

TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF SOFTWARE

These conditions may only be varied with the written agreement of the Board. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by the Board.

1. DEFINITIONS

In these Conditions:

"Board" means the Scottish Legal Aid Board.

"Contractor" means the person, firm or company to which the Contract is issued.

"Services" means the services to be provided as specified in the Operational requirement and shall, where the context so admits, include any materials, articles and Software to be supplied thereunder.

"Software" means the Contractor's Software, Contractor's code and the third party Software.

"Premises" means the location where the services are to be performed, as specified in the Operational requirement.

"Contract" means the contract between the Board and the contractor consisting of the Operational requirement, the Contractor's response thereto, these Conditions and any other documents (or parts thereof) specified in the Operational requirement.

"Operational requirement" means the document setting out the Board's requirements for the Contract.

2. VARIATION OF THE SERVICES AND SOFTWARE

The Board reserves the right by notice to the Contractor to modify the quality or quantity of the Services or Software and any alteration to the Contract price or the completion date arising by reason of such modification shall be agreed by the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 36.

3. IMPLEMENTATION PLAN

3.1 Both parties shall perform all their obligations under the Contract in accordance with the implementation plan (to be agreed between the parties).

3.2 In the event that the Contractor fails to fulfil an obligation by the date specified in the implementation plan for such fulfilment, the Contractor shall, at the request of the Board and without prejudice to the Board's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no extra charge to the Board.

4. LICENCES TO USE SOFTWARE

4.1 The Board shall not acquire title to the Intellectual Property Rights in the Contractor's Software or any third party Software which is supplied hereunder.

4.2 In consideration of the payment of the relevant Charges the Contractor hereby grants to the Board, a non-exclusive licence to use the Contractor's Software. Such licence to use the Contractor's Software, subject to Condition 16.7, shall be perpetual and irrevocable. In the case of any Contractor's Software for which the Charges are periodic, the licence to use shall subsist, subject to Condition 16.7, until the expiry of written notice by the Board terminating such licence.

4.3 In consideration of the payment of the relevant Charges in respect of third party Software supplied hereunder, the Contractor either:

4.3.1 hereby grants to the Board a sub-licence to use the third party Software, subject to Condition 4.4 and Condition 4.5; or

4.3.2 shall procure, prior to the commencement of the acceptance procedures period (to be agreed between the parties) that the third party grants to the Board a licence to use the third party Software, subject to Condition 4.4 and Condition 4.5.

4.4 The Board shall be entitled to engage a third party to use the Contractor's Software and third party Software subject to and in accordance with the Contract on behalf of the Board that such third party shall have entered into a confidentiality undertaking in accordance with Condition 15.5.2.

4.5 The Board shall be entitled to copy the Contractor's Software and third party Software in order to create an archival copy and a back-up copy of the same. When copying Software the Board shall include the original machine readable copyright notice, and a label affixed to the media identifying the Software and stating: "This medium contains an authorised copy of copyrighted software which is the property of (the Contractor or the third party Software owner).

4.6 The Contractor shall place the source code of the Contractor's Software in escrow with ESCROW or an equivalent organisation on the basis of the appropriate standard agreement or on such other terms as the Board and the Contractor and ESCROW or such other equivalent organisation shall agree.

5. INSPECTION OF THE PREMISES AND NATURE OF THE SERVICES

5.1 The Contractor confirms that it has had the opportunity to inspect the Premises, and that the contractor either:

5.1.1 Has satisfied itself that the Premises are suitable for the installation of the Software and the supply of the Services; or

5.1.2 Will advise the Board in writing within 14 days of the date of installation of any matter, or aspect of the Premises, which is inadequate or not suitable for installing the Software or supplying the Services.

5.2 The Contractor acknowledges that it is not entitled to recover any additional costs from the Board which arise from any matter, or aspect of the Premises, which has not been notified to the Board in accordance with Condition 5.1.2 and which is inadequate or unsuitable for installing or operating the Software or supplying the Services. For the avoidance of doubt, the Board warrants that the Premises do not suffer from any latent structural defect.

6. CONTRACTOR'S STATUS

6.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Board. Accordingly:

(a) the contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Board, and

(b) nothing in the contract shall impose any liability on the Board 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 the Board to the Contractor that may arise by virtue of either a breach of the Contract or any negligence on the part of the Board, its staff or agents.

7. HEALTH AND SAFETY

The Contractor represents and warrants to the Board that the Contractor has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Software to ensure that the Software is designed and made so as to be safe and without risk to the health and safety of persons using the same, and that it has made available to the Board adequate information about the use for which the Software has been designed and which has been tested and about any conditions necessary to ensure that when put to use the Software will be safe and without risk to health. The Contractor shall indemnify the Board against all actions, suits, claims, demands, losses, charges, costs and expenses which the Board

may suffer or incur as a result of or in connection with any breach of this Condition.

8. ACCEPTANCE

8.1 The Contractor shall, during the acceptance procedures period (to be agreed between the parties), make available the Software for the acceptance procedures (to be agreed between the parties) to be performed.

8.2 The Board shall accept the Software in accordance with the acceptance procedures.

8.3 The acceptance procedures shall be recorded as successful and the Contractor notified accordingly where all the acceptance criteria (to be agreed between the parties) are met.

8.4 The acceptance procedures shall be recorded as unsuccessful and the Contractor notified accordingly where any of the acceptance criteria are not met.

8.5 If the acceptance procedures, in respect of any item of Software, have not been recorded as successful pursuant to Condition 8.3 by the acceptance date (to be agreed between either parties) the Board shall have the right either:

8.5.1 to accept such items of Software as the Board may decide and pay a pro-rated Charge therefore or such other charge, as may be agreed between the parties.

8.5.2 without prejudice to its other rights and remedies, to extend the acceptance procedures period for a period or periods, specified by the Board, during which the Contractor shall correct the fault which caused the acceptance procedures to be recorded as unsuccessful; or

8.5.3 to terminate the Contract in accordance with Condition 16.3.

8.6 In the event that the Board extends the acceptance procedures period for a period pursuant to Condition 8.5.2 and the acceptance procedures have not been recorded as successful by the end of that period, the Board shall have the right either:

8.6.1 to accept such items of Software as the Board may decide and pay a pro-rated Charge therefore or such other charge, as may be agreed by the parties.

8.6.2 to extend the acceptance procedures period for a further period in accordance with Condition 8.5.2; or

8.6.3 to terminate the Contract in accordance with Condition 16.3.

9. TITLE AND RISK

9.1 The Board shall not acquire title to the media on which the Software is supplied under the Contract.

9.2 Risk in all media supplied under the Contract shall vest in the Board upon acceptance of the Software in accordance with Condition 8.

10. CHARGES

10.1 In consideration of the supply of the Software in accordance with the terms of the Contract, the Board shall pay the Charges specified in the Contract.

10.2 Payment shall be made within thirty (30) days of receipt by the Board of a valid invoice, in accordance with the Contract.

10.3 The Charges are exclusive of Value Added Tax.

10.4 In the event that the Contractor, in accordance with the terms of the Contract, enters into a sub-contract in connection with the Contract, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due thereunder to the sub-contractor within a specified period, not to exceed 30 days, from the date

of receipt of a valid invoice as defined by the terms of sub-contract.

11. VALUE ADDED TAX

The Board shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law, from time to time.

12. WARRANTIES AND REPRESENTATIONS

12.1 The Contractor warrants and represents that:

12.1.1 the contractor has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

12.1.2 at the acceptance date, the Software shall meet the acceptance criteria;

12.1.3 at the acceptance date the Software shall operate in accordance with its technical specifications;

12.1.4 the Software shall operate in and be fully compatible with the operating environment (to be agreed between the parties);

12.1.5 the Board's use and operation of the Software shall not infringe any industrial, commercial or other Intellectual Property Rights of any third party.

12.1.6 the Contractor has the full capacity and authority to grant the licence referred to in Condition 4;

12.1.7 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures; and

12.1.8 the Board shall have the right to quiet possession of the Software.

12.2 Except as expressly stated in the Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness or purpose) are hereby excluded to the extent permitted by law.

13. LIMITATION OF LIABILITY

13.1 Neither party excludes or limits liability to the other party for death or personal injury.

13.2 Subject always to Condition 13.1, the liability of either party for defaults shall be as set out in this Condition 13.2.

13.2.1 Subject to any right to repudiate, rescind or otherwise terminate the Contract which may arise hereunder or otherwise at law or in equity, the liability of either party in respect of any default shall be for damage only.

13.2.2 The aggregate liability of either party for all defaults resulting in direct loss of or damage to the property of the other under the Contract shall be limited to damages which in no event shall exceed £5,000,000.

13.2.3 Subject always to Condition 13.1, the aggregate liability under the Contract of either party for all defaults (other than those governed by Condition 13.2.2) shall be limited to damages which in no event shall exceed the total charges paid and payable under the Contract.

13.2.4 Without prejudice to the generality of Condition 13.1 in no event shall either party be liable to the other for:

13.2.4.1 loss of profits, business, revenue, goodwill or anticipated savings; and/or

13.2.4.2 indirect or consequential loss or damage.

13.2.5 The provisions of Condition 13.2.4 shall not be taken as limiting the right of the Board to claim from the Contractor for:

13.2.5.1 additional operational and administrative costs and expenses; and

13.2.5.2 expenditure or charges rendered unnecessary as a result of any default by the Contractor.

13.3 The parties expressly agree that should any limitation or provision contained in Condition 13 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

14. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

14.1 Subject always to the Board's proper observance of its obligations under this Condition 14, the Contractor shall indemnify the Board against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right by the use or possession of the Software by the Board or in connection with the Services.

14.2 The Contractor shall forthwith notify the Board if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Software by the Board or which may affect the Services.

14.3 The Board shall forthwith notify the Contractor if any claim or demand is made or action brought against the Board for infringement or alleged infringement of any Intellectual Property Right by reason of the use or possession of the Software by the Board or in connection with the Services. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Board hereby agrees to grant the Contractor exclusive control of any such litigation and such negotiations.

14.4 The Board shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Board or the Contractor for infringement or alleged infringement of any Intellectual Property Right by reason of the use or possession of the Software by the Board or in connection with the Services and shall be repaid all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in doing so.

14.5 The Board shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement of any Intellectual Property Right by the Board or the Contractor in respect of the use or possession of the Software by the Board or in connection with the Services.

14.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in respect of the Software or in connection with the Services or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense either:

14.6.1 modify or replace the Software and the Services, without reducing the performance and functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Software and Services; or

14.6.2 procure a licence to use the Software and perform the Services on terms which are acceptable to the Board.

14.7 The foregoing provisions of this Condition 14 shall not apply insofar as any such claim or demand or action is in respect of:

14.7.1 any use by or on behalf of the Board of anything supplied by the Contractor under the Contract in combination with any item not so supplied where such use of the item directly gives rise to the claim, demand or action; or

14.7.2 any modification carried out by or on behalf of the Board to any item supplied by the Contractor under the Contract if such modification is not authorised by the Contractor in writing; or

14.7.3 any use of the Software not reasonably to be inferred from the specification or requirements of the Board; or

14.7.4 the Board's unreasonable refusal to use a modified or replacement Software supplied pursuant to Condition 14.6.

14.8 If the contractor has availed itself of its rights to modify the Software or Services under Condition 14.6.1 or to procure a licence in accordance with Condition 14.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Contractor shall have no further liability thereafter under this Condition 14 in respect of the said claim, demand or action.

14.9 If a replacement or modification in accordance with Condition 14.6.1 above is not possible so as to avoid the infringement or the Contractor has been unable to procure a licence in accordance with Condition 14.6.2, the Contractor shall be liable for the value of replacement Software or Services or part thereof together with associated costs incurred in implementing such replacements.

14.10 The Board hereby warrants that any instructions given in relation to the Contractor's use of any third party item supplied directly or indirectly to the Board shall not cause the Contractor to infringe any third party's Intellectual Property Rights in such item.

14.11 The foregoing states the entire liability of the Contractor with regard to infringement of any Intellectual Property Right by the use or possession of the Software by the Board or in connection with the Services.

15. CONFIDENTIALITY

15.1 Without prejudice to the application to section 34 of the Legal Aid (Scotland) Act 1986 to any confidential information the Contractor acknowledges that any confidential information obtained from or relating to the Board, its servants or agents is the property of the Board.

15.2 In further consideration of the Board executing the Contract with the Contractor, the Contractor hereby warrants that:

15.2.1 the Contractor (and any person employed or engaged by the Contractor in connection with the Contract in the course of such employment or engagement) shall only use confidential information for the purposes of the Contract.

15.2.2 the Contractor (and any person employed or engaged by the Contractor in connection with the Contract in the course of such employment or engagement) shall not disclose any confidential information to any third party without the prior written consent of the Board.

15.2.3 the Contractor shall take all necessary precautions to ensure that all confidential information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of the Contract by the Contractor's employees, servants, agents or sub-contractors; and

15.2.4 without prejudice to the generality of the foregoing neither the contractor nor any person engaged by the Contractor whether as a servant or a consultant or otherwise shall use the confidential

information for the solicitation of business from the Board.

15.3 The Board:

15.3.1 shall treat as confidential all confidential information, obtained from the Contractor; and

15.3.2 shall not subject to Condition 15.5 disclose to any third party without the prior written consent of the Contractor any confidential information obtained from the Contractor.

15.4 The provisions of Conditions 15.1, 15.2 and 15.3 shall not apply to any information which:

15.4.1 is or becomes public knowledge other than by breach of this Condition 15; or

15.4.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

15.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

15.4.4 is independently developed without access to the confidential information.

15.5 Nothing in this Condition shall be deemed or construed to prevent the Board from disclosing any confidential information obtained from the Contractor:

15.5.1 to any other department, office or agency of Her Majesty's Government, provided that the Board has required that such information is treated as confidential by such departments, offices and agencies, and their servants or agents, including, requiring servants or agents to enter into a confidentiality undertaking where appropriate; and

15.5.2 to any consultant, Contractor or other person engaged by the Board in connection herewith, provided that the Board shall have obtained from the consultant, Contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Condition 15.

15.6 Nothing in this Condition 15 shall prevent the contractor or the Board from using data processing techniques, ideas and know-how gained during the performance of the Contract in the furtherance of its normal business, to the extent that this does not relate to a disclosure of confidential information or an infringement by the Board or the Contractor of any Intellectual Property Right.

16. TERMINATION

16.1 The Board may at any time by notice in writing terminate the Contract as from the date of service of such notice if:

16.1.1 the Contractor, being an individual, or where the Contractor is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for behoof of his creditors; or any similar event occurs under the law of any other jurisdiction; or

16.1.2 the Contractor, being a company, passes a resolution, or the Court makes an order that the Contractor or its parent company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver,

manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Contractor or the parent company, or circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Contractor or its parent company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

16.2 The Board may at any time by notice in writing terminate the Contract forthwith, if the Contractor is in default of any obligation (other than an obligation under Condition 8.5 or Condition 8.6) under the Contract and:

16.2.1 the default is capable of remedy and the Contractor shall have failed to remedy the default within thirty (30) days of written notice to the Contractor specifying the default and requiring its remedy; or

16.2.2 the default is not capable of remedy.

16.3 In the event that the circumstances detailed in Condition 8.5 or Condition 8.6 arise, the Board may terminate the Contract forthwith by notice in writing.

16.4 In the event of any termination of the Contract pursuant to Condition 16.1, Condition 16.2 or Condition 16.3 prior to the acceptance procedures being recorded as successful pursuant to Condition 8.3, the Board shall be entitled to return any or all of the Software and the Contractor shall give the Board a full refund of all monies paid by the Board to the Contractor in connection with such returned items.

16.5 Termination in accordance with this Condition 16 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

16.6 The provisions of Conditions 1, 4, 13, 14, 15, 17, 20 and 38 shall survive the termination of the Contract by the Board.

16.7 The Contractor may at any time by notice in writing terminate the contract if the Board is in default of its obligations under Condition 4.2 and/or Condition 4.4 and the Board shall fail to remedy such default within thirty (30) days of written notice to the Board specifying the default and requiring its remedy. In the event of termination under this Condition 16.7 then the provisions of Conditions 1, 13, 14, 15, 17, 20 and 38 shall survive.

17. RECOVERY OF SUMS DUE

17.1 If any sum of money shall be due from the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any agreement with the Board.

18. DOCUMENTATION

18.1 The Contractor shall supply the documentation (to be agreed between the parties) with the Software.

18.2 The Contractor warrants that the documentation includes a complete set of operating manuals.

19. PUBLICITY

19.1 Except with the written consent of the other party, neither party shall make any press announcements or publicize the Contract in any way.

19.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Condition 19.1 by all their servants, employees, agents and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition 19.1 by its sub-contractors.

19.3 Notwithstanding the provisions of Condition 19.1, the Board shall be entitled to publicize the Contract in accordance with any legal or quasi legal obligation upon the Board including, but without limitation, obligations under the General Agreement

on Tariffs and Trade, Agreement on Government Procurement.

20. THE LEGAL AID (SCOTLAND) ACT 1986

20.1 The Contractor's attention is drawn to the provisions of Section 34 of the Legal Aid (Scotland) Act 1986. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons engaged on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the expiry or termination of the Contract.

21. CORRUPT GIFTS AND PAYMENT OF COMMISSION

21.1 The Contractor shall neither:

21.1.1 offer or give or agree to give any employee or representative of the Board any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this or any other Contract with the Board or for showing or forbearing to show favour or disfavour to any person in relation to the Contract; nor

21.1.2 enter into the Contract if in connection with it commission has been paid or agreed to be paid to any employee or representative of the Board by the Contractor or on the Contractor's behalf or to the Contractor's knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Board.

21.2 In the event of any breach of this Condition 21 by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on behalf of the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other Contract with the Board, the Board may summarily terminate the Contract by notice in writing to the Contractor. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued thereafter to the Board and provided always that the Board may recover from the Contractor the amount or value of any such gift, consideration or commission.

21.3 The decision of the Board shall be final and conclusive in any dispute, difference or question arising in respect of:

21.3.1 the interruption of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under Condition 21.2 in respect of any loss resulting from such termination of the Contract); or

21.3.2 the right of the Board under this Condition 21 to terminate the Contract; or

21.3.3 the amount or value of any such gift, consideration or commission.

22. CONTRACTOR'S PERSONNEL

22.1 The Contractor shall take steps reasonably required by the Board, to prevent unauthorised persons being admitted to the Premises. If the Board gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from the involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Board the Contractor shall replace any person removed under this Condition with another suitably qualified person.

22.2 If and when instructed by the Board, the Contractor shall give to the Board a list of the names and addresses of all persons who are or may be at any time concerned with the supply of the Software or the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other

particulars and evidence of identity and other supporting evidence as the Board may reasonably require.

22.3 The decision of the Board as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from the involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

22.4 The Contractor shall bear the cost of any notice, instruction or decision of the Board under this Condition.

23. RACIAL DISCRIMINATION

23.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.

23.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition 23.1 by all servants, employees, agents and consultants of the Contractor and all sub-contractors.

24. FORCE MAJEURE

24.1 For the purposes of the Contract the expression "force majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting the third party for which a substitute third party is not reasonably available. In the case of the Contractor such cause will only be considered force majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the contractor, its agents or employees.

24.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to force majeure.

24.3 If either of the parties shall become aware of circumstances of force majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

24.4 It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to force majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of force majeure.

24.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for force majeure hereunder.

25. TRANSFER AND SUB-CONTRACTING

25.1 The Contractor shall not assign or sub-contract any portion of the Contract without the prior written consent of the Board. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to him under the Contract or these conditions.

25.2 Where the board has consented to the placing of sub-contracts, copies of each sub-contract shall be

sent to the Contractor to the Board immediately it is issued.

25.3 Where the Contractor enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or Contractor within a specified period not exceeding thirty days from receipt of a valid invoice as defined by the sub-contract requirements.

26. AMENDMENTS TO THE CONDITIONS

The Contract shall not be varied or amended unless such variation or amendment has been agreed in writing by or on behalf of the Board and by a duly authorised representative of the Contractor.

27. COMMUNICATIONS

27.1 Except as otherwise expressly provided no communication from one party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Board as the case may be by or on behalf of the Contractor.

27.2 Any notice or other communication whatsoever which either party hereto is required or authorised by the Contract to give or make to the other shall be given or made either by post in a prepaid letter, or by telex or by facsimile transmission confirmed by post in a prepaid letter, addressed to the other party at the address stated in the Contract and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of the Contract to have been given or made after two days, for a letter, or four days, for a telex or facsimile transmission.

27.3 Either party may change its address for service by notice as provided in this Condition 27.

28. SEVERABILITY

28.1 if any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Board and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

29. WAIVER

29.1 The failure of either party to insist upon strict performance of any provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract.

29.2 A waiver of any default shall not constitute a waiver of any subsequent default.

29.3 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Condition 27.

30. MANNER OF SUPPLYING THE SOFTWARE AND CARRYING OUT THE SERVICES

30.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Board's prior consent.

30.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable him to supply the Software or to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Board may reasonably require.

30.3 The Board shall have the power at any time during the progress of the supply of the Software or the Services to order in writing,

(a) the removal from the Premises of any materials which in the opinion of the Board are either hazardous, noxious or not in accordance with the Contract, and/

(b) the substitute of proper and suitable materials, and/or

(c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment thereof of any work which, in respect of material or workmanship, is not in the opinion of the Board in accordance with the Contract.

30.4 On completion of the supply of the Software or the Services the Contractor shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the supply of the Software or the Services and leave the Premises in a neat and tidy condition.

31. FREE ISSUE MATERIALS

Where the Board for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Board. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Board of any surplus materials remaining after completion of the supply of the Software or the Services and shall dispose of them as the Board may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Board, the Contractor shall deliver up such materials whether processed or not to the Board on demand.

32. AUDIT

The Contractor shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the Board of all expenditures which are reimbursable by the Board and of the hours worked and costs incurred by the Contractor or in connection with any employees of the Contractor paid for by the Board on a time charge basis. The Contractor shall on request afford the Board or his representatives such access to those records as may be required by the Board in connection with the Contract.

33. INSURANCE

33.1 The Contractor shall have in force and shall require any sub-contractor to have in force:

(a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under the Contract in the sum of not less than £5,000,000 for any one incident and unlimited in total, unless otherwise agreed by the Board in writing.

33.2 The policy or policies of insurance referred to in paragraph 33.1 shall be shown to the Board whenever he requests, together with satisfactory evidence of payment of premiums.

34. REFERENCE

The Contractor shall provide details of two reference bodies including names and telephone numbers of contacts, for whom similar work has been, or is currently, undertaken.

35. ANNUAL ACCOUNTS

The Contractor will provide a copy of the last two years' annual accounts which should be submitted with its response.

36. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decisions of the Board is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an argument to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.

37. HEADINGS

The headings to Conditions shall not affect their interpretation.

38. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Contractor hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Board to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.