) provide their services to the Supplier through an intermediary to which the provisions of Chapters 8 and/or 10 of part 2 of the Income Tax (Earning and Pensions) Act 2003 (and/or any other legislation dealing with the tax and national insurance contributions treatment of workers whose services are provided via intermediaries from time to time) apply (an "IR35 Intermediary"); and

6.6.3 in connection with the performance of the Services under this Agreement, the Supplier shall not operate as an IR35 Intermediary and the Supplier is not (and will not become prior to the date that it ceases to perform the Services) a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

6.7 The Supplier shall indemnify VisitScotland and keep VisitScotland indemnified against all losses, fines, penalties, awards, liabilities, costs, taxes, national insurance and/or social security contributions, interest payments, damages, expenses and any other amounts (including reasonable legal expenses on an indemnity basis) that VisitScotland may suffer or incur arising from or in connection with:

6.7.1 a breach of any warranty set out in Condition 6.6; and/or

6.7.2 any claim or allegation by any person, and/or any finding from HMRC and/or a court or tribunal of competent jurisdiction, that the appropriate amount of salary, taxes, national insurance, social security or any other amounts required by law or by contract to be paid to or in respect of any Supplier Personnel has not been paid.

## **7. MANNER OF CARRYING OUT THE SERVICES**

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

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

7.3 Where requested by VisitScotland, the Supplier shall provide the Supplier with advance detail and information of all equipment and infrastructure that it intends to bring to the Premises in order to carry out the Services.

7.4 VisitScotland shall have the power at any time during the progress of the Services to order in writing:

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

7.5 The Supplier shall forthwith comply with any order made under Condition 7.4.

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

7.7 The Supplier shall perform the Services with the best care, skill and diligence in accordance with Industry Good Practice

7.8 The Supplier shall use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract.

7.9 The Supplier shall not use any VisitScotland materials to train an artificial intelligence model or allow any third party to use VisitScotland train an artificial intelligence model.

## **8. HEALTH AND SAFETY**

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

8.2 The Supplier shall indemnify VisitScotland and their relevant subsidiaries against all actions, suits, claims, demands, losses, charges, costs and expenses which VisitScotland or their subsidiaries (or any of them) may suffer or incur as a result of or in connection with any breach of Condition 8.1.

## **9. TIME OF PERFORMANCE**

9.1 The Supplier shall begin performing the Services on the date stated in the Award Letter and shall, unless instructed otherwise by VisitScotland, complete the Services by the date stated in the Award Letter or continue to perform them for the period stated in the Award Letter (whichever is applicable). Time is of the essence of the Contract. VisitScotland may by written notice require the Supplier to execute the Services in such order as VisitScotland may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as VisitScotland may from time to time require.

## **10. PAYMENT**

10.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices (whichever is the latter), submitted monthly in arrears, for work completed to the satisfaction of VisitScotland.

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

10.3 Unless otherwise agreed in writing by VisitScotland, the price set out in the Contract includes every cost and expense that the Supplier may directly or indirectly incur in connection with the provision of the Services, including all travel and subsistence costs, royalties, licence fees and other expenses. No increase in the price may be made (whether on account of increased material, labour or transport costs, indexation, fluctuation in rates of exchange or otherwise) without the prior written consent of VisitScotland.

10.4 VisitScotland may at any time, without notice to the Supplier, set off any liability of the Supplier to VisitScotland against any liability of VisitScotland to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

10.5 In the case of a disputed invoice, VisitScotland will pay the undisputed amount(s) subject to the Supplier reissuing separate invoices for the disputed and undisputed amounts. The Parties shall work together in good faith to resolve the disputed invoice.

10.6 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against VisitScotland in order to justify withholding payment of any amount due by the Supplier to VisitScotland. VisitScotland may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by VisitScotland to the Supplier.

## **11. FREE-ISSUE MATERIALS**

11.1 Where VisitScotland for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of VisitScotland. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify VisitScotland of any surplus materials remaining after completion of the Services and shall dispose of them as VisitScotland may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's

servants, agents or sub- contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of VisitScotland, the Supplier shall deliver up such materials whether processed or not to VisitScotland on demand.

## **12. AUDIT**

12.1 The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of VisitScotland of all expenditures which are reimbursable by VisitScotland and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by VisitScotland on a time charge basis. The Supplier shall on request afford VisitScotland or VisitScotland's representatives such access to those records as may be required by VisitScotland in connection with the Contract.

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

## **13. PREVENTION OF CORRUPTION**

13.1 The Supplier shall not, and shall procure that any sub-contractors and all Supplier Personnel shall not commit a Prohibited Act;

13.2 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 VisitScotland, or that an agreement has been reached to that effect, excluding any arrangement of which full details have been disclosed in writing to VisitScotland before execution of this Contract.

13.3 The Supplier shall, if requested, provide VisitScotland with any reasonable assistance to enable VisitScotland to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

13.4 The Supplier shall have an anti-bribery policy (which shall be disclosed to VisitScotland 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 VisitScotland's anti-bribery and corruption policy as notified by VisitScotland to the Supplier from time to time.

13.5 If any breach of this Condition 13 is suspected or known, the Supplier must notify VisitScotland immediately.

13.6 In the event of any breach or suspected breach of this Condition 13, the Supplier must respond promptly to VisitScotland's enquiries, co-operate with any investigation, and allow VisitScotland 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.

## **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 The parties' respective rights, obligations and liabilities in relation to any Intellectual Property Rights used and/or created in connection with the Services and/or this Contract are set out in Schedule Part 2 (Intellectual Property Rights).

## **15. INDEMNITY, INSURANCE AND LIABILITY**

15.1 Without prejudice to any rights or remedies of VisitScotland, the Supplier shall indemnify VisitScotland and their wholly owned and controlled entities against all actions, suits, claims, demands, losses, charges, costs and expenses which VisitScotland or their relevant subsidiaries (or any of them) may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier (including its permitted sub-contractors and/or Supplier Personnel).

15.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 15.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of VisitScotland, the Scottish Ministers or any servant or agent of the Scottish Ministers) the indemnity contained in Condition 15.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of VisitScotland, the Scottish Ministers or any servant or agent of the Scottish Ministers.

15.3 Without prejudice to any specific insurance requirements that are set out elsewhere in the Contract, the Supplier shall have in force and shall require any sub-contractor to have in force the following insurance policies with reputable insurance companies:

(a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million (or any other legal minimum which may apply, whichever is the greater) for any one incident and unlimited in total, unless otherwise agreed by VisitScotland in writing.

15.4 The policy or policies of insurance referred to in Condition 15.3 shall be shown to VisitScotland whenever VisitScotland requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

15.5 Neither party limits its liability for any liability if and to the extent that such liability cannot be excluded or limited under applicable law.

15.6 Subject to Condition 15.5, the total aggregate liability of VisitScotland to the Supplier (including for all claims, losses or damages, whether in delict, tort, negligence, breach of contract, under an indemnity or otherwise) under and/or in connection with this Contract shall not exceed, in aggregate, an amount equal to the total amount of the

charges paid by VisitScotland for the provision of the Services in accordance with the terms of the Contract.

## **16. DISCRIMINATION**

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

## **17. BLACKLISTING**

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

## **18. CONFIDENTIALITY**

18.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by Clause 18.2

18.2 All information related to the Contract will be treated as commercial in confidence by the parties except that:

(a) The Supplier may disclose any information as required by law or judicial order to be disclosed.

(b) VisitScotland may disclose any information as required by law or judicial order to be disclosed, further VisitScotland may disclose all information obtained by VisitScotland by virtue of the Contract to their relevant subsidiaries (or any of them), the Scottish or United Kingdom Parliament or any other department, office or agency of His 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 VisitScotland shall if VisitScotland sees fit disclose such information but is unable to impose any restrictions upon the information that VisitScotland provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Contract.

18.3 The Supplier acknowledges that VisitScotland and certain of their subsidiaries are subject to the requirements of public sector access to information legislation, including the Freedom of Information (Scotland) Act 2002, the Access to Environmental Information (Scotland) Regulations 2004, the Public Services Reform (Scotland) Act 2010 or (as applicable) equivalent or similar legislation applicable in other parts of the United Kingdom (the "Information Laws").

18.4 The Supplier acknowledges that VisitScotland may be obliged under the Information Laws to disclose information relating to the Supplier. VisitScotland will take reasonable steps, where deemed appropriate by VisitScotland, to give the

Supplier advance notice of the proposed disclosure of any of the Supplier's confidential information, or failing that, to draw the relevant disclosure to the Supplier's attention as soon as reasonably practicable after any such disclosure. The Supplier acknowledges that VisitScotland will be responsible for determining in its absolute discretion whether any information requires to be disclosed in accordance with the provisions of the Information Laws, and that nothing in this Agreement shall VisitScotland from disclosing (and VisitScotland shall not have any liability to the Supplier in connection with the disclosure of) any information pursuant to the Information Laws.

18.5 The provisions of this Condition 18 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **19. TERMINATION**

19.1 The Supplier shall notify VisitScotland in writing immediately upon the occurrence of any of the following events:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or

(b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

(c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

19.2 On the occurrence of any of the events described in Condition 19.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by VisitScotland in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, VisitScotland shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of VisitScotland's rights, VisitScotland may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and VisitScotland shall not be liable to make any further payment to the

Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by VisitScotland (including VisitScotland's own costs). If the total cost to VisitScotland exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by VisitScotland from the Supplier.

19.3 VisitScotland may terminate the Contract in the event that:

- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
- (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure;
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Public Contracts (Scotland) Regulations 2015 or any other applicable UK laws; or
- (d) a Force Majeure Event (affecting either party) continues for a period of 30 days or more.

19.4 VisitScotland may also terminate the Contract:

19.4.1 in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law; and/or

19.4.2 if the Supplier, or any Supplier Personnel commits any act or omission which brings any VisitScotland, their subsidiaries or the Scottish tourism industry into disrepute.

19.5 In addition to VisitScotland's rights of termination under Condition 19.2, 19.3 and 19.4, VisitScotland shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.

19.6 Termination under Condition 19.2, 19.3, 19.4 or 19.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to VisitScotland and shall not affect the continued operation of Conditions 12(Audit), 14 (Intellectual Property Rights) 18 (Confidentiality) and 26 (TUPE).

## **20. RECOVERY OF SUMS DUE**

20.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract with VisitScotland or with any department, agency or authority of the state, a

regional or local authority, a body governed by public law, or an association formed by one or more such authorities or bodies..

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

21.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of VisitScotland. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions and the Supplier shall remain responsible for all acts and omissions of its sub-contractors.

21.2 Where VisitScotland has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to VisitScotland immediately it is issued.

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

21.3.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where VisitScotland has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

21.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of VisitScotland 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 VisitScotland; and

21.3.3 in the same terms as that set out in this Condition 21.3 (including for the avoidance of doubt this Condition 21.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

21.4 The Supplier shall also include in every sub-contract:

21.4.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law 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 UK legal obligations) specified in Condition 19.3 occur;

21.4.2 a requirement that the sub-contractor includes a provision having the same effect as 21.4.1 above in any sub-contract which it awards; and

21.4.3 such other provisions as VisitScotland may require having regard to the nature and extent of the services that are to be performed by the sub-contractor.

In this Condition 21.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from VisitScotland 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.

## **22. NOTICES**

22.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by recorded delivery service resulting in the receipt of a written communication in permanent form sent to the address of the party shown on the Award Letter, or to such other address as the party may by notice to the other have substituted therefor, and 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. A copy of any notice from the Supplier must also be sent to VisitScotland by email to [legalnotices@visitscotland.com](mailto:legalnotices@visitscotland.com)

## **23. COMPLIANCE WITH THE LAW ETC.**

23.1 In providing the Services and otherwise when performing the Contract, the Supplier:

23.1.1 must comply in all respects with:

- (a) all applicable law;
- (b) any applicable requirements of regulatory bodies;
- (c) Good Industry Practice; and
- (d) any relevant policies, procedures and practice directions relevant to the performance of the Contract and/or in respect of any Premises, as notified to the Supplier from time to time;

23.1.2 is responsible for and must, obtain any and all licences, consents, approvals and permissions required for the purposes of performing its obligations set out in the Contract; and

23.1.3 must act in good faith and in the best interests of VisitScotland and its subsidiaries, and in the best interests of the Scottish tourism industry.

## **24. DISPUTE RESOLUTION**

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

24.2 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, may be referred to a single arbitrator to be appointed and 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.

24.3 Any arbitration under 24.2 is subject to the Arbitration (Scotland) Act 2010.

24.4 Nothing in this Condition 24 shall prevent either party from raising Court proceedings in order to preserve or enforce its proprietary or other rights

## **25. HEADINGS**

25.1 The headings to Conditions shall not affect their interpretation.

## **26. TUPE**

26.1 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.

26.2 During the period of six months preceding the expiry of the Contract or after VisitScotland has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by VisitScotland, the Supplier shall fully and accurately disclose to VisitScotland or to any person nominated by VisitScotland 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.

26.3 The Supplier shall permit VisitScotland to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as VisitScotland considers appropriate in connection with any re-tendering. The

Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

- 26.4 The Supplier agrees to indemnify VisitScotland and any replacement supplier fully and to hold them harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Condition.
- 26.5 The Supplier further agrees to indemnify VisitScotland and any replacement supplier fully and to hold them harmless at all times from all Employee Liabilities, actions, proceedings, claims, expenses, awards, costs and all other liabilities which VisitScotland, any relevant subsidiary and/or any replacement supplier suffers or incurs at any time in connection with any Supplier Personnel (or former Supplier Personnel) whether arising before, on, or after expiry or termination of all or any part of this Contract and/or the Services.
- 26.6 In the event that the information provided by the Supplier in accordance with this Condition becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify VisitScotland of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs VisitScotland may incur as a result of the inaccurate or late production of data.
- 26.7 The provisions of this Condition 26 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 26.8 For the purposes of this Condition 27, 'Employee Liabilities' means all claims, actions, demands, complaints, investigations, awards, compensation, damages, losses, payments made by way of settlement, costs, expenses and any other liabilities suffered or incurred in connection with any claim or investigation related to the employment or engagement (or termination thereof) of any Supplier Personnel and/or any former Supplier Personnel.

## **27. DATA PROTECTION**

- 27.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule Part 1 (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 Processor and VisitScotland acts as the Controller.
- 27.2 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 27 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.

27.3 The Supplier will, in conjunction with VisitScotland 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.

27.4 The Supplier will provide VisitScotland 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.

27.5 The Supplier must:

27.5.1 comply with the terms of the data processing provisions set out in the Schedule Part 1 (Data Protection);

27.5.2 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by VisitScotland (which may be specific or of a general nature), including with regards to any permitted transfers outside the UK, unless required to do so by applicable law or Regulatory Body to which the Supplier is subject; in which case the Supplier must inform VisitScotland 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;

27.5.3 subject to Condition 27.5.2 only process or otherwise transfer any Personal Data in or to any country outside the UK with VisitScotland's prior written consent;

27.5.4 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 VisitScotland or as otherwise permitted by this Contract; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data; and

27.5.5 implement appropriate technical and organisational measures including those set out in the Schedule Part 1 (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.

27.6 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 VisitScotland. In the case of general written authorisation, the Supplier must inform VisitScotland of any intended changes concerning the addition or replacement of any other sub-contractor and give VisitScotland an opportunity to object to such changes.

27.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of VisitScotland, 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 VisitScotland for the performance of the sub-contractor's performance of the obligations.

27.8 The Supplier must provide to VisitScotland reasonable assistance including by such technical and organisational measures as may be appropriate in complying the Data Protection Laws. The Supplier must notify VisitScotland if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
- (e) received a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with VisitScotland from time to time.

27.9 Taking into account the nature of the Processing and the information available, the Supplier must assist VisitScotland in complying with VisitScotland'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 VisitScotland without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting VisitScotland with communication of a personal data breach to a Data Subject;
- (d) supporting VisitScotland with preparation of a data protection impact assessment;
- (e) supporting VisitScotland with regard to prior consultation of the Supervisory Authority.

27.10 At the end of the provision of Services relating to processing the Supplier must, on the written instruction of VisitScotland, delete or return to VisitScotland all Personal Data and delete existing copies unless applicable law requires storage of the Personal Data.

27.11 The Supplier must:

- (a) provide such information as is necessary to enable VisitScotland to satisfy itself of the Supplier's compliance with this Condition 27;
- (b) allow VisitScotland, 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 27 and contribute as is reasonable to those audits and inspections;
- (c) inform VisitScotland if in its opinion an instruction from VisitScotland infringes any obligation under the Data Protection Laws.

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

27.13 If requested, the Supplier must make such records referred to in Condition 27.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

27.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 27.11 with minimum disruption to the Supplier's day to day business.

## **28. THIRD PARTY RIGHTS**

28.1 The Contract is entered into by VisitScotland for its own benefit.

28.2 A person who is not a party to the Contract has no right to enforce any term of the Contract and nothing in the Contract shall confer on any third party any benefit and/or the right to enforce any term of the Contract, whether pursuant to the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.

28.3 For the avoidance of any doubt, the parties may agree to alter, vary, terminate or rescind the Contract (in accordance with its terms) without the consent of any third party.

## **29. FORCE MAJEURE**

29.1 'Force Majeure Event' means any event which affects the performance by a party of its obligations and which arises from the following acts, events, omissions, happenings or non-happenings: acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster, pandemic or epidemic but which shall not include (i) lack of funds, (ii) foreseeable adverse weather or other similar conditions, (iii) strike or labour disputes between the Supplier and any Supplier Personnel (or between any Supplier Personnel and any of the respective employees) (and whether or not such strikes or labour disputes involve official or unofficial action), and/or (iv) any other failure in the Supplier's supply chain.

29.2 Subject to the remaining provisions of this Condition 29, a Party may claim relief from liability for non-performance of its obligations if and only to the extent that this is due to a Force Majeure Event affecting that Party (the "Affected Party").

29.3 The Affected Party shall immediately give the other Party written notice of any claim that a Force Majeure Event has occurred. The notification shall include full details of the Force Majeure Event including the estimated period for which the failure or delay is to continue, together with evidence of its effect on the obligations of the Affected Party, and the action the Affected Party proposes to take to mitigate its effect.

29.4 As soon as practicable following after the Affected Party's notification, the Parties shall consult with each other in good faith and the Affected Party shall use all reasonable endeavours (at its own cost) to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

29.5 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

29.6 The Affected Party shall not be entitled to relief under this Condition 29 to the extent that it has caused or has substantially contributed to any delay or failure in the performance of its obligations, including any failure to place orders or issue instructions when it ought reasonably to have done so, or if it has failed to comply with its notification obligations under this Condition 29.

## **30. PREVENTION OF MODERN SLAVERY**

30.1 The Supplier represents and warrants to VisitScotland that:

30.1.1 it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking, including any activity or practice that would constitute an offence under s.1, s.2 and s.4 of the Modern Slavery Act 2015, if carried out in the UK ("slavery and human trafficking");

30.1.2 all employees and agency workers of the Supplier are paid in compliance with all applicable employment laws and minimum wage requirements;

30.1.3 it will take reasonable steps to prevent slavery and human trafficking in connection with the Supplier's business; and

30.1.4 it will include in its contracts with its subcontractors and suppliers in connection with this Contract slavery and human trafficking provisions that are at least as onerous to the subcontractor or supplier as those set out in this Contract.

30.2 Any instances of slavery and human trafficking connected to the Supplier will entitle VisitScotland to immediately terminate this Contract on providing notice to the Supplier (and without any liability by VisitScotland to the Supplier).

## **31. GOVERNING LAW**

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

## **SCHEDULE PART 1 (Data Protection)**

Data Processing provision as required by the Data Protection Laws.

This Schedule Part 1 includes certain details of the Processing of Personal Data in connection with the Services:

*Subject matter and duration of the Processing of Personal Data*

**[CONTRACT SPECIFIC DETAIL ADDED AT AWARD]**

*The nature and purpose of the Processing of Personal Data*

**[CONTRACT SPECIFIC DETAIL ADDED AT AWARD]**

*The type of Personal Data to be Processed*

**[CONTRACT SPECIFIC DETAIL ADDED AT AWARD]**

*The categories of Data Subject to whom Personal Data relates*

**[CONTRACT SPECIFIC DETAIL ADDED AT AWARD]**

*The obligations and rights of VisitScotland*

**[CONTRACT SPECIFIC DETAIL ADDED AT AWARD]**

## SCHEDULE PART 2 (Intellectual Property Rights)

### 1. Definitions

In this Schedule Part 2 (Intellectual Property Rights), the following terms shall (unless the context requires otherwise) have the following meanings:

- 1.1 **"Contract-Specific IPRs"** means:
- 1.1.1 all IPRs in and to the Deliverables and all items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Services and/or the Contract and all updates and amendments to these items; and
  - 1.1.2 all IPRs arising as a result of the performance of the Supplier's obligations under the Contract;
- 1.2 **"Deliverables"** means all products, reports, presentations, documentation, software, inventions, designs, trade marks, information, know-how, specifications, formulae, data, processes, methods, techniques, technology, equipment, goods, plans, features and other items (in whatever form or format) that are provided by or on behalf of the Supplier to VisitScotland under and/or pursuant to the Contract, which shall include, but not be limited to, all deliverables to be provided by the Supplier as identified in the Award Letter;
- 1.3 **"Embedded Supplier IPRs"** means any of the Supplier IPRs that are embedded in or otherwise form an integral part of the Deliverables and/or the Services;
- 1.4 **"VisitScotland IPRs"** means all Intellectual Property Rights owned by, licensed to and/or created by or on behalf of VisitScotland or any subsidiary which shall include, but not be limited to, all Intellectual Property Rights in and to any trade marks, trade names, documentation, processes and procedures that are provided or made available by or on behalf of VisitScotland and/or any Subsidiary under and/or in connection with the Contract or the Services;
- 1.5 **"Supplier IP Claim"** means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any third party's IPRs arising from (i) the use or possession by VisitScotland of any Deliverables and/or any other materials or items provided by the Supplier under and/or pursuant to the Contract and/or (ii) the Supplier's performance, or non-performance, of its obligations under and/or pursuant to the Contract;
- 1.6 **"Supplier IPRs"** means all Intellectual Property Rights that were owned by the Supplier and/or any of its permitted sub-contractors before the date of this Contract and/or are created by the Supplier independently of this Contract after the date of this Contract; and

### 2. VisitScotland IPRs

- 2.1 The Supplier acknowledges and agrees that:
- 2.1.1 all Intellectual Property Rights and all other rights, title, interest and goodwill in and to or arising from VisitScotland IPRs shall be vested at all times in and shall be the exclusive property of VisitScotland or the relevant subsidiary;
  - 2.1.2 to the extent that any of the Intellectual Property Rights referred to in paragraph 2.1.1 are, or become, vested in the Supplier, the Supplier hereby assigns as a present and future assignment all such Intellectual Property Rights to VisitScotland (or, if directed by VisitScotland, to VisitScotland's nominee(s)).
- 2.2 For the term of the Contract and always subject to the terms of the Contract, VisitScotland grants (or shall use reasonable endeavours to procure the grant) to the Supplier a non-exclusive licence to use VisitScotland IPRs strictly for the purposes of (and to the extent necessary for) performing the Services under the Contract.
- 2.3 The licence granted in paragraph 2.2:
- 2.3.1 is granted solely to the extent, for the purposes and for the period necessary to perform the relevant Services in accordance with the Contract. The Supplier shall not, and shall procure that the permitted sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than VisitScotland; and
  - 2.3.2 includes the right to allow permitted sub-contractors to use the relevant licensed materials in order to perform those elements of the Services in which the permitted sub-contractors are engaged, provided that:
    - 2.3.2.1 any relevant permitted sub-contractor has entered into a confidentiality undertaking with the Supplier on the same or substantially similar terms as set out in Condition 18 of the Conditions;
    - 2.3.2.2 the permitted sub-contractor only uses the licensed materials solely in accordance with paragraph 2.3.1; and
    - 2.3.2.3 the Supplier shall be responsible and liable for any permitted sub-contractor's use of the licensed materials.
- 2.4 In the event of the termination or expiry of the Contract, all of the licences and rights of use granted to the Supplier (and/or any permitted sub-contractor) in accordance with this Schedule Part 2 shall terminate automatically and the Supplier shall deliver to VisitScotland all material licensed to the Supplier pursuant to this Schedule Part 2 in the Supplier's or any permitted sub-contractor's possession or control.

### 3. **Supplier IPRs**

- 3.1 Except as expressly set out in the Contract, VisitScotland shall not acquire any right, title or interest in or to the Supplier IPRs.
- 3.2 Where VisitScotland acquires, by operation of law, title to Supplier IPRs that is inconsistent with the allocation of title set out in paragraph 3.1 of this Schedule Part 2, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party (or its nominee) on the request of the other Party (whenever made).
- 3.3 Without prejudice to paragraph 4.5 of this Schedule Part 2, the Supplier hereby grants to VisitScotland a perpetual, non-exclusive, royalty-free licence to use the Supplier IPRs to the extent that VisitScotland may require in connection with the Services. VisitScotland may sub-license, and/or otherwise permit access to and/or use of, the Supplier IPRs to any of their subsidiaries and Third Parties.

#### **4. Contract-Specific IPRs**

- 4.1 The Supplier hereby assigns to VisitScotland (or, if required by VisitScotland in respect of any particular Contract-Specific IPRs, to VisitScotland's nominee) (by way of present and future assignation or assignment), with full title guarantee, title to and all rights and interest in the Contract-Specific IPRs and shall procure that the first owner of the Contract-Specific IPRs assigns title to and all rights and interest in the Contract-Specific IPRs to VisitScotland or its nominee on the same basis.
- 4.2 The assignation under paragraph 4.1 shall either take effect on the date of this Contract or as a present assignation of future rights that will take effect immediately on the coming into existence of the relevant Contract-Specific IPRs, as appropriate.
- 4.3 The Supplier shall waive and/or procure a waiver of any moral rights in any copyright works assigned to VisitScotland or its nominee under the Contract.
- 4.4 If requested to do so by VisitScotland or its nominee, the Supplier shall without charge to VisitScotland execute all documents and do all such further acts as VisitScotland or its nominee may require to perfect the assignation under paragraph 4.1 and/or shall procure that the owner of the Contract-Specific IPRs does so on the same basis.
- 4.5 To the extent that this is necessary to enable VisitScotland to obtain the full benefits of ownership of the Contract-Specific IPRs, the Supplier hereby grants to VisitScotland (and shall procure that any relevant third party licensor shall grant to VisitScotland) a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to use, sub-license and/or commercially exploit the Embedded Supplier IPRs.

#### **5. Supplier's General Obligations**

- 5.1 The Supplier must not, except as expressly provided under the Contract:
  - 5.1.1 grant any right or interest in relation to VisitScotland IPRs, the Contract-Specific IPRs and/or the Deliverables or use any

confusingly or deceptively similar artwork, representations, names or marks, except with the prior written consent of VisitScotland (and, where directed by VisitScotland, by the relevant subsidiary);

- 5.1.2 permit any other person to use VisitScotland IPRs, Contract-Specific IPRs and/or the Deliverables or any artwork, representations, names or marks which is confusingly similar to any of the same;
  - 5.1.3 use or register or consent to the registration by any other person of any names or marks for or including any Purchaser IPRs, Contract-Specific IPRs and/or the Deliverables or any name or mark which is confusingly or deceptively similar to such a mark;
  - 5.1.4 do or be a party to or permit the doing of any act, matter or thing or omit to do anything whereby VisitScotland IPRs, the Contract-Specific IPRs and/or the Deliverables (or the distinctiveness of or reputation or goodwill in any of the same) may be prejudicially affected;
  - 5.1.5 use VisitScotland IPRs, the Contract-Specific IPRs and/or the Deliverables or any confusingly or deceptively similar artwork, representations, names or marks; and/or
  - 5.1.6 challenge the validity of, or dispute VisitScotland's and/or the relevant subsidiary's right to license any element of VisitScotland IPRs, Contract-Specific IPRs and/or the Deliverables.
- 5.2 The Supplier must notify VisitScotland of:
- 5.2.1 any actual, threatened or suspected infringement of any of VisitScotland IPRs, Contract-Specific IPRs and/or the Deliverables of which the Supplier becomes aware; and
  - 5.2.2 any claim or proceedings brought by any third party of which the Supplier becomes aware that the use of VisitScotland IPRs, Contract-Specific IPRs and/or the Deliverables infringes any rights of any other person.
- 5.3 In the case of any matter falling within paragraph 5.2 above:
- 5.3.1 VisitScotland or its nominee shall, in its absolute discretion, determine what action if any shall be taken in respect of the matter; and
  - 5.3.2 VisitScotland or its nominee shall at its own expense have sole control over and shall conduct any action or court proceedings or settlement negotiations as it may deem necessary, and in the Supplier's name if necessary.
- 5.4 The Supplier shall, at the request and expense of VisitScotland, take all such steps during the term of the Contract as VisitScotland may reasonably require to assist in maintaining VisitScotland IPRs, Contract-Specific IPRs and/or the Deliverables as valid and effective, or to assist

VisitScotland and/or the relevant subsidiary (as appropriate) in taking or defending any court or other dispute proceedings concerning VisitScotland IPRs, Contract-Specific IPRs and/or the Deliverables. Any payment or award of damages or costs received from a third party as a result of VisitScotland, or any relevant subsidiary making or defending a claim, or bringing or defending any proceedings concerning VisitScotland IPRs, Contract-Specific IPRs and/or the Deliverables is for the account of VisitScotland or the relevant subsidiary (as appropriate) only, and shall not be for the account or benefit of the Supplier.

## **6. IPR Infringement Indemnity**

- 6.1 The Supplier shall at all times on demand indemnify VisitScotland and each relevant subsidiary, and shall keep VisitScotland and each relevant subsidiary indemnified, from and against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by VisitScotland and/or any relevant subsidiary in connection with any Supplier IP Claim.
- 6.2 Subject to paragraph 6.3 of this Schedule Part 2, VisitScotland agrees that it shall:
  - 6.2.1 notify the Supplier in writing of any Supplier IP Claim;
  - 6.2.2 allow the Supplier to conduct all negotiations and proceedings and shall provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the Supplier IP Claim; and
  - 6.2.3 not, without first consulting with the Supplier, make an admission relating to the Supplier IP Claim.
- 6.3 The Supplier agrees that it shall provide VisitScotland and/or the relevant Subsidiary with such security for costs as VisitScotland and/or the relevant Subsidiary may reasonably require prior to VisitScotland providing any assistance pursuant to paragraph 6.2 of this Schedule Part 2.
- 6.4 The Supplier undertakes that it shall consider and defend any Supplier IP Claim diligently using competent counsel and in such a way as not to bring the reputation of VisitScotland into disrepute.

**SCHEDULE PART 3 (Cyber Security)**

**[CONTRACT SPECIFIC DETAIL ADDED AT AWARD]**