

Terms and Conditions for the Supply of Services by AM Bid Services Ltd

1 Definitions

1.1 In these terms and conditions the following definitions apply:

"Affiliate" of a party means any entity which directly or indirectly owns or controls, is directly or indirectly owned or controlled by, or is under common ownership or control with, that party;

"Business Day" means a day other than Saturday, Sunday and public holidays when clearing banks generally are open for non-automated business in Edinburgh;

"Commencement Date" means the date on which provision of the Services shall commence as specified in the Order;

"Confidential Information" means any commercial, financial or technical information relating to the services, plans, projects, finances, products, know-how or trade secrets, which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

"Contract" means the agreement between the Supplier and the Customer for the supply and purchase of the Services and the Deliverables incorporating these Terms and the Order;

"Customer" means the customer whose details are set out in the Order;

"Customer Materials" means all documents, materials, data (and the media on which they are each recorded), supplied by the Customer to the Supplier;

"Deliverables" means all documents, software and materials produced by the Supplier or its agents in relation to the Services and to be supplied to the Customer including without limitation any data and reports, as set out in the Order;

"Intellectual Property Rights" means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, database rights, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the Supplier is or may be entitled; and
- (f) in whichever part of the world existing;

"Order" means the letter of engagement or other invitation to treat from the Supplier addressed to the Customer setting out the scope of the Services;

"Services" means the services and other Deliverables set out in the Order to be supplied by the Supplier to the Customer;

"Specification" means the description or specification for the Services set out in the Order;

"Supplier" means AM Bid Services Ltd, registered in Scotland under number SC485842 and having its registered office at 14 Newmains Holding, North Berwick, EH39 5BL;

"Supplier Materials" means all documents, materials, data, proprietary software (and the media on which they are each recorded), which are owned by the Supplier at the date of the Contract or which are subsequently created by the Supplier;

"Terms" means the standard terms and conditions of business of the Supplier set out in this document;

"Value Added Tax or VAT" means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the supply of the Services.

1.2 Unless the context otherwise requires:

1.2.1 each gender includes the others;

1.2.2 the singular includes the plural and vice versa;

1.2.3 references to the Contract include the Terms and the Order;

1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

1.2.5 clause headings do not affect their interpretation;

1.2.6 general words are not limited by example; and

1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 Application of the Terms

2.1 An Order will be deemed to be an offer to purchase Services from the Supplier on these Terms.

2.2 Orders are not binding unless signed by the Supplier in writing. The Supplier reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.

2.3 Quotations will be deemed to be an invitation to treat by the Supplier to supply Services on and subject to the Terms, and do not constitute an offer to sell or supply. If the Customer wishes to purchase Services the subject of a quotation, it will need to place an Order.

2.4 The Customer agrees that, in placing an Order, it has not relied on any representation or statement by the Supplier not set out in the Contract.

2.5 These Terms apply to and form part of the Contract for the supply of the Services by the Supplier to the Customer. They supersede any previously issued terms and conditions of supply.

2.6 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract.

2.7 No variation of the Terms or to an Order, or to a quotation from the Supplier will be binding unless expressly agreed in writing (which may be by e-mail) and executed (or sent in the case of e-mail) by a duly authorised signatory of the Supplier.

- 2.8 A contract will be formed upon the earlier to occur of:
- 2.8.1 written acceptance (which may be by e-mail) by the Supplier of the Customer's Order; or
 - 2.8.2 the execution (which can be by e-mail) of a specific written agreement by both the Supplier and the Customer.

3 Price and payment

- 3.1 The price (subject to variation as set out in this Agreement) for the Services will be as set out in the Order. If the Customer requests any additional Services beyond the scope of Services as set out in the Order, the Supplier will, as soon as practicable, advise the Customer of any additional costs which will arise and if the Customer confirms the additional Services are to be provided or continues to instruct the Supplier then such additional costs (which may be fixed or if not will be calculated in accordance with the Supplier's standard scale of charges in force on the date of formation of the Contract) will apply and be payable. If the Customer requires the additional Services to be supplied prior to any price being agreed the additional price will be calculated in accordance with the Supplier's standard scale of charges in force on the date of formation of the Contract unless the Supplier agrees otherwise.
- 3.2 The price does not include Value Added Tax which will be charged in addition at the then applicable rate.
- 3.3 The price is payable as set out in the Order.
- 3.4 Unless a fixed or capped price is agreed for any Service, Services are charged on a time and materials basis at the Supplier's rates as set out in the Order. Where an estimate is provided this will be based on the initial agreed scope of work set out in the Order and the Supplier's best estimate of the likely cost, but shall not be binding on the Supplier. Further, in the event that the Customer fails to provide or delays in providing access or information as required under Clause 6.2, the Supplier may charge an uplift on the price of up to 25% to reflect additional operating costs and a short timescale premium.
- 3.5 The Supplier may vary its rates and/or prices for Services on an anniversary of the Commencement Date. The Supplier will give the Customer not less than 30 days' written notice of such variations. Where a proposed increase is unacceptable to the Customer, it may terminate the Contract on 20 days' written notice to the Supplier.
- 3.6 Unless stated otherwise in the Order, travel costs incurred by the Supplier in providing the Services will be reimbursed at cost.
- 3.7 The Supplier will invoice the Customer monthly in arrears unless stated otherwise in the Order. Invoices will include all information necessary to enable the Customer to check their accuracy. However the Supplier reserves the right, notified to the Customer in advance at time of accepting an Order, to require all or part of the anticipated price to be paid in advance of commencement of the Services under an Order.
- 3.8 The Customer will pay all invoices (unless disputed in good faith):
- 3.8.1 in full, without deduction or set-off other than as required by law, in cleared funds within 14 days of date of invoice;
 - 3.8.2 to the Supplier's nominated bank account.
- 3.9 Where sums due are not disputed in good faith and are not paid in full by the due date:



- 3.9.1 the Supplier may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of the Bank of England from time to time in force;
- 3.9.2 interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 3.10 VAT will be charged by the Supplier and paid by the Customer at the then applicable rate.
- 3.11 If the Customer disputes any invoice or is otherwise not satisfied with the provision of Services in any way, it must give notice in writing to the Supplier's managing director within 7 days of receipt of the invoice or provision of the Services as appropriate or will be deemed to have accepted the invoice and/or Services as provided. If such notice is issued, the Supplier's managing director will consider the notice in good faith and aim to respond within 7 days with either his decision or his request for further information, with the intent of making a final decision (which will be binding on all parties) within 28 days of receipt of the initial notice.

4 Provision of services

- 4.1 The Supplier will provide the Services to the Customer in accordance with the Contract and the Specification.
- 4.2 The Services will begin on the Commencement Date and be performed for the period set out in the Order or until the earlier termination of the Contract.
- 4.3 Whilst the Supplier will use reasonable endeavours to meet any milestone dates set out in the Order, such dates are approximate only, and time of performance is not of the essence.
- 4.4 The Supplier will not be liable for any delay in or failure of performance of the Services (including any failure to achieve any milestone or other date) so far as caused by an event of Force Majeure or the Customer's failure to perform its obligations under the Contract.
- 4.5 The Supplier may make any changes to the Services:
 - 4.5.1 needed to comply with applicable law or safety requirements; or
 - 4.5.2 which do not materially affect the nature or quality of the Services;and will notify the Customer in advance of such changes.
- 4.6 Where the Services include the provision of training by the Supplier, the Supplier shall provide the level of training set out in the Order to the Customer's employees or consultants at such times and locations as are reasonably agreed.

5 Supplier's obligations

- 5.1 The Supplier will:
 - 5.1.1 perform the Services using reasonable care and skill;
 - 5.1.2 use sufficient personnel who have appropriate skills and experience for their duties;
 - 5.1.3 ensure that the Services comply with the Specification;
 - 5.1.4 obtain and maintain all licences, permits and other consents required for its performance of the Services;

- 5.1.5 comply with all applicable laws and regulations; and
- 5.1.6 on completion of the Services or earlier termination of the Contract return all Customer Materials other than a back up copy of any such materials required for the Supplier's records.

6 Customer's obligations

- 6.1 The Customer will pay the price for the Services in accordance with the Contract.
- 6.2 The Customer will:
 - 6.2.1 afford the Supplier reasonable access to the Customer's personnel and premises; and
 - 6.2.2 provide the Supplier such facilities, information and assistance (ensuring that information is complete and accurate);

in each case to the extent and in accordance with the Supplier's requested timescales as required to allow the Supplier to perform the Services.
- 6.3 The Customer will also:
 - 6.3.1 co-operate fully with the Supplier and follow the Supplier's reasonable instructions in relation to the performance of the Services;
 - 6.3.2 obtain and maintain all necessary licences and consents for the performance of the Services;
 - 6.3.3 keep all documents, equipment, materials and other Supplier property ("Supplier Materials") at the Customer's premises safely and at its own risk and in the same condition as they were in when supplied (fair wear and tear excepted); and
 - 6.3.4 not dispose of or use any Supplier Materials without the Supplier's prior written agreement.
- 6.4 The Services are provided at the Customer's request and the Customer is responsible for verifying that the Services are suitable for its own needs. In particular, the terms implied by sections 13, 14 and 15 of the Supply of Goods and Services Act 1982 are expressly excluded.

7 Failure of or delay in performance

- 7.1 If the Supplier is prevented or delayed in performing the Services by any cause attributable to the Customer, the Supplier (without prejudice to its other rights):
 - 7.1.1 may suspend performance of the Services until the Customer remedies its default;
 - 7.1.2 will not be liable for any costs or losses sustained by the Customer as a result of such suspension; and
 - 7.1.3 may charge the Customer (and the Customer will pay in accordance with the Contract) costs or losses incurred by the Supplier arising from the Customer's default, subject to clause 8.

8 Liability

- 8.1 The Supplier does not exclude its liability:
- 8.1.1 for death or personal injury caused by its negligence; or
 - 8.1.2 for fraud or fraudulent misrepresentation.
- 8.2 The Supplier will be liable to the Customer for direct damage to tangible property in an amount which will not exceed the total price of the Services under the Contract.
- 8.3 Neither party will be liable for:
- 8.3.1 loss of or inability to use data;
 - 8.3.2 any form of indirect, consequential or special loss; or
 - 8.3.3 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect;
- and, in each case, however arising.
- 8.4 Other than as set out above, the Supplier limits its liability (however arising) in respect of or in connection with the Services, and otherwise in connection with the Contract, to the lower of the price paid under the Order and the Supplier's PI insurance limit from time to time.

9 Intellectual Property Rights

- 9.1 Nothing in the Contract will affect the rights (including Intellectual Property Rights) in the Supplier Materials which are and shall remain vested in the Supplier.
- 9.2 To the extent that the Supplier Materials are used or incorporated into the Services or any part of the Deliverables then the parties acknowledge and agree that the Customer is licensed to use the same upon the terms set out in clause 9.3.
- 9.3 The Supplier hereby grants to the Customer a royalty-free, worldwide licence, revocable only for breach by the Customer of the terms of the Contract, to use the Supplier Materials solely to the extent necessary to use the results of the Services. The Customer will not use the Supplier Materials for any other purpose.
- 9.4 The Supplier acknowledges that it shall acquire no rights in or to the Customer Materials except to the extent necessary to provide the Services.
- 9.5 The Supplier will defend or, at its option, settle any action brought against the Customer arising from any claim that the receipt by the Customer of the Services or use by it of the results of the Services, in both cases in accordance with the Contract, infringes any third party intellectual property right, and indemnify the Customer against all reasonable costs and expenses incurred by the Customer in connection with such claim.
- 9.5.1 The Supplier's obligations under this clause 9.5 will not apply to Services received, or where their results are modified or used, by the Customer other than in accordance with the Contract. The Customer will indemnify the Supplier against all reasonable costs and expenses incurred by the Supplier in connection with any claim arising from such receipt, modification or use.
 - 9.5.2 The Supplier's obligations under clause 9.5 are conditional on the Customer:

- 9.5.2.1 promptly advising the Supplier in writing of any claim or action;
 - 9.5.2.2 making no admission as to, or settlement or compromise of, any claim or action without the Supplier's prior written consent;
 - 9.5.2.3 giving the Supplier sole conduct of any defence and any settlement negotiations; and
 - 9.5.2.4 co-operating fully with the Supplier at the Supplier's expense and providing the Supplier with all reasonable assistance in the defence or settlement of such claim or action.
- 9.5.3 The provisions of this clause 9 set out the Supplier's entire liability and the Customer's sole right in respect of third party infringement of any intellectual property right.

10 Confidentiality

- 10.1 Each party shall keep confidential all Confidential Information of the other party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:
- 10.1.1 any information which was in the public domain at the date of the Contract;
 - 10.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 10.1.3 is independently developed by the other party without using information supplied by the first party; or
 - 10.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 10.2 This clause 10 will remain in force for a period of five years from the Commencement Date.

11 Data Protection

- 11.1 The terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" shall have the meanings set out in the Data Protection Act 1998 until the EU General Data Protection Regulation comes into effect in the United Kingdom and thereafter shall have the meanings set out in such Regulation or in such UK law as implements or reflects it in the United Kingdom from time to time ("**Data Laws**").
- 11.2 The parties acknowledge that the Customer is a Data Controller and the Supplier is a Data Processor in relation to any Personal Data provided to it by the Customer for the purposes of providing the Services ("**Customer Data**").
- 11.3 The Supplier shall:
- 11.3.1 process the Customer Data only on the written instructions of the Customer under this Agreement or otherwise as instructed by the Customer, unless it is otherwise required by applicable law;
 - 11.3.2 provide appropriate technical and organisational measures against unauthorised or unlawful Processing, accidental loss or destruction of or damage to the Customer Data;



- 11.3.3 take all reasonable steps to ensure the reliability of its staff who have access to the Customer Data and ensure that access to the Customer Data is limited to such authorised staff only who require access to it for the purpose of complying with the Supplier's obligations under this Agreement;
 - 11.3.4 not Process or transfer the Customer Data outside of the UK and European Economic Area (or any country deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC) without the prior written consent of the Customer and putting in place adequate protection for the Customer Data to enable compliance by the Customer and the Supplier with their obligations under the Data Laws;
 - 11.3.5 at the Customer's reasonable request, provide to the Customer and any relevant regulator all information and assistance necessary or desirable to demonstrate or ensure compliance with the obligations in this clause;
 - 11.3.6 take the measures that are expressed to be obligations of the Data Processor under applicable Data Laws in order to ensure the appropriate level of security for the Customer Data; and
 - 11.3.7 at the written election of the Customer, either: securely destroy the Customer Data (including all copies of it); or return the Customer Data (including all copies of it) to the Customer in the format required by the Customer which retains the integrity of the Customer Data, acknowledging that either may affect the provisions of services by the Supplier; and
 - 11.3.8 shall not appoint any third party, including consultant, subcontractor, agent or professional adviser or other third party who may receive and/or have access to Customer Data without the prior written consent of the Customer which shall not be unreasonably withheld or delayed.
- 12 **Force Majeure**
- 12.1 Force Majeure means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest, strike, lockout or boycott or other industrial action; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service. Failure to pay or be paid is not Force Majeure.
 - 12.2 A party will not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 12.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 12.2.2 uses reasonable endeavours to minimise the effects of that event.
 - 12.3 If, due to Force Majeure, a party:
 - 12.3.1 is or will be unable to perform a material obligation; or
 - 12.3.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days;the other party may, within 30 days, terminate this Contract on immediate notice.

13 Termination

- 13.1 The Contract may be terminated forthwith at any time by either party on written notice to the other if:
- 13.1.1 the other commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or is not remedied within 30 days of written notice requiring that party to do so;
 - 13.1.2 the other: (i) suspends or threatens to suspend payment of its debts, (ii) is unable to pay its debts as they fall due or (iii) is unable to pay its debts (being a company) within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) there is any partner to whom any of the foregoing applies;
 - 13.1.3 the other: (i) negotiates with its creditors for rescheduling of its debts, (ii) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction or (iii) makes an application to court for protection from its creditors generally;
 - 13.1.4 the other passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other, other than solely in relation to a solvent amalgamation or reconstruction;
 - 13.1.5 a receiver or administrative receiver may be or is appointed in relation to the other or any of its assets;
 - 13.1.6 any creditor of the other attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the other's assets, and such attachment or process is not discharged within 14 days;
 - 13.1.7 the other takes or suffers any action similar to any of the above in any jurisdiction;
 - 13.1.8 the other suspends trading, ceases to carry on business, or threatens to do either;
 - 13.1.9 the other (being an individual) dies or ceases to be capable of managing his own affairs; or
 - 13.1.10 the other is subject to an event of Force Majeure under clause 12.3.
- 13.2 On termination of the Contract for any reason:
- 13.2.1 the Customer will within 14 days pay all invoices of the Supplier then outstanding and not disputed in good faith;
 - 13.2.2 the Supplier will, within 14 days, invoice the Customer for all Services provided but not yet invoiced and the Customer will pay such invoice within such 14 days (unless the invoice is disputed in good faith);
 - 13.2.3 each party will, subject to clause 5.1.6 above, within 14 days return any materials of the other then in its possession or control;
 - 13.2.4 the accrued rights and liabilities of the parties will not be affected; and
 - 13.2.5 any provisions of these Terms which expressly or by implication are to survive termination will do so.

14 General

14.1 Time

Unless stated otherwise, time is not of the essence of any date or period specified in these Terms.

14.2 No set-off

All payments by the Customer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

14.3 Relationship

The parties are independent businesses and not principal and agent, partners, or employer and employee.

14.4 Severability

If any part of these Terms is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Terms and the remaining provisions of the Terms will otherwise remain in full force.

14.5 Notices

Notices under the Contract will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:

14.5.1 by first-class recorded delivery post: two Business Days after posting;

14.5.2 by airmail: seven Business Days after posting;

14.5.3 by hand: on delivery; and

14.5.4 by e-mail: on receipt of a delivery or read receipt mail from the correct address.

14.6 Waiver

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

14.7 Rights of Third Parties

The Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14.8 Priority

These Terms prevail over those of the Order unless expressly varied in writing.

14.9 Entire Contract

The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

14.10 Succession

The Contract will bind and benefit each party's successors and personal representatives.

14.11 Governing Law and Jurisdiction

The Contract will be governed by the law of Scotland and disputes will be submitted to the non-exclusive jurisdiction of the courts of Scotland.