

**Fisheries Innovation Scotland Standard Contract**

**FORM OF AGREEMENT for Project Code Insert project code**

between:

**FISHERIES INNOVATION SCOTLAND, PO Box 7223, Pitlochry, Perthshire, PH16 9AF**

- and -

**Insert contractor details**; herein to be described as the “Contractor”.

**NOW IT IS HEREBY AGREED:**

1. The Contractor and FISHERIES INNOVATION SCOTLAND (henceforth FIS) agree to observe and comply with FIS’s standard terms and conditions set out in Appendix F (the "Terms and Conditions") which are incorporated into this Agreement.
2. The Contractor will carry out the Project in accordance with this Agreement.
3. FIS will pay to the Contractor its costs properly incurred in carrying out the Project in accordance with this Agreement.
4. This Agreement supersedes and replaces any and all previous contracts, agreements and statements relating to the Project, and comprises:

This document (the “Form of Agreement”), together with the Appendices:

- A – Specification and Research Proposal, together with any specified amendments detailed in Appendix A or incorporated by reference to them in Appendix A
- B – Pricing Schedule
- C – Reporting Schedule
- D – Contacts Schedule
- E – Intellectual Property Schedule
- F – The Terms and Conditions

5. The Contractor shall commence work on the Project on **insert date** (the “Date of Commencement”).
6. The Contractor shall complete the Project by **insert date** (the “Date of Completion”).
7. For the purposes of Paragraph 29 of the Terms and Conditions (Conflict or Inconsistency), the documents shall take precedence in the order in which they appear in Clause 4 of this Form of Agreement.

8. The definitions herein and contained in Appendix F apply equally within each Appendix hereto.

**Signed on behalf of FIS by:**

(Print name).....

A Director or authorised signatory, on the ..... day of ..... 20.....

.....

Authorised Signatory

in the presence of:-

Witness Signature .....

Full Name .....

Address .....

**Signed on behalf of The Contractor by:**

(Print name).....

A Director or authorised signatory, on the ..... day of ..... 20.....

.....

Authorised Signatory

in the presence of:-

Witness Signature .....

Full Name .....

Address .....

THIS IS THE APPENDIX A REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN FIS AND THE CONTRACTOR

**APPENDIX A - Specification and Research Proposal**

The Project shall be carried out in accordance with the specifications and research proposal detailed below.

1. The title of the Project is: **Insert full project title;**
2. The Project Code is: **Insert project code;**
3. The objectives of the Project are: As specified in the research proposal **FIS.....**, submitted on the FIS application form and appended to this contract;

Subject to the following amendments agreed between the parties (if any):

**insert details of any amendments or state 'none'.**

Specific amendments to the proposal will not be permitted after this Agreement has been entered into, unless agreed in writing by all parties.

THIS IS THE APPENDIX B REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN FIS AND THE CONTRACTOR

**APPENDIX B - Pricing Schedule**

1. FIS will pay to the Contractor in respect of the Project no more than:

**£Insert amount including VAT**

2. In respect of each payment to be made to the Contractor under this Agreement:

- 2.1. The proportion to be paid by FIS will be 100%.

- 2.2. An amount equivalent to 5% of the total Project cost will be retained by FIS as part of the final payment which will be made to the Contractor once the final report is accepted by FIS (in accordance with Appendix C).

3. The payment arrangements shall be as follows:-

- 3.1. The Contractor shall provide to FIS an accurate statement (invoice), signed on behalf of the Contractor's Finance Department, of the Eligible Costs properly incurred by the Contractor in carrying out the Project during the relevant period. These statements shall be submitted to FIS (contact details are set out in Appendix D) starting from the Date of Commencement, as follows:

**Insert any details of payment tranches**

- 3.2. Subject to the provisions of Appendix C (Reporting Schedule), completion of the reports specified in Appendix C to the satisfaction of FIS, and Paragraph 2.2 of this Appendix B, within 30 days of receiving a satisfactory invoice, FIS shall pay to the Contractor the amount of the Eligible Costs which FIS reasonably consider to have been properly incurred by the Contractor in the carrying out of the Project during the relevant period subject to a cap of the maximum amount payable as detailed in Paragraph 1 of this Appendix B.

- 3.3. In the event that no such statement satisfactory to FIS is provided within the time specified in Paragraph 3.1 of this Appendix B, FIS shall not be under any obligation to make the relevant payment until 30 days after the date on which a statement satisfactory to FIS is received.

- 3.4. The final payment will be made within 35 working days of receipt of a final report satisfactory to FIS, in accordance with Appendix C (Reporting Schedule).

- 3.5. Where the Contractor is VAT registered, it shall provide to FIS a VAT invoice in respect of the amounts of each of their respective payments.

THIS IS THE APPENDIX C REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN FIS AND THE CONTRACTOR

## **APPENDIX C – Reporting Schedule**

### **1. Duty to submit reports**

- 1.1. The Contractor shall submit the final and interim reports required by FIS, as detailed in this Appendix C.
- 1.2. Unless specified otherwise in the Project specification and/or mutually agreed by the Contractor and FIS, the reports must be in MS Word format and must be submitted by providing a copy via email to each of the FIS contact email addresses provided in Paragraph 1 of Appendix D for this purpose.

### **2. Final Reports**

- 2.1. The Contractor shall submit a final report for the Project in accordance with the conditions contained in this Paragraph 2.
- 2.2. The Contractor shall submit a final report within **two weeks** of completion of the Project.
- 2.3. The final report shall:
  - 2.3.1. contain a section identifying the Project's code and title, as set out in Appendix A; the Contractor's Representative, as set out in Appendix D; the Contractor's Representative's address; the Project's Date of Commencement and Date of Completion; the total Project costs; total staff input by name and grade and a statement confirming that the staff input by grade is the same as that proposed in Paragraph 21 of Section Two of the Application; whether any Intellectual Property Rights have arisen from the Project (which may be verified by an independent Intellectual Property Rights advisor); the objectives (as set out in Paragraph 3 of Appendix A, indicating any amendments which have been agreed) and the primary milestones;
  - 2.3.2. contain a succinct executive summary written in English in a style understandable to the educated non-specialist and containing the following:
    - (i) the objectives of the Project and why it was important to do it;
    - (ii) the main findings of the Project presented in bullet form (this should be the major part of the executive summary);
    - (iii) any action to follow the research, including action in relation to Intellectual Property Rights and/or technology transfer, where relevant, including whether the advice of an independent Intellectual Property Rights expert has been obtained;
  - 2.3.3. contain a main report in a standard A4 format, Arial font size 11, single spacing, stating:
    - (i) the objectives and primary milestones for the Project as set out in Paragraph 3 of Appendix A;
    - (ii) the methods used, results of the research and analysis thereof;

- (iii) discussion of the results and their reliability;
- (iv) the extent to which the objectives set out in Paragraph 3 of Appendix A have been met;
- (v) details of possible future research and how this may relate to other work in the field, identifying further avenues as appropriate;

2.3.4. contain a list of final or draft publications arising out of the Project together with copies of any other relevant papers;

2.3.5. indicate in non-scientific terms the progress achieved since the commencement of the Project, together with any findings of particular interest;

2.3.6. list any outputs, e.g. published papers or presentations and identify any opportunities for exploiting any Intellectual Property or technology transfer arising out of the Project (it is the Contractor's responsibility to ensure that no publication of Results occurs that could prejudice patent applications or filings); and

2.3.7. comment briefly on any new research or commercial opportunities which may arise from the Project.

2.4. Annexes of detailed information may be added to the report.

### 3. Interim Reports

3.1. At the request of FIS, the Contractor will submit an interim report in the format detailed in this Paragraph 3.

3.2. Interim reports shall be provided within **14 days** of the date of request by FIS.

3.3. Interim reports shall:

3.3.1. list the objectives as set out in Paragraph 3 of Appendix A, indicating where amendments have been agreed;

3.3.2. indicate in non-scientific terms the progress achieved since the commencement of the Project, together with any findings of particular interest;

3.3.3. indicate whether the objectives in Paragraph 3 of Appendix A are appropriate for the remainder of the Project, giving reasons for any changes, together with financial, staff and time implications;

3.3.4. list the primary milestones for the Project as set out in the Paragraph 3 of Appendix A, indicating which primary milestones have been met and whether the remaining primary milestones appear realistic;

3.3.5. list any outputs, e.g. published papers or presentations and identify any opportunities for exploiting any Intellectual Property or technology transfer arising out of the Project (it is the Contractor's responsibility to ensure that no publication of results occurs that could prejudice patent applications or filings); and

3.3.6. comment briefly on any new research or commercial opportunities which may arise from the Project if any such opportunities have been identified by this stage of the Project.

#### **4. General provisions in respect of reports**

- 4.1. Final reports will be made available publicly on the FIS website. When submitting the final report to FIS, the Contractor shall indicate any information contained in the report which it considers to be commercially sensitive or that should otherwise be protected or redacted, such as information subject to data protection rules, in which event FIS shall not disclose such information publicly without first having consulted with the Contractor.
- 4.2. The Contractor is not permitted to publish the whole or part of any reports without the prior approval of FIS and any such publication approved by FIS is subject to the requirements of Paragraph 4.7 of this Appendix C.
- 4.3. FIS reserves the right to return to the Contractor any interim or final report submitted by the Contractor which is not, in the reasonable opinion of FIS or its agents, satisfactory, either in form or content, having regard to the provisions of this Agreement. In the event that such a report is returned to the Contractor, the Contractor shall promptly remedy any deficiencies identified by FIS and submit a revised report at no additional cost to FIS.
- 4.4. The Contractor shall supply any additional reports regarding the progress of the Project, at such time or times as FIS may reasonably require.
- 4.5. In the event that the Contractor fails to provide any one or more of the interim or final reports due in terms of this Appendix, or any other draft or interim reports which may have been agreed to, by the specified or agreed time-limit and/or to the specified reporting standard required by FIS, either in terms of this Contract or as notified to the Contractor by FIS, FIS will be entitled to impose and collect a penalty.
- 4.6. The penalty will entitle FIS to reduce the contract payment due to the Contractor at a rate of £500 for the first week or part thereof for the period of delay in providing a report or providing a report to the required standard. For subsequent delays in providing a report of the required standard, the sum retained by FIS as final payment will be further reduced at a rate of 1% of the total Project cost to FIS per week or part thereof.
- 4.7. On all publications associated with the Project, including all printed and display materials, digital and online publications, social media, print publications, press releases and in any media coverage FIS, and, if relevant, any other funder notified to the Contractor by FIS:
  - 4.7.1. must be acknowledged as the Project funder; and
  - 4.7.2. on written publications it must be stated that FIS is the owner of the Intellectual Property Rights in respect of the Project.
- 4.8. Use of the FIS logo must comply with any stated requirements.
- 4.9. FIS is able to publicise the Project, the reports and any publications on their own and on any associated websites and in public documents.

- 4.10. On receiving notification from FIS that the final report from the Project is considered acceptable, the Contractor shall assign all Intellectual Property Rights in the Project to which it is legally entitled to FIS pursuant to the terms of Appendix E.
- 4.11. FIS shall ensure that the Contractor is appropriately acknowledged, subject to the final report being approved.



THIS IS THE APPENDIX D REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN FIS AND THE CONTRACTOR

**APPENDIX D – Contacts Schedule**

1. FIS's address for correspondence and submission of reports:

[s.gray@fiscot.org](mailto:s.gray@fiscot.org) and [execdir@fiscot.org](mailto:execdir@fiscot.org)

FIS's address for service will be:

PO Box 7223  
Pitlochry  
Perthshire  
PH16 9AF

2. The Contractor's Representative will be:

**Insert name of contractor representative.**

3. The Contractor's address for correspondence and service will be:

**Insert contractor address.**

4. Where the Contractor consists of more than one person there shall be only one individual acting as the Contractor's Representative.

5. The Contractor's Key Personnel will be:

**Insert name of key personnel.**

6. Contact details for Key Personnel:

**Insert email addresses for 3. and 6. above.**

THIS IS THE APPENDIX E REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN FIS AND THE CONTRACTOR

## **APPENDIX E – Intellectual Property Schedule**

### **Ownership and Protection**

1. Subject to any prior rights and the rights of third parties (including H M Comptroller General with regard to Crown Copyright), the Contractor hereby transfers, assigns and/or vests in FIS or, insofar as it is not competent for the Contractor to currently transfer, assign and/or vest, hereby undertakes and agrees to transfer, assign and/or vest in FIS, from the date of creation, its whole right, title and interest in and to all copyright and all other Intellectual Property Rights in relation to the Results, including, but not limited to:
  - 1.1. the title in any invention, patent, trade mark, other protection and/or registration in relation to such Intellectual Property;
  - 1.2. the right to apply for and/or register any patent pursuant to the Patents Act 1977;
  - 1.3. any database rights, for the purposes of the Copyright and Rights in Databases Regulations 1997.
2. In circumstances where the Contractor is unable to immediately transfer to, assign to or otherwise vest Intellectual Property Rights in FIS in accordance with the foregoing Paragraph, the Contractor shall hold those Intellectual Property Rights as trustee solely for the benefit of FIS until such time as the Intellectual Property Rights can be transferred, assigned or otherwise vested in FIS.
3. In recognition of the increasing prevalence of policies on open access to research data, the Contractor may, with the prior written consent of FIS, archive and make available any raw data generated during the course of the study after the final report has been peer reviewed and approved by the FIS board.
4. The Contractor shall:
  - 4.1. ensure that all its staff, students and sub-contractors are engaged, in relation to this Agreement and the Project, on terms which do not entitle any of them to acquire any copyright or any other Intellectual Property Rights or other rights in the Results;
  - 4.2. ensure that it can, and remains entitled to, transfer, assign and/or vest (free from any encumbrances) any title and/or rights necessary to effect the vesting required by this Appendix E;
  - 4.3. do all things and execute, at the Contractor's expense, any documents reasonably required to give effect to such vesting in FIS;
  - 4.4. co-operate with and assist FIS in obtaining and/or enforcing any and all such Intellectual Property Rights;
  - 4.5. ensure that confidentiality and non-disclosure agreements are in place to ensure that the ability to secure or maintain such Intellectual Property Rights is not compromised.
5. The Contractor warrants and represents to FIS that the Project is original and that it is not a

violation or infringement of any existing copyright, licence Intellectual Property Right of any other right of any other person or organisation.

6. The Contractor undertakes to obtain appropriate permission for any copyright material used in the Project or any reports created in connection with the Project, where the copyright rests with a person or organisation other than the Contractor. The Contractor shall provide appropriate details, including proof of consent and the required acknowledgements.
7. It is the responsibility of the Contractor to ensure that no publication of results or other information from the Project occurs that could prejudice patent applications or filings.

### **Commercial Exploitation**

8. The Contractor shall identify and inform FIS of any such Intellectual Property Rights which it considers suitable for commercial exploitation. Where the Contractor has identified an opportunity for the commercial exploitation of the Intellectual Property Rights, it will provide such assistance as is required by FIS to pursue and exploit those opportunities.
9. The Contractor shall identify and inform FIS of any Intellectual Property Rights which may be suitable for patent, copyright, registered design, trade mark or other legal protection and shall use its reasonable endeavors to assist FIS, if requested, in relation to applying for such protection throughout or in any part of the world in the name of FIS.
10. FIS shall have the sole right to commercially exploit any and all Intellectual Property Rights in respect of the Project. If any commercial revenues or returns result from the commercial exploitation of such Intellectual Property Rights, FIS may, at its sole discretion, award to the Contractor an equitable share of any such revenues that accrue to FIS as shall be determined by FIS.
11. The Contractor shall have sole responsibility for making any payments due to its employees or contractors under any rewards or incentive schemes, whether contractual, *ex gratia*, or statutory, in relation to the Project and the Results.
12. For the avoidance of doubt, the provisions of this Appendix E do not apply to and do not affect any Intellectual Property Rights in existence before the commencement of the Project.

THIS IS THE APPENDIX F REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN FIS AND THE CONTRACTOR

**APPENDIX F – Terms and Conditions**

**1. Definitions**

1.1. In these terms and conditions the following words and expressions shall have the meanings given to them below, unless the context otherwise requires:

“Agreement”	This agreement between FIS and the Contractor comprising the Form of Agreement, the Appendices A to F and any other documents annexed or incorporated by reference.
“Appendix”	One of the appendices lettered A to F incorporated into this Agreement.
“Application”	The “Application for a Research Contract with FIS” submitted by the Contractor to FIS in respect of the Project, which forms part of this Agreement and is referred to in Appendix A.
“Bribery Laws”	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;
“Business Day”	A day (other than a Saturday or Sunday) on which banks in the city of London are generally open for business.
“Contractor”	The person or persons named in this Agreement as the Contractor. Where the Contractor consists of more than one person, the obligations of those persons in respect of this Agreement shall be joint and several.
“Contractor’s Representative”	The person named in Paragraph 3 of Appendix D.
“Date of Commencement”	The date set out in Clause 5 of the Form of Agreement.
“Date of Completion”	The date set out in Clause 6 of the Form of Agreement.
“Eligible Costs”	Costs incurred by the Contractor for the purposes of the carrying out of the Project, limited to those costs identified in Section Three of the Application (‘Financial Guidelines for Project Cost Estimates’).
“FIS”	Fisheries Innovation Scotland, PO Box 7223, Pitlochry, Perthshire, PH16 9AF.

“Intellectual Property Rights”	Any copyright, design right, trade mark, trade name, Know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, and all intellectual property, the rights to which are protectable by law.
“Key Personnel”	Any member of the Contractor’s personnel identified by name or job title as key personnel in Appendix D.
“Know-how”	All information not in the public domain held in any form (including, without limitation, oral and written instructions, diagrams, drawings, formulae, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists and scientific methods) used in connection with or arising as a result of the Project.
“Parties”	FIS and the Contractor.
“Period for the Project”	The period for the carrying out of the Project, being the period between the Date for Commencement and the Date of Completion.
“Project”	The research project particulars of which, are set out in Appendix A.
“Results”	means all inventions, designs, information, knowledge, Know-how, specifications, formulae, data, test results, research, outcomes, processes, methods, techniques, and other technology and the Intellectual Property Rights therein created, generated, collected or discovered by agents, employees, students or sub- contractors of the Contractor as a result of the Project.
“Terms and Conditions”	FIS standard terms and conditions set out in this Appendix F.

1.2. Unless the context otherwise requires, references in these Terms and Conditions:

- 1.2.1. to the Contractor or to FIS shall, where appropriate, be references to any lawful successor, assignee or transferee;
- 1.2.2. to the Contractor shall, where appropriate, be references to each individual person constituting the Contractor;
- 1.2.3. to conditions are references to the conditions of these Terms and Conditions unless provided otherwise;
- 1.2.4. to "person" or "third party" include any individual, company, corporation, firm,

partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;

1.2.5. to one gender include all genders, and references to the singular include the plural and vice versa;

1.2.6. to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.

1.3. The headings in this document are for convenience only, and shall be ignored in construing these Terms and Conditions.

## **2. Duration**

2.1. The Contractor shall commence work on the Project no later than the Date of Commencement.

2.2. The Contractor shall complete the Project by the Date of Completion, unless the Parties have agreed in advance in writing to accept a different date, which will then become the new Date of Completion.

## **3. Payment**

3.1. Payment shall be requested and made in accordance with the provisions of the Appendix B ( Pricing Schedule).

3.2. The Contractor shall submit all invoices relating to payments to be made by FIS to the address given in Paragraph 1 of the Appendix D (Contacts Schedule).

## **4. Payment of Contractors and Sub-contractors**

4.1. Where the Contractor enters into a sub-contract for the provision of services as part of the Project, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within 30 days after the Contractor has verified the relevant invoice.

4.2. The Contractor shall use reasonable endeavours to verify the invoices promptly.

4.3. Where the Contractor becomes liable to pay interest payments to a sub-contractor under the provisions of the contract between the Contractor and the sub-contractor or the provisions of the Late Payments of Commercial Debts (Interest) Act 1998, FIS will not reimburse those costs.

4.4. Payments made by FIS in accordance with this Agreement shall not exceed the amount specified in Paragraph 1 of Appendix B (Pricing Schedule).

## **5. Nominated officers**

5.1. The Contractor's Representative shall be the person named in Paragraph 3 of Appendix D (Contacts Schedule), or such other person that the Contractor may nominate having given 14 days' notice to FIS.

## 6. Contractor's Status

6.1. In carrying out the Project, the Contractor shall be acting as principal and not as agent or employee of FIS. Accordingly:

6.1.1. the Contractor shall not (and shall ensure that its agents, sub-contractors and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of FIS; and

6.1.2. nothing in this Agreement shall impose any liability on FIS in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of FIS to the Contractor that may arise by virtue of either a breach of this Agreement by FIS or any negligence on the part of FIS their staff or agents.

## 7. Warranties

7.1. The Contractor warrants, represents and undertakes to FIS that:

7.1.1. the Contractor will carry out and shall ensure that its employees, agents and sub-contractors also carry out the Project with diligence and reasonable skill and care, in accordance with reasonable professional, technical and scientific knowledge and practice, and any legislative requirements;

7.1.2. any materials or processes used in connection with the carrying out of the Project shall be in accordance with standards set out in this Agreement;

7.1.3. the Contractor will deploy in the performance of the Project only suitably qualified, trained, experienced and (where appropriate) supervised staff and sub-contractors, and any sub-contractors will be intimated to and approved by FIS;

7.1.4. the Contractor is responsible for ensuring that its staff and sub-contractors are suitably trained and equipped in order to carry out their tasks in connection with the Project safely;

7.1.5. the proper use by FIS of any Results, documentation, or materials delivered by the Contractor pursuant to this Agreement shall not, to the best of the Contractor's knowledge and belief, constitute an infringement of the Intellectual Property Rights of any third party;

7.1.6. the Contractor has understood the nature and extent of the Project to be carried out and satisfied itself in relation to all matters connected with the Project including the supply of, safety and conditions affecting labour, its staff, employees and sub-contractors, the suitability of the premises or locations where the Project is to be carried out and any equipment, vehicles or vessels necessary for the carrying out of the Project subject to all such matters being reasonably discoverable by the Contractor;

7.1.7. the Contractor will use its reasonable endeavours to identify commercial exploitation opportunities for the Results;

7.1.8. the Contractor complies with all of its obligations and those of any of its predecessors (whether or not legally binding and including those it would be expected to comply with by any regulatory or other body to which it is subject) due to or in connection with its employees;

7.1.9. the Contractor, its employees, staff, agents and sub-contractors will at all times comply with all health and safety requirements relating to the carrying out of the Project. Such requirements include in addition to statutory laws and regulations any codes of practice and relevant national or international standards relating to health or safety which may be applicable to the performance of the Project; and

7.1.10. the Contractor will indemnify FIS against all losses suffered or incurred by FIS arising out of or in connection with any failure by the Contractor to comply with its obligations under this Condition 7.1.

7.2. Nothing in this Agreement shall be taken as limiting or excluding FIS's rights or the Contractor's obligations pursuant to any statute, statutory instrument or the common law.

## **8. Limitation of liability**

8.1. In the event of any breach or breaches of this Agreement by any Party, that Party shall not be liable to the other in respect of any resulting:

8.1.1. loss of profit, business, revenue, goodwill or anticipated savings;

8.1.2. indirect or consequential loss or damage.

8.2. The aggregate liability of FIS to the Contractor, arising out of any breach or breaches of this Agreement by FIS, shall be limited to the sum due by FIS to the Contractor, detailed in Appendix B; and the aggregate liability of the Contractor to FIS shall not exceed the total value of the contract with FIS (at the date the loss was incurred) under this Agreement or the amount of insurance cover available to the Contractor, whichever is the greater.

## **9. Indemnities**

9.1 The Contractor shall indemnify and keep indemnified on a full and unqualified basis FIS against any and all direct loss or damage arising out of negligence, breach of contract, breach of statutory duty, or other wrongful act or omission on the part of the Contractor or any sub-contractor; or injury (including death) of any person or to any property which arises out of, or in connection with this and/or any sub-contractor's performance of the Project.

9.2 The indemnity contained in Condition 9.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of FIS or its agents.



## **10. Insurance**

10.1 Unless a Public Body under which circumstances this Condition would not apply, the Contractor shall have in force and maintain insurance with a reputable insurance company, including (but not limited to) property, equipment, vehicles/vessels, employer's liability, public liability and professional indemnity, for such range of cover as the Contractor deems appropriate but covering at least all matters which are the subject of the indemnities or compensation obligations under these Conditions in such sum as may be specified in this Agreement, or, if no such sum is specified, the sum of not less than £1 million in respect of any single claim for professional indemnity and not less than £1 million in respect of any single claim with respect to public liability and not less than £5 million employer's liability (unless legally exempt) in respect of any single claim.

10.2. The Contractor shall ensure that any sub-contractor involved in carrying out the Project shall have in force and maintain insurance with a reputable insurance company, including (but not limited to) property, equipment, vehicles/vessels, employer's liability, public liability and professional indemnity, for such range of cover as the Contractor deems appropriate but covering at least all matters which are the subject of the indemnities or compensation obligations under these Conditions in such sum as may be specified in this Agreement, or, if no such sum is specified, the sum of not less than £1 million in respect of any single claim.

10.3 The policy or policies of insurance referred to in Conditions 10.1 and 10.2 shall be provided to FIS prior to the commencement of the Project, together with satisfactory evidence of payment of premiums. In the event that non-disclosure of policies to third parties is a mandatory requirement set by insurers, either a copy of the policy or satisfactory evidence of payment of premiums for the relevant types of insurance cover, must be provided.

## **11. Records and Monitoring of Progress**

11.1. The Contractor agrees to progress the Project to the reasonable satisfaction of FIS and failure to do so will constitute a breach of this Agreement by the Contractor.

11.2. In order to monitor the Contractor's performance of the Project and the progress of the Project, FIS or its servants or agents, may:

11.2.1. inspect at all reasonable times and, save where FIS has good reason not to give any notice, on reasonable notice, any and all records of the Contractor connected with its activities under this Agreement;

11.2.2. enter into and inspect at all reasonable times and, save where FIS have good reason not to give any notice, on reasonable notice, all facilities (whether at the Contractor's premises or elsewhere) used by the Contractor in its performance of its obligations under this Agreement;

11.2.3. require that the Contractor provides a detailed update on the progress of the Project,

and the Contractor specifically agrees to do all it reasonably can at all times to ensure compliance therewith.

- 11.3. The Contractor shall retain or ensure that it has access to all records which relate to the Project. On completion of the Project, or in the event that this Agreement is terminated pursuant to Condition 22 or otherwise, the Contractor shall at the direction of FIS either retain or transfer to FIS those records required by FIS, or, where such records are in the possession of any third party, procure that the same is done. If FIS requires the Contractor to transfer the records to a third party, the Contractor shall be entitled to retain a copy of them.
- 11.4. The Contractor may only use the records which relate to the Project with the prior consent of FIS.

## **12. National Audit Act**

- 12.1. For a period of not less than 6 years after the completion of the Project or, where relevant, its termination, the Contractor shall retain in its possession all records and documentation relating to the Project unless they have been transferred to FIS or a third party in accordance with Condition 11.3 above.
- 12.2. FIS may require the Contractor to permit a representative of the Contractor and a designated accountant to examine such documents as FIS may reasonably require for the purposes of the National Audit Act 1983 which are in the possession, custody or control of the Contractor, and FIS may require the Contractor to produce such oral and/or written explanations as may reasonably be required.
- 12.3. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3)(d) and 6(5) of the National Audit Act 1983.

## **13. Contractor's Performance and Personnel**

- 13.1. The Contractor shall properly manage and monitor the Project and inform FIS immediately if any aspect of this Agreement is not being or cannot be performed.
- 13.2. The Contractor shall provide all the facilities and equipment that are necessary to complete the Project.
- 13.3. The Contractor shall deploy sufficient personnel of appropriate qualifications, competence and experience to complete the Project within the Period for the Project and shall ensure that those personnel are properly managed and supervised.
- 13.4. The Contractor shall give FIS, if so requested, full particulars of all persons who are or may be at any time employed on the Project.

- 13.5. If, after due consultation with the Contractor, FIS gives the Contractor notice that any person or equipment is to be removed from involvement in the Project, the Contractor shall take immediate steps to comply with such notice and such decision of FIS shall be final and conclusive.
- 13.6. The Contractor shall take all reasonable steps to avoid any changes of Key Personnel, but where the Contractor considers it necessary to do so, it will give FIS not less than one month's notice of any intention to change any Key Personnel and the reasons for such change.

#### **14. Publication and Disclosure**

- 14.1. Subject to the provisions of Appendix C, Conditions 14.3 and 14.5 below and obtaining the prior consent of FIS, the Contractor shall endeavour to make information about, and results from, the Project generally available and may do so provided it acknowledges in any public statement the financial support of FIS and any other funder as advised by FIS.
- 14.2. Subject to the requirements of Appendix C, FIS and its agents shall have the right to disclose, copy, or otherwise distribute to the public, or use in any way any information arising out of the Project or comprised in any work relating to the Project, as it sees fit.
- 14.3. The Contractor shall notify FIS immediately if approached by the media about the Project.
- 14.4. For the avoidance of doubt, the notification required by Conditions 14.3 is for the purposes of informing FIS or the Contractor (as the case may be) and are not designed to interfere with the issue of any public statement.
- 14.5. Where the carrying out of the Project results in, or materially contributes to, the creation of Intellectual Property Rights which the Contractor or FIS may be suitable for commercial exploitation or for intellectual property protection, no disclosure of information may be made by the Contractor which would jeopardise such exploitation.
- 14.6. The Parties acknowledge that, in order to be compliant with the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, the Environmental Information Regulations 2004, the Environmental Information (Scotland) Regulations 2004 or any other applicable legislation governing access to information (the "FOI Legislation"), to which they may be subject, any Party may be obliged to provide information, on request, to third parties that relates to this Agreement.
- 14.7. In the event that a Party ("the receiving Party") receives a request for information relating to this Agreement falling within the scope of the FOI Legislation, it shall be entitled to disclose such information as is necessary in order to ensure its compliance with the FOI Legislation. Where a Party reasonably considers that information is exempt from disclosure, it shall use reasonable endeavours to consult with the other Parties, but the receiving Party's decision as to whether such information should be disclosed shall be final and binding.
- 14.8. In the event that a Party requires the assistance of the other Party in supplying any information falling within the scope of the FOI legislation that is held or controlled by that

Party or any other person engaged by that Party in relation to this Agreement, the other Party will provide such assistance or will procure that such assistance is provided by the third party, at its own cost within ten (10) days of receiving the request.

- 14.9. The receiving Party shall not be liable for any loss, damage, harm or other detriment suffered by any other Party arising from the disclosure of any information falling within the scope of the FOI Legislation.

## **15. Data Protection**

- 15.1. Where the Contractor processes personal data in carrying out the Project, the Contractor shall take such appropriate technical and organisational measures as are necessary to comply with all applicable national and international laws relating to the processing of personal data and privacy, as amended from time to time, including the Data Protection Act 2018.

## **16. Equipment**

- 16.1. All equipment purchased by the Contractor for use on the Project shall, where reasonably practicable, be acquired by competitive tender.
- 16.2. Unless otherwise agreed in writing with FIS, the Contractor shall provide the equipment necessary for the provision of the Project.
- 16.3. The Contractor shall maintain all items of equipment in good and serviceable condition.
- 16.4. All equipment shall be at the risk of the Contractor and FIS shall have no liability for any loss of or damage to any equipment.

## **17. Intellectual Property**

- 17.1. Specific conditions applying to Intellectual Property arising from the Project are subject to the provisions of Appendix E.

## **18. Infringement of Intellectual Property and Confidentiality between Parties**

- 18.1. Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the Results or the Intellectual Property Rights of the other Party in relation to this Agreement, and the Parties shall consult with each other to decide the best way to respond to such infringement.

## **19. Anti-bribery**

- 19.1. For the purposes of this Condition 19, the expressions “adequate procedures” and “associated with” shall be construed in accordance with the Bribery Act 2010 and legislation

or guidance published under it.

- 19.2. Each Party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that all of that Party's personnel, all others associated with that Party, and all of that Party's subcontractors involved in performing services for or on behalf of that Party in relation to this Agreement so comply.
- 19.3. Without limitation to Condition 19.2, neither Party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such bribe or improper payment to be made or received on its behalf, either in the United Kingdom or elsewhere, and each Party shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 19.4. Each Party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this Condition 19.

## **20. Modern Slavery**

The Contractor undertakes, warrants and represents that:

- 20.1. neither the Contractor nor any of its officers, employees, agents or subcontractors has:
  - 20.1.1. committed an offence under the Modern Slavery Act 2015 (a MSA Offence); or
  - 20.1.2. been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
  - 20.1.3. is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; and
- 20.2. it shall comply and ensure that its officers, employees, agents and subcontractors shall comply with the Modern Slavery Act 2015 and any policies that FIS has in respect of modern slavery.

## **21. Infringement of Third Party Rights**

- 21.1. If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights in the manufacture, use or sale of any licensed product or use of any patents or Intellectual Property Rights, that party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.

## 22. Termination

- 22.1. In the event that the Contractor commits at any time a default or breach of the terms of this Agreement, FIS may issue a notice to the Contractor in accordance with Condition 28.1, identifying the default and, where possible, requiring the Contractor to remedy that default.
- 22.2. If the Contractor fails to remedy the default or breach within 30 days of the above notice, or if FIS reasonably considers that the default is of a serious nature or not capable of remedy, FIS may without prejudice to any other rights or remedies terminate this Agreement by written notice to the Contractor with immediate effect.
- 22.3. If the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, FIS may terminate this Agreement with immediate effect, by written notice to the Contractor.
- 22.4. The Contractor shall notify FIS immediately if, in relation to the Contractor's business:
- 22.4.1. a resolution is passed for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation and reconstruction not involving insolvency); or
  - 22.4.2. any court makes an administration order or winding-up order, or the Contractor makes a composition or arrangement with creditors; or
  - 22.4.3. an administrator, administrative receiver, receiver, or manager is appointed; or
  - 22.4.4. possession is taken of any of the Contractor's assets under the terms of a floating charge; or
  - 22.4.5. (in the case of an individual) the Contractor has been sequestrated, has a bankruptcy order made against him or her, enters into any composition, individual voluntary arrangement or other arrangement with or for the benefit of his or her creditors, or signs a trust deed for creditors.
- 22.5. The Contractor shall forthwith inform FIS in writing of any proposal or negotiations which will or may result in a merger, take-over, change of ownership, change of control, change of name or status, including, where the Contractor is a company as defined in the Companies Act 2006, any change in "control" as defined in Section 1124 of the Corporation Tax Act 2010.
- 22.6. On the occurrence of any of the events described in Condition 22.4 or 22.5 FIS shall be entitled to terminate this Agreement by written notice to the Contractor with immediate effect.
- 22.7. Without prejudice to the provisions of this Condition, either Party may submit a request to the other Party to withdraw from this Agreement. This Agreement may be terminated by written agreement between the Contractor and FIS at any time.

22.8. Where FIS is the sole funder, and without prejudice to the other provisions of this Condition, FIS may, at any time, terminate this Agreement by giving the Contractor not less than 30 days written notice.

22.9. FIS may, during any notice period direct the Contractor:

22.9.1. to refrain from commencing the Project or any part of the Project;

22.9.2. to cease work immediately; or

22.9.3. to complete, in accordance with this Agreement, any part of the Project, which shall be paid at the agreed price or, where no agreement exists as to price, a fair and reasonable price.

22.10. Except as provided in this Agreement, termination of this Agreement shall not affect:

22.10.1. any obligation or liability of any Party which has accrued at the date of termination;  
or

22.10.2. any of the provisions of this Agreement which are intended to continue to have effect after this Agreement has been terminated.

### **23. Payment on termination**

23.1. Without prejudice to any other rights or remedies of FIS, in the event of this Agreement being terminated:

23.1.1. by FIS in accordance with Condition 22 by reason of the default or breach of the Contractor; or

23.1.2. otherwise by reason of the Contractor's breach of this Agreement,

FIS shall not be under any obligation to make any payment to the Contractor for such period as is reasonable for FIS to assess the loss and/or damage suffered as a result of the termination.

23.2. After such period, FIS may set off against any sums otherwise due to the Contractor, or recover as a debt, the amount of loss and/or damage FIS have reasonably assessed as resulting from the termination of this Agreement. This amount will be limited to three times the contract price or the level of insurance retained by the Contractor as specified in Conditions 10.1 and 10.2 whichever is greater.

23.3. Where this Agreement is terminated by FIS in accordance with Condition 22.8 the Contractor shall be entitled to claim from FIS reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Project, including any commitments, liabilities or other expenditure unavoidably incurred as a result of the termination of this Agreement, but excluding loss of profits and any deductions or exclusions permitted to be made under the terms of this Agreement. The liability of FIS under this Condition shall not exceed the total sums payable for the Project, as set out in Appendix B.

23.4. Any overpayment by FIS to the Contractor, whether of the agreed price or Value Added Tax, shall be a sum of money recoverable by FIS from the Contractor.

## **24. Transfer of rights and obligations**

24.1. The Contractor shall not sub-contract, transfer, assign, charge, or otherwise dispose of this Agreement or any part of it without the prior written consent of FIS.

24.2. The Contractor shall ensure, if so requested by FIS, that an assignee enters into a novation agreement with FIS to perform this Agreement as if the assignee were a Party to this Agreement in lieu of the Contractor.

24.3. The Contractor shall ensure that any sub-contract complies with the terms and conditions of this Agreement, so far as they are applicable and shall provide to FIS, upon request, copies of any sub-contracts. Any sub-contract shall not relieve the Contractor of its obligations under this Agreement.

24.4. FIS may at any time, on written notice to the Contractor, transfer or assign all or any rights and/or obligations under this Agreement.

## **25. Rights of Third Parties**

Save to the extent expressly set out in this Agreement, this Agreement is not intended nor shall it create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017, or any other entitlement, claims or benefits enforceable by any person that is not a party to it.

## **26. Waiver and variation**

26.1. No delay by FIS in enforcing or expressing any right, either arising out of this Agreement or any right in respect of any breach of this Agreement by the Contractor, shall constitute a waiver of such right.

26.2. No waiver by FIS of any breach of the Contractor's obligations shall constitute a waiver of any other prior or subsequent breach.

26.3. Any variation of any provision of this Agreement must be effected in writing and issued by FIS. No purported variation by any other means shall bind FIS.

## **27. Severance**

27.1. If any condition or provision of this Agreement which is not of a fundamental nature is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction in any proceedings relating to this Agreement, such provision shall be severed and the validity



or enforceability of the remainder of this Agreement shall not be affected thereby.

## **28. Notices**

- 28.1. Any notice required to be given under, or any communication between the Parties with the respect to any of the provisions of this Agreement shall be in writing in English and shall be deemed duly given if signed by or on behalf of a duly authorised officer of the Party giving the notice and if left at, or sent by pre-paid registered or recorded delivery post, or by facsimile transmission or other means of electronic telecommunication in permanent written form to the address of the receiving Party as specified in this Agreement (as or amended from time to time by due notice in writing to other Party).
- 28.2. Any such notice or other communication shall be deemed to have been given and received by the addressee:-
- 28.2.1. at the same time as it is left at the address of or handed to a representative of the Party to be served;
  - 28.2.2. by post on the day (not being a Sunday or public holiday) 2 days following the date of posting);
  - 28.2.3. in the case of a facsimile or email or other type of electronic telecommunication on the day following dispatch.
- 28.3. In providing the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was correctly addressed and was posted, or that the facsimile or e-mail or other form of electronic communication was correctly addressed and was dispatched and dispatch of the transmission was confirmed and (in the case of a facsimile) confirmed as having been sent to the number above with all pages successfully transmitted.

## **29. Special Provisions**

- 29.1. Subject to Clause 7 of the Form of Agreement, in the case of any conflict or inconsistency between these Terms and Conditions and any conditions contained within the Form of Agreement and Appendices A to E, the latter conditions shall prevail.

## **30. Entire Agreement**

- 30.1. This Agreement together with these Terms and Conditions and any variation made in accordance with Condition 26 sets out the entire agreement between the Parties and supersedes any prior agreement whether formal or informal and whether legally within this Agreement.

## **31. Legal Relationship**

- 31.1. Nothing in this Agreement shall be construed so as to create a partnership or joint venture

between the Parties or have the effect of making any employee of any one Party a servant of any of the other Parties. Neither Party shall act or describe itself as the agent of the other nor shall it make or represent that it has authority to make any commitments on the other's behalf.

### **32. Dispute resolution**

- 32.1. The relevant Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement.
- 32.2. If any such dispute cannot be resolved in accordance with Condition 32.1 the dispute may, by agreement between the relevant Parties, be referred to the Chair of the FIS Board of Trustees, Mr. John Goodlad, in the case of FIS and to [REDACTED], in the case of the Contractor in an attempt to resolve the issue. A Party may bring proceedings in accordance with Condition 33 if the dispute cannot be resolved, and a Party may apply to the court for an interdict whether or not any issue has been escalated under this Condition.

### **33. Governing Law**

- 33.1. This Agreement is made in Scotland and shall be governed by and interpreted in accordance with Scots Law and shall be subject to the exclusive jurisdiction of the Courts of Scotland. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of FIS to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.