

HIGHLANDS AND ISLANDS AIRPORTS LIMITED
TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1 DEFINITIONS

1.1 In these Conditions, the following words shall have the following meanings:

“Commencement Date” means the date of commencement specified in the Purchase Order or otherwise agreed between the parties;

“Confidential Information” means all information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to HIAL, its business affairs, finances, activities and IPR;

“Contract” means the Purchase Order and the Supplier’s acceptance of the Purchase Order, incorporating these Conditions;

“Contract Price” means the price agreed in the Contract;

“Deliverables” means those deliverables created, developed or otherwise resulting from the provision of the Services, including, without limitation, those more particularly described in the Purchase Order;

“Foreground IP” means all IPR created, developed or otherwise resulting from the provision of the Goods and/or Services including, without limitation, all IPR in the Deliverables;

“Goods” means any goods agreed in the Contract to be purchased by HIAL from the Supplier (including any part or parts of them);

“HIAL” means Highland and Islands Airports Limited (registered number SC097647) and having its registered office at Head Office, Inverness Airport, Inverness IV2 7JB;

“IPR” means all patents, trade marks, registered designs (and any applications for any of the foregoing), copyright, database right, unregistered design right, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries, know-how and any other intellectual property rights in each and every part of the world together with all applications, renewals, revisals and extensions;

“Purchase Order” means HIAL’s written request to purchase the Goods and/or Services from the Supplier, incorporating these Conditions;

“Services” means the services to be supplied by the Supplier to HIAL under the Contract, as described in the Purchase Order or as otherwise agreed between the parties in writing from time to time;

“Specification” means the specification for the Goods and/or Services provided by HIAL to the Supplier or otherwise agreed between the parties in writing;

“Supplier” means the company, partnership, business or individual who/accepts HIAL’s Purchase Order and supplies the Goods and/or Services; and

“Supplier Background IP” means all IPR owned by the Supplier, or to which the Supplier has rights, prior to the Commencement Date.

1.2 Clause headings are for ease of reference only and shall not affect the construction or interpretation of any clause.

1.3 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.4 Reference to statutes, any statutory instrument, regulation, or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.

2 APPLICATION OF THESE CONDITIONS

2.1 Unless otherwise agreed in writing by HIAL, these Conditions are the only conditions upon which HIAL is prepared to purchase Goods and/or Services from the Supplier.

2.2 These Conditions together with the Purchase Order shall constitute the whole agreement between HIAL and the Supplier and shall govern the Contract to the entire exclusion of all other terms and conditions (including the Supplier’s terms and conditions or those implied by trade, custom or practice).

3 GOODS

3.1 The quantity and description of the Goods shall be as set out in the Purchase Order.

3.2 The Goods shall conform in all respects with the Purchase Order and the Specification.

3.3 If after inspection or testing HIAL is of the reasonable opinion that the Goods do not conform or are unlikely to conform with the Purchase Order and the Specification, HIAL shall inform the Supplier and the

Supplier shall immediately take such action as is necessary to ensure conformity.

3.4 HIAL’s rights under these Conditions are in addition to the statutory conditions implied in favour of HIAL by the Sale of Goods Act 1979.

4 SERVICES

4.1 The Supplier shall provide the Services with effect from the Commencement Date in accordance with the Specification.

4.2 The Supplier will provide the Services:

4.2.1 with all reasonable skill and care and in accordance with best practice in the industry;

4.2.2 in a proper, diligent, expeditious and professional manner;

4.2.3 dutifully, timeously and in good faith; and

4.2.4 in all respects in accordance with any policies or guidance supplied by HIAL that are directly related to the Services (including but not limited to airside working and airport security procedures).

5 DELIVERY

5.1 Unless otherwise agreed in writing by HIAL, the Goods shall be delivered, carriage paid, to HIAL’s place of business. The Supplier shall off-load the Goods at its own risk as directed by HIAL.

5.2 The Supplier shall deliver to HIAL the Deliverables and/or Goods at the times and on the dates specified in the Purchase Order and to the satisfaction of HIAL.

5.3 The time(s) and date(s) of performance of the Services and delivery of the Goods/Deliverables shall be of the essence.

5.4 Where HIAL agrees in writing to accept delivery by instalments, the Contract will be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle HIAL at its option to treat the whole Contract as repudiated.

5.5 If the Goods are delivered to HIAL in excess of the quantities ordered, HIAL shall not be bound to pay for the excess and any excess will be and will remain at the Supplier’s risk and will be returnable at the Supplier’s expense.

5.6 Without prejudice to any other right or remedy which HIAL may have, if the Goods and/or the Deliverables are not delivered on the due date, HIAL reserves the right to be released from any obligation to accept and pay for the Goods and/or the Deliverables and rescind the Purchase Order or cancel the Contract in whole or in part.

6 RISK/TITLE

6.1 The Goods shall remain at the risk of the Supplier until delivery to HIAL when risk of the Goods shall pass to HIAL.

6.2 Ownership in the Goods shall pass to HIAL upon delivery to HIAL in accordance with the Contract unless payment of the Contract Price is made prior to delivery in which case the property in the Goods shall pass to HIAL once payment has been made in full and the Goods have been appropriated to the Contract.

7 PRICE AND PAYMENT

7.1 Subject to the Supplier performing the Services and delivering the Goods and/or Deliverables to the satisfaction of HIAL, the Supplier may invoice HIAL after performance of the Contract to HIAL’s satisfaction. HIAL will pay the Contract Price together with any VAT properly payable thereon to the Supplier within thirty (30) days of receipt by HIAL of a valid VAT invoice.

7.2 The Supplier shall ensure that all such invoices include HIAL’s Purchase Order number, a description of the Goods and/or Services and the period to which it relates.

7.3 No increase in the Contract Price may be made without the prior written consent of HIAL.

7.4 All expenses that may be incurred by the Supplier (including travel costs) must be agreed in advance and will only be payable by HIAL subject to the Supplier obtaining HIAL’s prior written consent to such expenses and the Supplier providing receipts or other such evidence to prove such expenditure.

7.5 The parties will, upon request, pay interest on any outstanding amount payable under the Contract at the due date of payment at the rate of two (2) per cent per annum above the base lending rate of the Royal Bank of

Scotland plc from time to time. The parties acknowledge and agree that the amounts set out in this condition represent a substantial remedy.

- 7.6 The Supplier shall pay all taxes and other outgoing or expenses payable in consequence of the Contract and the Supplier shall indemnify HIAL in respect of any demand, costs or expense suffered by HIAL, whether during the period of the Contract or following termination of the Contract (howsoever caused) or otherwise in relation to any tax or employer's National Insurance contributions or other expense payable in respect of the Supplier, its employees, agents or sub-contractors or in relation to the provision of Goods and/or Services.
- 7.7 Payment by HIAL shall be without prejudice to any claims or rights, which HIAL may have against the Supplier, and shall not constitute any admission by HIAL as to the performance by the Supplier of its obligations under the Contract.

8 INTELLECTUAL PROPERTY

- 8.1 The Supplier hereby grants to HIAL a perpetual, irrevocable, royalty free, worldwide non-exclusive licence (with the right to grant sub-licences) to use the Supplier Background IP for the purpose of exploiting the Foreground IP and/or using or otherwise disposing of the Deliverables.
- 8.2 The Supplier agrees that the Foreground IP will belong to and upon its creation vest in HIAL. The Supplier hereby assigns to HIAL and insofar as it is not competent for the Supplier to currently assign, hereby agrees to assign to HIAL from the date of creation, free from any encumbrances, its whole right, title and interest in the Foreground IP at no additional charge.
- 8.3 The Supplier shall, and shall procure that all third parties, employees and individuals shall, execute and perform (at HIAL's expense) all such documents and do anything as may be required to ensure that all Foreground IP is vested in HIAL. The Supplier shall deliver all supporting materials and documentation required in order to make effective use of the Foreground IP.
- 8.4 The Supplier shall indemnify HIAL 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) of any IPR in connection with the receipt and/or use of the Goods and Services, the Foreground IP, the Supplier Background IP or Deliverables.
- 8.5 The Supplier hereby irrevocably waives in favour of HIAL any moral rights it may have in terms of Chapter IV of Part I of the Copyright, Designs and Patents Act 1988, and any similar rights available in any part of the world.

9 WARRANTIES

- 9.1 The Supplier warrants, undertakes and represents that:
- 9.1.1 it has full capacity and authority and all necessary licenses, permits and consents to enter into and to perform the Contract;
- 9.1.2 the Goods and/or Services will conform to the Specification;
- 9.1.3 the Goods will be fit for purpose;
- 9.1.4 the provision and use of the Goods and/or the Services will not infringe the IPR of any third party; and
- 9.1.5 the Services shall be performed in compliance with all applicable laws, regulations and codes of practice.
- 9.2 The Supplier shall indemnify HIAL in full 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 or paid by HIAL as a result of or in connection with:
- 9.2.1 breach of any warranty given by the Supplier; or
- 9.2.2 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and performing its obligations under the Contract.

10 DATA PROTECTION

The Supplier warrants that it will at all times comply with the provisions of the Data Protection Act 1998 and any subordinate legislation enacted pursuant thereto in connection with the provision of the Goods and the performance of the Services under the Contract.

11 CONFIDENTIALITY

- 11.1 The Supplier shall at all times hold the Confidential Information secret and confidential on behalf of and for the exclusive benefit of HIAL. The Supplier shall not use, copy or divulge the Confidential Information to any third party except with the express written consent of HIAL. Any

such permitted disclosures shall in no way affect the ownership of such Confidential Information.

- 11.2 The provisions contained in clause 11 shall not apply:

- 11.2.1 to any of the information which is in or enters the public domain other than as a result of a breach of the Agreement;
- 11.2.2 to any information which is required to be disclosed by the courts or process of law; to any information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information (Scotland) Act 2002 ("FOISA") or the Environmental Information (Scotland) Regulations 2004 ("EIR"), and any subordinate legislation, related guidance and codes of practice; and/or
- 11.2.3 the information is disclosed on a strictly confidential basis to the Supplier's professional advisors, auditors or bankers for the purpose of advising the Supplier in connection with the Contract.

- 11.3 HIAL is subject to the requirements of FOISA and the EIR and the Supplier agrees to assist and co-operate with HIAL, at no additional charge, to enable HIAL to comply with the information disclosure requirements under the FOISA and the EIR.
- 11.4 HIAL shall be responsible for determining whether the information requested is exempt from disclosure under the FOISA and the EIR and whether the information requested ought to be disclosed. If HIAL determines that any information is required to be disclosed under the FOISA or the EIR it shall where it is reasonably practicable to do so, notify the Supplier that a request has been received.
- 11.5 The Supplier shall upon HIAL's request and on termination of the Contract for any reason whatsoever (and not withstanding any claim of whatever nature it may have against HIAL) immediately cease use of and return to HIAL all Confidential Information.

12 INSURANCE

- 12.1 The Supplier shall have in place at all times during the term of the Contract appropriate insurance with a reputable insurance company to cover all liabilities under the Contract.
- 12.2 Where the Services are for professional or design services, the Supplier shall have in place at all times during the term of the Contract and for a period of five (5) years thereafter professional indemnity insurance in each case in an amount of not less than FIVE MILLION POUNDS (£5,000,000) Sterling.
- 12.3 Evidence of all such insurance shall be made available to HIAL at any time upon HIAL's reasonable request.

13 LIMITATION OF LIABILITY

- 13.1 Neither party excludes or limits liability to the other party for death or personal injury caused by any negligent act or omission or wilful misconduct or arising from any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Part IA of the Supply of Goods and Services Act 1982 as introduced by the Sale and Supply of Goods Act 1994.
- 13.2 HIAL's aggregate and total liability under the Contract (including that arising from negligence, delict or otherwise) shall in no event exceed 100% (one hundred per cent) of the Contract Price.
- 13.3 Subject always to conditions 8.4 and 9.2, in no event shall either party be liable to the other for indirect or consequential loss or damage.
- 13.4 The provisions of condition 13.3 shall not be taken as limiting the right of HIAL to claim from the Supplier for:
- 13.4.1 directly incurred loss of profits, business, revenue, goodwill or anticipated savings;
- 13.4.2 additional operational and administrative costs and expenses; and/or
- 13.4.3 expenditure or charges rendered unnecessary as a result of any breach of the Contract by the Supplier.

14 TERMINATION

- 14.1 HIAL shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier fourteen (14) days' written notice whereupon all work on the Contract shall be discontinued HIAL shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.2 The Contract may be terminated by either party by written notice with immediate effect if:

14.2.1 either party commits a material breach that it fails to remedy within thirty (30) days of being requested to do so by the other party; or

14.2.2 either party ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily or shall suffer any analogous event under any jurisdiction which it is subject to.

14.3 Termination of the Contract shall be without prejudice to any rights of either party under the provisions of the Contract existing at the date the Contract is terminated (including the right of either party to recover all sums due to that party up to such date of termination).

14.4 The provisions of conditions 8, 9, 10, 11 and 13 shall survive termination of the Contract for any reason and shall remain in full force and effect.

15 ASSIGNATION

15.1 The Supplier shall not, and shall not purport to, assign, charge, sub-contract or otherwise transfer the Contract or any rights or obligations under it without HIAL's prior written consent.

15.2 To the extent that the Supplier sub-contracts any of its rights or obligations under this Agreement, the Supplier acknowledges that it shall remain fully responsible for the proper and complete discharge of all such obligations.

16 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way whatsoever.

17 DISPUTE RESOLUTION

Should any dispute arise between the Supplier and HIAL, the parties will attempt to resolve the dispute in good faith. Where both parties agree that it may be beneficial they will seek to resolve the dispute through arbitration but this shall not prejudice a party's right to raise court or other proceedings.

18 VARIATION

Any variation to the Contract shall only be effective if in writing and signed by authorised representatives of both parties.

19 SEVERABILITY

If and in so far as any part or provision of these Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.

20 WAIVER

The failure of either party to exercise or enforce any right conferred on that party by the Contract shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

21 THIRD PARTY RIGHTS

Save to the extent expressly set out in the Contract, the Contract is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

22 NOTICES

22.1 Any notice given under the Contract shall be in writing and may be delivered by hand or sent by first class recorded delivery post to the other party at their last known address, or such other address as may from time to time be notified in writing to the party giving such notice or other communication, by the party to whom such notice or other communication is given.

22.2 Notices shall be deemed given, in the case of notice given by recorded delivery post, two Business Days after the date of posting. Notices delivered by hand shall be deemed given at the time when left at the correct address of the recipient.

23 GOVERNING LAW

The Contract shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.