

**Terms and Conditions for the Supply of Services by First Scottish Searching Services Limited (the  
“Company”)**

**1. Interpretation**

1.1 In these Conditions unless the context otherwise requires:-

“Confidential Information” means any and all information, data and technology in whatever form the same may exist including written, oral, or electronic, being confidential, scientific, business or financial information including any trade secrets, provided by either party to the other party under or pursuant to the terms of the Contract;

“Contract” means the contract between the Company and the Customer for the supply of the Services by the Company to the Customer, incorporating these conditions and the terms of any quotation for the Services provided by the Company to the Customer;

“Customer” means the person, firm or company who commissions the supply of Services from the Company;

“Charges” means the charges payable in respect of the Services as such charges are either: (i) specified in the quotation given by the Company to the Customer in respect of the Services; or (ii) agreed between the parties in writing from time to time in consideration of the provision of Services;

“Public Record” means any public record or register which the Company searches in relation to the provision of Services including, but not limited to, the Register of Sasines, the Land Register, the Books of Council and Session, Register of Inhibitions, Register of Insolvencies; and

“Services” means any services agreed in the Contract to be supplied to the Customer by the Company;

1.2 Unless the context requires otherwise the words “include” or “including” or “in particular” are to be construed as meaning without limitation.

1.3 The headings are inserted for convenience only and shall not affect the construction of these conditions.

**2. Application of Terms**

2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the

Customer purports to apply under any purchase order, confirmation of order, specification or other document or correspondence including e-mail or during any telephone conversation).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document or referred to in any e-mail or during any telephone conversation with the Company's personnel shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 Each order or acceptance of a quotation for Services by the Customer from the Company shall be deemed to be an offer by the Customer to commission Services from the Company subject to these conditions. Without prejudice to the foregoing generality, an order for Services shall be deemed to have been placed by the Customer where the Company has received confirmation (whether verbal or in writing) from a representative of the Customer that it wishes the Company to undertake the Services.

2.4 No order placed by the Customer shall be deemed to be accepted by the Company until the Company commences to provide or undertake the Services.

2.5 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate in all respects.

2.6 Any quotation given by the Company is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

**3. The Services**

3.1. The Company shall use its reasonable endeavours to procure that the Services are provided by it with reasonable care and skill.

3.2. The Company shall use its reasonable endeavours to procure the completion of the Services by such date (if any) as is agreed with the Customer, provided that the Company shall not have any liability in respect of any failure to complete the Services by such date, to the extent that such failure is caused by

any circumstance outside of the reasonable control of the Company, including any failure by the Customer to provide any data or other materials relevant to the provision of the Services to the Company.

#### **4. Payment**

- 4.1. In consideration of the provision of the Services by the Company the Customer shall pay the Charges to the Company.
- 4.2. The Company shall invoice the Customer in respect of the Charges and the Customer shall pay such invoice within 30 days of receipt by the Customer. Time of payment shall be of the essence.
- 4.3. If any amount due under the Contract by the Customer is not paid in accordance with condition 4.2 the Customer shall be liable for and pay interest on the amount outstanding as at the due date of payment from the due date of payment until payment is made in full at the rate of 4 per centum per annum above the base lending rate of The Royal Bank of Scotland plc from time to time (whether before or after judgement). The Company reserves any rights that it may have (including the right to claim interest) under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4. All payments to be made by the Customer under the Contract are stated exclusive of value added tax, which shall be paid by the Customer at the rate and in the manner prescribed by law.
- 4.5. Any and all payments due under the Contract shall be made without any lien, retention, set-off, counterclaim, withholding or deduction whatsoever.

#### **5. Customers Obligations**

- 5.1. The Customer will ensure that all data or information provided by it to the Company under this Contract is complete, accurate and up to date when given to the Company.
- 5.2. If the Customer is ordering the Services online, they will comply with the terms set out in the Company's Website Terms and Conditions which can be viewed at [www.firstscottish.com](http://www.firstscottish.com).

5.3. The Customer will comply with the terms set out in the Company's Company's Privacy Policy which can be accessed at the Group website [www.firstscottish.com](http://www.firstscottish.com) - the terms of which shall be deemed to have been incorporated into the Contract.

5.4. The Customer will inform the Company forthwith upon becoming aware of any error, omission or inaccuracy in any report issued by the Company in connection with the provision of the Services. In such circumstances, the Customer (or its clients) should not rely or act upon any such report.

#### **6. Liability**

- 6.1. Nothing contained in this Contract shall exclude or restrict the liability of either party for injury, death, loss or damage caused by the negligence of that party or arising by virtue of fraud or fraudulent misrepresentation.
- 6.2. Whilst the Company will use all reasonable endeavours to ensure the accuracy of the information or other material provided to the Customer pursuant to performance of the Contract, no warranty, undertaking or representation, express or implied, is given by the Company as to the accuracy of the information or other material provided pursuant to the Contract. Accordingly, all warranties, conditions, representations, covenants and or/other terms that are implied by law are hereby excluded to the fullest extent permitted by law.
- 6.3. Although the Company will use its reasonable endeavours to perform the Services in accordance with these conditions the Company does not undertake, warrant, or represent that the work carried out under or pursuant to the Contract will lead to any particular result or be suitable or fit for any specific purpose (irrespective of whether such purposes were made known to the Company prior to or after the entry into the Contract), nor is the success of such work guaranteed.
- 6.4. Subject to clause 6.1:
  - 6.4.1. the Company's aggregateliability in respect of any and all

breaches of its contractual obligations under the Contract and any representation, statement or delictual act or omission, including negligence or otherwise arising under or in connection with the Contract shall be limited to £10,000,000 in the event that it is covered by the Company's professional indemnity insurance; and

- 6.4.2. neither party shall be liable to the other party for:-
- 6.4.2.1. any special, indirect or consequential loss or damage;
  - 6.4.2.2. loss of profit;
  - 6.4.2.3. loss of business, turnover, revenue or income;
  - 6.4.2.4. loss or depletion of goodwill and/or reputation;
  - 6.4.2.5. loss of anticipated savings; or
  - 6.4.2.6. (save where expressly provided otherwise in the Contract) any costs and expenses except for the costs and expenses incurred by a successful party in enforcing or taking action against the other or defending an action by any other party;

which arise out of or in connection with the Contract or the performance of a party's obligations under the Contract, even if such loss, damage or depletion was in the contemplation of a party prior to entry into the Contract or was reasonably foreseeable or had been specifically brought to the attention of the other party prior to or after entry into the Contract.

6.5. The Customer acknowledges and agrees that the Company has no

liability or responsibility for any data, information, or other content or the like ("Data") kept on or registered or stored on any Public Record or for the completeness, accuracy or maintenance (or otherwise) of any of the Data.

6.6. The Customer undertakes to indemnify and keep indemnified the Company in full and on demand from and against any loss, liability, damage, cost, expense or proceedings suffered or incurred by the Company which relates to

6.6.1. any reliance placed (whether in whole or in part) on an error, omission or inaccuracy or the like of Data on any Public Record that the Company has searched in order to provide the Services to the Customer by the Customer or any third party including a client of the Customer. The Customer acknowledges and agrees that it is not reasonable for the Company to be liable in respect of any such error or omission and/or inaccuracy; or

6.6.2. any reliance placed (whether in whole or in part) by a Customer or any third party including a client of the Customer on any report produced by us where the Customer or any third party including a client of the Customer is aware or ought reasonably to have been aware of any error or omission in or inaccuracy in the report.

## 7. Termination

7.1. The Contract may be terminated immediately by notice in writing by the Company if the Customer fails to pay any sum due under the Contract by the due date without prejudice to any other provisions relating to late payment in these conditions.

7.2. Upon termination of the Contract or completion of the Services all Charges accruing for Services performed up to the date of expiry or termination (as the case may be) shall become immediately due by the Customer and shall be paid to the Company within 30 days of such date of expiry or termination.

7.3. Any expiry or termination of the Contract will be without prejudice to any other rights or remedies of either

party under the Contract or at law and will not affect any accrued rights or liabilities of either party at the date of expiry or termination (as the case may be). The provisions of clauses 1, 3, 6, 7 and 10 shall survive the expiry or termination of the Contract.

## **8. Data Protection**

By engaging the Company's to perform the Services, the Customer shall share and the Company shall process data or information controlled by the Customer which is personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679). The Customer warrants that all information and data provided by it is accurate and complete in all respects and that it has obtained any and all necessary permissions, approvals and consents so as to allow the Company to process and use such data in such manner as it may determine. The Company will process such personal data only in accordance with the Customer's instructions and will take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data. Personal data will be processed in accordance with the Company's privacy policy which can be accessed at [www.firstscottish.com](http://www.firstscottish.com). The Company and the Customer each undertake to comply with any and all laws and regulations relating to the processing of personal data and privacy which may be in force from time to time.

## **9. Criminal Finances Act 2017**

9.1 The Company is committed to promoting compliance with the Criminal Finances Act 2017. The Company does not tolerate tax evasion, or the facilitation thereof, in any circumstances whether committed by or facilitated by the Customer, any other client, personnel or associated persons.

## **10. General**

### **10.1. No partnership/agency**

Nothing in the Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as the

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 (including to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **10.2. Force Majeure**

The Company reserves the right to defer the date of the Services or to cancel the Contract (without liability to the Customer or the Company) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including access to the Public Records being denied or delayed (for whatever reason), acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 21 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract, without liability to the Customer or the Company.

### **10.3. Entire Agreement**

This Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter.

### **10.4. Severability**

If and in so far as any part or provision of the Contract 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.

## **11. Governing law and Disputes**

11.1. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by and construed in accordance with the laws of Scotland.

11.2. Any dispute arising out of the interpretation, validity or performance of or otherwise in connection with,

the Contract shall be submitted to the  
non-exclusive jurisdiction of the  
Scottish courts.

September 2018

