

**SAC Commercial Limited and SRUC
Standard Terms and Conditions of Subcontracts**

1 Definitions and Interpretation

1.1 Definitions:

Applicable Laws: means all applicable laws, statutes, regulations and codes from time to time in force including the Data Protection Laws.

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business.

Change Request: has the meaning given in clause 9.1.

Charges: the charges, as set out in the Commercial Terms, payable by the Client for the supply of the Services (including any Deliverables) in accordance with clause 8.

Commencement Date: has the meaning given in clause 2.2.

Commercial Terms: the commercial terms set out in Schedule 1 of the Contract.

Client: means either SRUC (a Scottish charity with charity number SC003712 and a company registered in Scotland with number SC103046) or SAC Commercial Limited

thereunder), and the Privacy and Electronic Communications Regulations 2003 as amended.

Deliverables: any deliverables and results, provided by the Service Provider pursuant to the Services, as specified in the Commercial Terms.

Estimate: has the meaning given in clause 9.2.

Force Majeure Event: acts, events, omissions or accidents beyond a party's reasonable control, including strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, fire, flood or storm.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

New Supplier: another party chosen by the Client to take over the provision of all or part of the Services.

Potential Returning Employees: has the meaning given in clause 4.4.1.

Proposal: the Client's proposal to the Service Provider for the provision of the Services to the Client as set out overleaf.

Returning Employees

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended).

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email.

2 **Basis of contract**

2.1 The Proposal constitutes an offer to the Service Provider for the provision of the Services to the Client in accordance with the Commercial Terms and these Standard Conditions.

2.2 The Proposal shall only be deemed to be accepted when the Service Provider accepts the Proposal in writing, at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 These Standard Conditions, together with the Commercial Terms apply to the Contract to the exclusion of any other terms that the Service Provider seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 In the event of a conflict between the Commercial Terms and the Standard Conditions, the Commercial Terms shall prevail.

3 **Duration of the Contract**

- 4.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Client and/or the New Supplier.
- 4.4 To the extent lawfully permitted, the Service Provider shall, or shall procure that any sub-

- 4.5.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed as Potential Returning Employees;
 - 4.5.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Potential Returning Employees save for fulfilling assignments and projects previously scheduled and agreed with the Client;
 - 4.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed as Potential Returning Employees; and
 - 4.5.5 replace any of the personnel listed as Potential Returning Employees or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the list of Potential Returning Employees.
- 4.6 The Service Provider shall indemnify the Client (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Client and/or a New Supplier in connection with or as a result of:
- 4.6.1 any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, negligence, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Service Provider (or where relevant any sub-contractor of the Service Provider) or any other matter, event or circumstance occurring on or before the Subsequent Transfer Date;
 - 4.6.2 all and any claims in respect of all emoluments and outgoings in relation to the Returning Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Subsequent Transfer Date;
 - 4.6.3 any failure by the Service Provider (or where relevant any sub-contractor

- 5.1 The Service Provider shall:
- 5.1.1 supply the Services and the Deliverables to the Client in accordance with Applicable Laws and the Contract in all material respects;
 - 5.1.2 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Service Provider's industry, profession or trade;
 - 5.1.3 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - 5.1.4 co-operate with the Client in all matters relating to the Services, and comply with the Client's instructions;
 - 5.1.5 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises from time to time (where the Service Provider is present on the Client's premises);
 - 5.1.6 before the date on which the Services are to start, obtain and at all times maintain during the term of this Contract, all necessary licences and consents required in respect to the Services and comply with all Applicable Laws;
 - 5.1.7 not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
 - 5.1.8 hold all Client Materials and Client Data in safe custody at its own risk and maintain the Client Materials in good condition until returned to the Client, and not dispose of or use the Client Materials or Client Data other than in accordance with the Client's written instructions or authorisations; and
 - 5.1.9 notify the Client in writing immediately upon the occurrence of a change of control of the Service Provider (where the Service Provider is a company).

5.2 Time is of the essence in relation to any performance dates for the Service Provider. If the Service Provider fails to meet the relevant deadlines, then (without prejudice to any other rights or remedies available to the Client) the Client shall be entitled to terminate the Contract immediately and to claim any damages or compensation payable by the Service Provider in respect of the Contract.

5.1.1

employees, agents, representatives, contractors, including sub-contractors, and Substitutes as if they were the acts and omissions of the Service Provider itself.

5.4 Nothing in this Contract shall prevent the Service Provider from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of the Contract provided that:

5.4.1 such activity does not cause a breach of any of the Service Provider's obligations under this Contract; and

5.4.2 the Service Provider shall not engage in any such activity which is directly in contradiction to or conflicts with the Services without the prior written consent of the Client.

6 **Individual Service Provider itself.**

8.8 All payments by the Client shall be considered to be advance payments until such time as the Client has confirmed that the Contract has been performed satisfactorily.

9 **Changes to Services**

9.1 If the Client wishes to change the scope of the Services (including Client requests for additional services), it shall submit details of the requested change to the Service Provider in writing (a "**Change Request**").

9.2 Upon receipt of a Change Request, the Service Provider shall, within a reasonable time, provide a written estimate (an "**Estimate**") to the Client of:

9.2.1 the likely time required to implement the change;

9.2.2 any variations to the Charges arising from the change;

9.2.3 the time period for accepting the Estimate (being a period of no longer than 30 days); and

9.2.4 any other impact of the change on the terms of the Contract.

9.3 If the Client wishes to proceed with an Estimate, the Client shall confirm this in writing to the Service Provider within 14 days of receipt of an Estimate, and such confirmed Estimate shall constitute an amendment to the Commercial Terms. The Client shall have no obligation in respect of an Estimate until such time as the Estimate has been agreed in writing by the Client.

10 **Intellectual property rights**

10.1 Nothing in these Standard Conditions affects either party's rights in pre-existing Intellectual Property Rights. The Client shall retain all right, title and interest in the Client Materials and all Intellectual Property Rights therein.

10.2 The Service Provider acknowledges and agrees that the Client owns or licenses the Client Data. The Service Provider shall have no rights to access, use or modify the Client Data unless it has the prior written consent of the Client.

10.3 The Client grants to the Service Provider a revocable, non-transferable, non-exclusive, royalty-free, worldwide limited licence for the duration of the Services to use the Client's Intellectual Property Rights solely to the extent necessary to enable the Service Provider to comply with its obligations under the Contract.

10.4 The Service Provider hereby assigns to the Client (including by way of present assignation of future rights) free from all third party rights, all Intellectual Property Rights in the Deliverables and all materials embodying these rights to the fullest extent permitted by law (excluding any Intellectual Property Rights in the Service Provider Materials). Insofar as they do not vest automatically by operation of law or under this Contract, the Service Provider holds legal title in these rights on trust for the Client.

10.5

Service Provider is required by Applicable Laws to otherwise process that Client Personal Data. Where the Service Provider is relying on Applicable Laws as the basis for processing Client Personal Data, the Service Provider shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Service Provider from so notifying the Client on important grounds of public interest. The Service Provider shall immediately inform the Client if, in the opinion of the Service Provider, the instructions of the Client infringe

12.4.1.7 maintain adequate records, and, on the Client's request, make available such information as the Client may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Client or the Client's designated auditor, to demonstrate its compliance with the Data Protection Laws and this clause 12.

12.5 The Service Provider shall not, without the prior written consent of the Client (and in any event subject to the Service Provider providing the Client with reasonable evidence that such activity is being undertaken in full compliance with the Data Protection Laws):

12.5.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to Client Personal Data or transfer any Client Personal Data to the same; or

12.5.2 carry out, via itself or via any other processor, any processing of Client Personal Data, or transfer any Client Personal Data, outside of the UK, including processing Client Personal Data on equipment situated outside of the UK.

12.6 The Service Provider hereby indemnifies, and keeps indemnified, the Client (including

13.2.5 loss of or damage to goodwill; or

13.2.6 any indirect or consequential loss.

13.3 Subject to clause 13.1, the Client's total aggregate liability to the Service Provider, whether in contract, negligence, breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to an amount equal to the total Charges paid under the Contract.

13.4 This clause 13 shall survive termination of the Contract.

14 **Variation**

Except as set out in these Standard Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15 **Termination**

15.1 Without limiting or affecting any other right or remedy available to it, the Client may terminate the Contract:

15.1.1 with immediate effect by giving written notice to the Service Provider if:

15.1.1.1 where the Service Provider is a company, there is a change of control of the Service Provider;

15.1.1.2 where the Service Provider is an individual, the Service Provider is declared bankrupt or makes any arrangement with or for the benefit of his or her creditors;

15.1.1.3 where the Service Provider is an individual, he or she is

Confidential Information concerning the business, affairs, company's or suppliers of the other party, except as permitted by clause 17.4.2.

- 17.4.2 Each party may disclose the other party's Confidential Information:
 - 17.4.2.1 to its employees, officers, representatives, subcontractors, Substitutes 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, Substitutes or advisers to whom it discloses the other party's confidential information comply with this clause 17.4; and
 - 17.4.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.4.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 17.4.4 The Client is subject to the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and as g0w i

