**Schedule 33 (Scottish Law)**

***[Guidance Note: PPNs referenced throughout this Contract are not applicable to procurements under the Public Contracts (Scotland) Regulations 2015. Buyers may wish to take advice on relevant SPPNs, available at:*** [***https://www.gov.scot/collections/scottish-procurement-policy-notes-sppns/]***](https://www.gov.scot/collections/scottish-procurement-policy-notes-sppns/)

This is the schedule referred to in the foregoing agreement between [NAME OF PARTY] and [NAME OF PARTY] dated [DATE]

1. **When you should use this Schedule**

This Schedule 33 may be included to adapt the Core Terms and Schedules so that this Contract is under Scottish Law.

1. **Changes to the Core Terms**
	1. Clause 8.1.1(c), (Appointing Subcontractors) – *“assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.”* shall be replaced by *“novate, transfer or enter into assignation of its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.”*
	2. Clause 8.3.1e), (When Sub-Contracts can be ended) – "*Regulation 57 of the Public Contracts Regulations 2015*" shall be replaced by "*Regulation 58 of the Public Contracts (Scotland) Regulations 2015*".
	3. Clause 9.7, (Rights and protection) – *“All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer’s benefit by the Supplier for free.”* shall be replaced by *“The Supplier must enter into assignation of all third party warranties and covering the Deliverables for the Buyer’s benefit for free.”*
	4. Clause 23, (Other people’s rights in this contract) – "*Contract Rights of Third Parties Act (CRTPA)*" shall be replaced by *"Contract (Third Party Rights) (Scotland) Act 2017 (CTPRSA)*"*.* References to "*CRTPA*" shall be replaced by "*CTPRSA*".Clause 27.1, (Transferring responsibilities) – *“The Supplier cannot assign, novate or in any other way dispose of this Contract or any part of it without the Buyer’s written consent.”* shall be replaced by *“The Supplier cannot enter into assignation, novation or any other way of disposition of this Contract or any part of it without the Buyer’s written consent.”*
	5. Clause 27.3, (Transferring responsibilities) – *“The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.”* shall be replaced by *“The Buyer can enter into assignation, novation or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.”*
	6. Clause 39 (Resolving Disputes):
		1. Clause 39.3 – add the following wording: "*The governing law and jurisdiction provisions of CEDR’s Model Mediation Agreement shall be deemed to be amended to refer to the laws of Scotland and the Court of Session*."
		2. Clause 39.3 - The term "*Courts of England and Wales*" shall be amended to read *"Court of Session"*
		3. Clause 39.5 – Conduct of Arbitration.
			1. The words "*under the London Court of International Arbitration rules current at the time of the Dispute*" shall be deleted.
			2. The seat or legal place of the arbitration shall be amended so that it takes place in "*Edinburgh*" as opposed to "*London*".
			3. Add the following wording "*The arbitration shall be conducted in accordance with the Arbitration (Scotland) Act 2010 subject to disapplication in whole or in part of any of the default rules of the Scottish Arbitration Rules comprising Schedule 1 to that Act as the Parties may agree*."
	7. Clause 40 (Which law applies) – the words "*English Law*" shall be replaced by "*the Law of Scotland*".
2. **Changes to the Schedules**

***[Guidance Note: The pension schemes referenced in Part D of Schedule 7 may not apply where this Schedule is used. Buyers may wish to take advice as to whether these provisions are appropriate, or an alternative is required.]***

* 1. Schedule 1 – Definitions shall be amended as follows:
		1. (f) of the definition of “Auditor” shall be replaced by *“successors or any party that of any of the above that have entered into assignation with any party listed above”.*
		2. The definition of "CRTPA" shall be replaced by "CTPRSA" this Contract (Third Party Rights) (Scotland) Act 2017".
		3. In the definition of "Dispute" the reference to "*English law*" shall be replaced by "*the Law of Scotland*" and the reference to the "*English courts*" shall be replaced by the "*courts of Scotland*".
		4. The definition of EIR shall be amended to add "*or the Environmental Information (Scotland) Regulations 2004*".
		5. The definition of FOIA shall be amended to add, after "*the Freedom of Information Act 2000*" the words "*or the Freedom of Information (Scotland) Act 2002*".
		6. Part (d) of the definition of "Insolvency Event" will be deleted and replaced with "*that person has been served with a charge for payment which has expired, and* *a creditor has been granted an attachment order by a court, which is executed in relation to the property of that person, or such other process is enforced or pursued against the whole or any part of that person’s property".* In part (f) of the definition, (f)(iv) will be deleted in its entirety.
		7. In the definition of "Losses" theword *"tort"* shall be replaced with *"delict".*
		8. In part (a) of the definition of "Intellectual Property Rights*"* the words *"Know-How"* and *"trade secrets"* refer to pre-existing know-how and trade secrets only*.*
		9. "Working Day": the words "or public holiday in England and Wales" shall be replaced by "when banks in Edinburgh are open for business"
	2. Where Service Recipients want to join with the Buyer to contract collectively under this Contract, the following provisions of Schedule 17 – Service Recipients will be amended as follows:
		1. Paragraph 3.4 shall be amended to read "*Each of the Service Recipients will acquire a third-party right for the purposes of the CRTPSA and may enforce the relevant provisions of this Contract pursuant to CRTPSA*".
		2. Paragraph 3.6.2 shall be amended so that reference to "*CRTPA*" is replaced with "*CRTPSA*".
	3. Clause 1.5 of Annex 1(Form of Guarantee) of Schedule 23 – Guarantee shall be replaced by *“references to a person are to be construed to include that the Guarantee has person's that it may enter into assignation with or transferees or successors in title, whether direct or indirect;”.*
	4. Where a Guarantee is selected, the following provisions of Schedule 23 – Guarantee shall be amended as follows:
		1. Annex 1 – Form of Guarantee WHEREAS (B) "*deed*" replaced by "*contract*"
		2. Throughout the whole Schedule delete all references to "*deed of Guarantee*" merely express as "*Guarantee*"
		3. Clause 4.1 Delete references to "*England and Wales*" when referring to addresses.
		4. Clause 12 – the word "*assignment"* shall be amended to "*assignation*".
		5. Clause 14 – "*Contract (Rights of Third Parties) Act 1999*" shall be amended to "*Contract (Third Party Rights) (Scotland) Act 2017*".
		6. Clause 16 Governing Law (add "*and Jurisdiction*"). References to "*Courts of England*" to be replaced by *"Courts of Scotland*"*.* References to "*English*" to be replaced by "*Scottish*". References to "*England and Wales*" to be replaced by *"Scotland"*.
		7. Alter execution strip to read as follows:

**IN WITNESS WHEREOF** these presents consisting of this and the preceding [---] pages, together with the schedule in [---] parts [and plan], are executed as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **SUBSCRIBED** for and on behalf of [**NAME OF COMPANY**] by [a director][the secretary][an authorisedsignatory] in the presence of a witness on the [**DATE**] day of [**MONTH**][**YEAR**] at [**PLACE OF SUBSCRIPTION**]: |  | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | [**Director**][**Secretary**][**Authorised Signatory**] |
|  |  |  |  |
| Witness signature |  |  |
|  |  |  |
| Witness name  |  |  |
| (block capitals) |  |  |
|  |  |  |
| Witness address |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

* 1. Paragraph 1.5.4 of Schedule 27 – Key Subcontractors shall be replaced by *“a provision enabling the Supplier to enter into assignation, novation or otherwise transfer any of its rights and/or obligations under the Key Sub Contract to the Buyer;”.*
	2. Paragraph 3.1.4 (Buyer due diligence requirement) of Schedule 28 – ICT Services shall be replaced by “*existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, entered into assignation with or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.”*
	3. Changes to Schedule 30 – Exit Management:
		1. Paragraph 2.4.2 (Supplier must always be prepared for contract exit) shall be amended to read *“procure that all licences for Third Party Software and all Sub-Contracts shall be able to enter into assignation and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.”.*
		2. Throughout the whole Schedule delete all references to *"assignment"* and replace with *"assignation"*.
		3. Paragraph 8.2.3 (Assets, Sub-contracts and Software): *“…the Buyer requires to be assigned or novated to the Buyer…”* shall be replaced by *“the Buyer requires an assignation to be entered into or novated to the Buyer…”.*
		4. Paragraph 8.6 shall be replaced by *“The Supplier shall as soon as reasonably practicable enter into an assignation or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignation.”,*
		5. Paragraph 8.7.2 shall be replaced by *“once a Transferring Contract is novated or an assignation entered into with the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.”.*
		6. Paragraph 8.9 shall be replaced by *“The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is as a result of assignation or novation to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignation or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.”.*
		7. Paragraph 1.4.4 of Annex 1 (Scope of Termination Assistance) shall be replaced by *“key support contact details for third party supplier personnel under contracts which are to be novated or an assignation entered into to the Buyer pursuant to this Schedule,”.*
	4. Paragraph 8.2.4 (Limits of Use) of Schedule 35 – Lease Terms shall be replaced by *“The Buyer must not allow to exist any lien, assignationnor mortgage pledge or otherwise deal with the Equipment in a manner inconsistent with either the Supplier's interest or the Owner’s interest in the Equipment.”.*
	5. Changes to Schedule 36 – Intellectual Property Rights:
		1. Throughout the whole Schedule delete all references to *"assignment"* and replace with *"assignation".*
		2. Throughout the whole Schedule delete all references to *"assign in writing"* and replace with *"enter into an assignation in writing".*
		3. Throughout the whole Schedule delete all references to *"must promptly assign to the Buyer"* and replace with *"* must promptly enter into an assignation to the Buyer*".*
	6. The following wording shall be read in to each of the Schedules to this Contract, before Paragraph 1: "*This is the schedule referred to in the foregoing agreement between [NAME OF PARTY] and [NAME OF PARTY] dated [DATE].*"
1. **References to Legislation**

Where legislation applicable to England and Wales only is expressly mentioned in this Contract it shall have the effect of substituting the equivalent legislation applicable in Scotland.