



TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1 DEFINITIONS

- 1.1 **"Business Day"** means a day, other than a Saturday or Sunday, when banks in Glasgow are open for business.
- 1.2 **"Buyer"** means the person who purchases Services from the Seller.
- 1.3 **"Charges"** means the charges payable by the Buyer for the supply of the Services in accordance with Clause 5.
- 1.4 **"Commencement Date"** has the meaning given in Clause 2.2.
- 1.5 **"Conditions"** means these terms and conditions as amended from time to time in accordance with Clause 10.4.
- 1.6 **"Contract"** means the contract between the Seller and the Buyer for the supply of Services in accordance with these Conditions.
- 1.7 **"Control"** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
- 1.8 **"Deliverables"** means the deliverables set out in the Order produced by the Seller for the Buyer.
- 1.9 **"Fixed Contract"** means a Contract entered into between the parties for a specified period of time for a fixed price.
- 1.10 **"Force Majeure"** means any cause whatsoever that is beyond the Seller's control including but not limited to an act of God, war, civil disturbance, terrorism, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, fire or accident.
- 1.11 **"Intellectual Property Rights"** means all and any industrial and intellectual property rights including, without limitation, any copyright, patent, registered design, design right, or trademark (whether registered or unregistered).
- 1.12 **"Offshore Bound"** means a situation whereby the Seller engages an individual to provide Services offshore and, due to inclement weather conditions or any other operational issue, the individual cannot return onshore.
- 1.13 **"Order"** means the Buyer's order for Services.
- 1.14 **"Provisional Schedule"** means the timeframe set out for the provision of services at the time of quote.
- 1.15 **"Seller"** means JWF Process Solutions Ltd (company number SC038002).
- 1.16 **"Seller Materials"** has the meaning set out in Clause 4.1(h).
- 1.17 **"Services"** means the services, including the Deliverables, supplied by the Seller to the Buyer as set out in the Specification.
- 1.18 **"Specification"** means the description or specification of the Services provided by the Seller to the Buyer.

2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Buyer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Seller, and any descriptions or illustrations contained in the Seller's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Seller shall not constitute an offer. A quotation is only valid for a period of 7 Business Days from its date of issue, and the Provisional Schedule is subject to change until the point of Order placement when the date for performance of the Services shall be booked and confirmed by the Seller.

3 SUPPLY OF SERVICES

- 3.1 The Seller shall supply the Services to the Buyer in accordance with the Specification in all material respects.
- 3.2 The Seller shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such specified dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Seller reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

4 BUYER'S OBLIGATIONS

- 4.1 The Buyer shall:
- ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - co-operate with the Seller in all matters relating to the Services;
 - provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller;
 - provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - prepare the Buyer's premises for the supply of the Services, and in respect of any Services provided offshore, ensure that all equipment required is on the platform;

- obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - comply with all applicable laws, including health and safety laws;
 - keep all materials, equipment, documents and other property of the Seller (**Seller Materials**) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation; and
 - comply with any additional obligations as set out in the Specification
- 4.2 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):
- without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

5 CHARGES AND PAYMENTS

- 5.1 The Charges for the Services shall be calculated on a time and materials basis:
- the Charges shall be calculated in accordance with the Seller's daily fee rates, as set out in the Order;
 - the Seller's daily fee rates for each individual are calculated on the basis of a standard seven hour working day between the hours of 9.00am and 5.00pm worked on Business Days;
 - the Seller shall be entitled to charge an overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b); and
 - in the event that the Seller engages an individual to provide Services offshore, and that individual becomes Offshore Bound the Seller shall be entitled to charge the Charges as set out above.
- 5.2 The Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services including, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Seller for the performance of the Services, and for the cost of any materials required in the performance of the Services. Such charge will include a 10% handling charge.
- 5.3 The Seller reserves the right to increase the Charges (other than in respect of Fixed Contracts) on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index.
- 5.4 The Seller shall invoice the Buyer either on completion of the Services or monthly in arrears, as agreed between the parties.
- 5.5 The Buyer shall pay each invoice submitted by the Seller:
- within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Seller and confirmed in writing to the Buyer; and
 - in full and in cleared funds to a bank account nominated in writing by the Seller, and
- time for payment shall be of the essence of the Contract.
- 5.6 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under clause 8, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.7 will accrue each day at 4% a year above The Bank of England base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.9 The Buyer may cancel the Services without charge by giving the Seller written notice. If notice of the cancellation is received within 3 Business Days of the work commencing, the Buyer shall be liable for 100% of the Contract value.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Buyer) shall be owned by the Seller.
- 6.2 The Seller grants to the Buyer, or shall procure the direct grant to the Buyer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Buyer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Buyer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Buyer to the Seller for the term of the Contract for the purpose of providing the Services to the Buyer.

7 LIMITATIONS OF LIABILITY

- 7.1 Restrictions on liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, delict, under statute or otherwise (including liability arising from negligence).
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 11B of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.3 Subject to clause 7.2 (Liabilities which cannot legally be limited), the Seller's total liability to the Buyer whether under the warranty, guarantee, for breach of contract, negligence / delict, breach of statutory duty or otherwise shall in no event exceed the total value of the Contract.
- 7.4 Subject to clause 7.2 (Liabilities which cannot legally be limited), the Seller is not liable to the Buyer for any:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 7.5 The Seller has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 11C, 11D and 11E of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 This clause 7 shall survive termination of the Contract.

8 TERMINATION

- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party three months' written notice.
- 8.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) refuses to remedy that breach within 21 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3 Without affecting any other right or remedy available to it, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer fails to pay any amount due under the Contract on the due date for payment; or
 - (b) there is a change of control of the Buyer.
- 8.4 Without affecting any other right or remedy available to it, the Seller may suspend the supply of Services under the Contract or any other contract between the Buyer and the Seller if:
- (a) the Buyer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Buyer becomes subject to any of the events listed in clause 8.2(c) or clause 8.2(d), or the Seller reasonably believes that the Buyer is about to become subject to any of the events listed in clause 8.2(b) - 8.2(d)

9 CONSEQUENCES OF TERMINATION

- 9.1 On termination of the Contract:
- (a) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt; and
 - (b) the Buyer shall return all of the Seller Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 9.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10 GENERAL

- 10.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (Force Majeure).
- 10.2 Assignment and other dealings
- (a) The Seller and the Buyer may at any time assign, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract with the consent of the other party, not to be unreasonably withheld.
- 10.3 Confidentiality
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Buyers, clients or Sellers of the other party, except as permitted by clause 10.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10.4 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11 LAW OF CONTRACT AND JURISDICTION

This Contract is subject to Scots Law and the courts of Scotland shall have the exclusive jurisdiction to resolve any disputes arising.