

Ethical Standards Commissioner Service Level Agreement

between

«Title» «First Name» «Surname»

(A Public Appointments Adviser for the Commissioner for Ethical Standards in Public Life in Scotland)

and

The Commissioner for Ethical Standards in Public Life in Scotland

**The Commissioner for Ethical Standards in Public Life in Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE**

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1. Signatories to the Agreement

This document is a Service Level Agreement between the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) and «Title» «First_Name» «Surname», a Public Appointments Adviser (hereinafter referred to as the 'PAA') working for the Commissioner as a consultant. This Agreement does not represent an employment contract and is not intended to set up the relationship of employer/employee (or worker) between the Commissioner and the PAA – the PAA shall not hold themselves out as such.

Signatories to this agreement

Signed and dated on behalf of the Commissioner:

M. Storrach
pp _____ on xx/xx/24
Commissioner for Ethical Standards
in Public Life in Scotland

Signed and dated by the PAA:

«Title» «First_Name» «Surname»

Please provide your VAT registration number (if applicable):

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed “wet-ink” counterpart of this Agreement. No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.

2. Introduction

The Commissioner has contracted with a range of suitably qualified consultants who provide oversight of the regulated public appointments process and advice on innovation in appointment practices. The oversight is intended to facilitate compliance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code) and with its associated guidance. Advice on good practice and innovation in appointment practices is considered critical to the advancement of application of the Code in relation to improving diversity on public body boards.

This Agreement sets out the responsibilities of consultants, known as Public Appointments Advisers, when they are carrying out functions on behalf of the Commissioner. The Annexes and Schedules form part of the Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annexes and Schedules.

3. Service Delivery and Service Requirements

The following sets out the service delivery and service requirements for PAAs.

- i) During the term of this Agreement, the PAA shall (a) carry out functions on behalf of the Commissioner with all due care, skill and ability and use their best endeavours to promote the interests of the Commissioner; and (b) promptly give to the Commissioner all such information and reports as it may reasonably require in connection with matters relating to carrying out of such functions.
- ii) If the PAA is unable to carry out functions on behalf of the Commissioner due to illness or injury, they shall advise the Commissioner of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable by the Commissioner to the PAA in respect of any period during which the PAA is unable to carry out functions on behalf of the Commissioner.
- iii) Unless they have been specifically authorised to do so by the Commissioner in writing, the PAA shall not (a) have any authority to incur any expenditure in the name of or for the account of the Commissioner; or (b) hold themselves out as having authority to bind the Commissioner.
- iv) Notwithstanding the terms of the Commissioner's confidentiality policy which the PAA is obligated to comply with as explained at (v), the PAA undertakes that it shall not at any time disclose to any person the Commissioner's Property, Works or any other confidential information provided to them in connection with carrying out functions on behalf of the Commissioner, except as may be required by law, a competent court of jurisdiction or any governmental or regulatory authority. The PAA shall not use the Commissioner Property, Works or any other confidential information provided to them in connection with performance of the service requirements for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- v) The PAA will fulfil their obligations as consultants under this agreement in a manner which is in accordance with the policies of the Commissioner, or be able to demonstrate

that they have comparable policies, appropriate to their own business structure, that are acceptable to the Commissioner. The PAA will demonstrate the highest standards of practice and probity when undertaking their work, including upholding the values adopted by the Commissioner and as set out in the Strategic Plan. For reference, the particular policies of the Commissioner that set out these expectations are included in the following documents (copies are available to download from the Commissioner's website and can also be provided on request):

- Equality, Diversity and Inclusion Policy
- Code of Conduct
- Confidentiality Policy
- Data Protection Policy
- IT Policy

And the values as set out in the Strategic Plan are:

- We will conduct all of our activities in an ethical way, characterised by effective stewardship of public money, accountability, honesty, integrity, propriety, fairness and transparency.
- We will treat each individual and organisation that comes into contact with us with empathy, kindness and respect, recognising that we must earn their trust and ensure that our commitment to equality, diversity and inclusion informs all of our work.
- We welcome constructive criticism and challenge. If we get things wrong we will remedy our errors and learn from these in order to improve our future performance.

To comply with the Commissioner's Code of Conduct the PAA must complete and submit to the Commissioner a declaration of interests form. The PAA is responsible for advising the Commissioner of any relevant changes to their interests. PAAs are also expected to comply with the Out of Pocket Expenses Policy and the Charging and Travelling Time Policy for Advisers.

In relation to Data Protection, the PAA will comply with the provisions set out in Annexes three and Schedules One and Two of this Agreement.

The PAA, during the time that they contract with and carry out functions on behalf of the Commissioner, is not permitted to provide oversight of unregulated appointment rounds in Scotland and nor may they serve as a councillor or board member of any board listed in schedule 3 of the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#). The required additional standards of anticipated conduct, and behaviours to be displayed by the PAA whilst overseeing public appointment activity, are set out in the Annexes to this Agreement.

The PAA shall comply with all applicable laws, regulations, codes, policies (including the Commissioner's own policies, as notified to the PAA from time to time) and sanctions relating to anti-bribery and corruption, including the Bribery Act 2010. The PAA will promptly report to the Commissioner any request or demand for any undue financial or other advantage of any kind received by the PAA in connection with carrying out functions on

behalf of the Commissioner under this Agreement. The PAA will promptly provide such supporting evidence of compliance as the Commissioner may reasonably request. Failure to comply with this obligation may result in immediate termination of this Agreement.

The PAA shall

(a) not engage in any activity, practice or conduct which would constitute either (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

(b) promptly report to the Commissioner any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 or any suspected tax evasion offences or facilitation of tax evasion offences, whether under UK law or under the law of any foreign country, in connection with the performance of this Agreement; and

(c) promptly provide such supporting evidence of compliance as the Commissioner may reasonably request. Failure to comply with this obligation may result in immediate termination of this Agreement.

vi) The PAA is required to keep up to date with developments in the field of public appointments. The Commissioner will facilitate this by running the equivalent of at least two one day training events per year (e.g. this might take the form of one full day and 2 half days). The Commissioner will give reasonable notice of these events. Attendance at the training events is not obligatory. Payment will be made to the PAA for attendance at the usual daily rate.

vii) The PAA will have, or undertakes to acquire, a detailed knowledge of the Code of Practice and associated guidance and to refer issues requiring interpretation of the Code to the Commissioner. Supporting information and guidance will be provided to the PAA through the Knowledge Hub private group for PAAs.

viii) The Commissioner will be the first point of contact for the Scottish Government when a request for regulatory oversight is received. The Commissioner will offer the PAA opportunities to scrutinise appointment rounds on receipt of such requests from the Scottish Government. The Commissioner is not obliged to offer any assignment to any particular PAA and the PAA is not obliged to take any assignments offered to them.

ix) At the point of assignment, the Commissioner will provide the Scottish Government and the PAA with brief details of the assignment and will forward the PAA's contact details to the Scottish Government. The Commissioner will also provide a written briefing to the PAA setting out information on the body and the assignment. The PAA will make themselves familiar with this material before undertaking their role.

x) When providing scrutiny of any appointment activity, the PAA's role is to enable compliance with the Code by providing oversight, advice and proactive support in any parts of the appointment round that the Commissioner considers appropriate as a member of the selection panel.

At the point of assignment the Commissioner will inform the PAA which parts of the appointment round they will participate in. The Commissioner may ask for additional parts of the appointment round to be overseen as the round progresses if any concerns arise or

if good practice is identified which the PAA may be able to provide support and guidance on.

The PAA is required to draw instances of potential non-compliance to the attention of the responsible person. This will usually be the chair of the selection panel. It is anticipated that the responsible person will take steps to ensure that the Code is complied with. Where the responsible person, for whatever reason, is unable or unwilling to address any instance of potential or actual non-compliance highlighted by the PAA, the PAA will:

- set out the relevant facts in writing
- provide this to the responsible person and
- copy the correspondence to the Commissioner.

Whether to take action in response to such a report and the form that any such action might take are matters for the Commissioner.

xi) PAAs must submit an invoice and expenses claim form to the Commissioner's office (with relevant supporting receipts) at the end of their participation in an appointment round or other type of assignment. In instances where the PAA has been assigned to scrutinise a full appointment round from start to finish they may provide an interim invoice following the completion of the planning phase. The PAA must also provide a written report on what they have observed during each stage of the round that they have overseen. These reports will subsequently be circulated to all PAAs for the purpose of securing improvement in and enhancing the public appointments process. PAAs should note that although there is no intention to make this report public, it is subject to Freedom of Information legislation, and may also be reproduced in whole or in part in publicly available end of round learning reports to assist with wider learning or transparency of the appointments process. The paperwork must be submitted to the Commissioner within one month.

xii) The Commissioner will make payment to the PAA within 21 days of receipt of the above and in accordance with the PAA charging and travelling time policy. The Commissioner reserves the right to withhold payment if, in the opinion of Commissioner, the services have not been delivered to a satisfactory standard. Payments will be made by BACS transfer. The agreed rate of remuneration is £330 per full day, payable to the nearest half day (as defined in the charging policy), (inclusive of VAT where this is chargeable), plus all agreed out of pocket expenses. Expenses claims will only be paid when they comply fully with the Commissioner's out of pocket expenses policy. The PAA is responsible for the payment of their own tax and national insurance.

xiii) As outlined in the charging policy, where PAAs (as a whole group) are asked to read and comment on documentation or materials, including contributing to discussion in the Knowledge Hub group, they are able to charge for up to one day of work per annum to cover the cost of doing so.

xiv) The Commissioner may occasionally contact individual PAAs and offer them an opportunity to carry out other ad-hoc activities for the Commissioner. Examples of such opportunities may include, but are not limited to, thematic reviews of the public appointments process, research in support of a specific project, support for consultation and / or outreach activities, scrutiny of reappointments, promotions or rounds not overseen individually and complaint investigations. The Commissioner is not obliged to offer such work to all PAAs

and no PAA is obliged to take on such work when it is offered. When a PAA does take up such ad-hoc work, the service standards set out at (i) apply and payment will be made on submission of an invoice at the completion of the project concerned (see vii and viii). Ad hoc work will be chargeable at an hourly rate pro-rated to the equivalent of the appropriate daily rate.

xv) The ESC IT policy as referenced at i) does not allow those covered by the policy to work outside the UK. It is similarly expected that PAAs will be based in and work within the UK. PAAs should not (under any circumstances) access or process sensitive data from a location outside the UK when that data relates to work conducted under the SLA. Additional guidance has been provided on the PAA Knowledge Hub group. Failure to comply with this obligation may result in immediate termination of this Agreement.

4. CONTACT WITH AND SUPPORT FROM THE COMMISSIONER'S OFFICE

Round allocation, review of work carried out and support for the PAAs will be provided by the Public Appointments Team in the Commissioner's office. This will be done through:

- Offering the opportunity to scrutinise appointment rounds as described in section 3
- Offering the opportunity for ad hoc project work to support the wider work of the Commissioner
- promoting compliance with the Code and guidance by identifying and arranging for training sessions and answering queries during the course of an appointment round
- cascading relevant information to the PAAs to support and inform the work undertaken (usually by email and through Knowledge Hub)
- gathering information to monitor adherence to the Agreement.

The main point of contact will be the Public Appointments Manager, although work will be allocated, reviewed and support provided by any of the Public Appointments team.

Contact details for the Public Appointments Manager are as follows:

Melanie Stronach
Public Appointments Manager
The Commissioner for Ethical Standards in Public Life in Scotland
Thistle House, 91 Haymarket Terrace
Edinburgh, EH12 5HE

Telephone: 0131 347 3899

E-mail: m.stronach@ethicalstandards.org.uk

Contact details for the full Public Appointments Team

Telephone 0131 347 3890 (option 3)

Email: appointments@ethicalstandards.org.uk

5. MONITORING AND REVIEWS

The Public Appointments Team (usually the Public Appointments Manager) will monitor the adherence of PAAs to this agreement and will draw service delivery failures to the attention of PAAs if these arise. In coming to a view on the extent to which this agreement has been adhered to, the Public Appointments Manager will refer to:

- the views of participants in the appointments process, whose feedback on whether the PAA met the requirements of this agreement will be gathered
- review of interaction with the office through contacts, enquiries and reports at the end of round involvement and
- the results of any other reviews conducted into a given appointment.

Section three and the Annexes set out the Commissioner's specific service requirements. Annex one, or a variation on this document, will be used to gather feedback from participants.

Based on the extent of the PAA's adherence to the Agreement's requirements, the Commissioner will decide whether to:

- revise this agreement or
- maintain the agreement for another year.

6. DURATION AND TERMINATION

Duration

This agreement will run initially from xx/xx/2024 to xx/xx/2025 and, subject to the ongoing business needs of the Commissioner, will be renewed yearly thereafter for a period of one year unless terminated in accordance with the Termination section below.

Termination

The Commissioner or the PAA may terminate this agreement on giving twenty working days' written notice. This agreement does not represent an employment contract and there are no mutual obligations to either supply or complete work in pursuance of it.

Without prejudice to any other rights that it might have at law, the Commissioner reserves the right to terminate the Agreement immediately by written notice with no liability to make any further payment to the PAA (other than in respect of amounts accrued before the date of termination of the Agreement) in the event of

- (a) a serious or repeated breach or non-observance of any of the Agreement's terms or refusal or neglect to comply with any reasonable and lawful directions of the Commissioner;
- (b) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
- (c) is in the reasonable opinion of the Commissioner negligent or incompetent in performance of the service requirements;
- (d) suffers an Insolvency Event;
- (e) commits any fraud or dishonesty or acts in any manner which, in the opinion of the Commissioner, brings or is likely to bring the Commissioner or the Scottish Ministers into

disrepute or is materially adverse to the interests of the Commissioner or the Scottish Ministers; or
(f) commits any breach of the Commissioner's policies and procedures or any applicable laws.

The Agreement will be reviewed in keeping with the reviewing and monitoring arrangements set out above.

Consequences of Termination

On the date of termination of this Agreement, howsoever arising, the PAA shall immediately deliver to the Commissioner all Works, Commissioner Property and any original confidential information in their possession or under their control.

7. INDEMNITY

The Scottish Parliamentary Corporate Body (SPCB) has undertaken to indemnify PAAs who act honestly and in good faith in connection with this agreement and in the course of their work for the Commissioner against any loss (including legal costs and expenses), or liability, reasonably incurred or suffered arising from any claim, suit, demand, action or proceeding by any person against the PAA PROVIDED ALWAYS THAT this indemnity shall not apply where such loss or liability was caused by any unlawful or negligent act or omission by the PAA.

Annexe One – Public Appointments Adviser Review Form (completed via smart survey)



PAA Review form - Template July 2023 Full oversight

1. PAA performance

The Ethical Standards Commissioner (ESC) has a service level agreement with each Adviser (PAA) which can be found on our [website](#). In this context, we would very much appreciate your views on how the adviser performed during the appointment round. As outlined in the service level agreement document **the contents of this form will be shared with the PAA for feedback and learning purposes**. (Please note that there is a space for comments further on in the survey)

You can find out more about how we use and store your data on the [ESC website](#). SmartSurvey's privacy policy can be found [here](#).

1. Please tell us who you are - name and contact details? (This is just because we sometimes send these form to more than one panel member and so that we are able to distinguish whose response it is)

2. Did the Adviser advise effectively on compliance with the Code of Practice.

(You may wish to consider the following when answering this question. Did the Adviser...

- offer informed guidance to the directorate and/or panel on interpreting the Code to support compliance
- seek guidance from the ESC where necessary
- support the panel chair in their decision making and provide advice on Code compliance)

Strongly agree

Agree

Disagree

N/A

3. Did the Adviser Respond timeously to requests for an opinion on matters pertaining to Code compliance?

(You may wish to consider the following when answering this question. Did the Adviser ...

- give timely responses to correspondence and communication) *

Strongly agree

Agree

Disagree

N/A

4. Did the Adviser Communicate effectively (consider all forms of communication including in writing / in person)?

(You may wish to consider the following when answering this question. Did the Adviser ...

- ask questions and pass comments in a constructive manner
- behave courteously towards the selection panel members and others involved in the process)

Strongly agree

Agree

Disagree

N/A

5. Did the Adviser Act independently and with integrity?

(You may wish to consider the following when answering this question. Did the Adviser ...

- demonstrate he/she was prepared to question others on application of the code
- raise appropriate concerns at potential breaches of the code)

Strongly agree

Agree

Disagree

N/A

6. Did the Adviser offer advice on good practice that contributed to a successful appointment round?

(You may wish to consider the following when answering this question. Did the Adviser ...

- demonstrate an understanding of good practice in planning for succession and in recruitment and selection.
- help to ensure that inclusion and diversity was properly considered.
- offer innovative ideas or solutions during the process)

Strongly agree

Agree

Disagree

N/A

2. Further information (only asked if answer to question 6 was strongly agree or agree)

7. Please tell us in which ways the PAA's advice and guidance was particularly helpful?

(you may wish to consider guidance offered on diversity and inclusion; succession planning; recruitment and selection; innovative ideas or solutions offered during the process)

3. PAA performance at assessment stage (only asked if oversight included 2nd stage assessment)

8. Did the Adviser assess applicants effectively against the requirements of the role?

(You may wish to consider the following when answering this question. Did the Adviser ...

- demonstrate an understanding of the role requirements and the evidence presented by applicants and assess effectively
- question effectively and operate professionally at interview)

Strongly Agree

Agree

Disagree

N/A

•

4. Comments on PAA performance

We welcome your constructive comments on whether the Adviser worked to the agreed service standard. We use your comments to

capture your perspective on the quality of the service provided

identify areas for Adviser development and training (individual and collective)

ensure that the quality of the advice and oversight provided by Advisers is consistent and consistently improved on.

9. The Commissioner has a set of values that it is expected that all PAA's should work to. These are:

- We will conduct all of our activities in an ethical way, characterised by effective stewardship of public money, accountability, honesty, integrity, propriety, fairness and transparency.
- We will treat each individual and organisation that comes into contact with us with empathy, kindness and respect, recognising that we must earn their trust and ensure that our commitment to equality, diversity and inclusion informs all of our work.
- We welcome constructive criticism and challenge. If we get things wrong we will remedy our errors and learn from these in order to improve our future performance.

To what extent to you consider that the PAA worked to these values?

Not at all

Very little

Somewhat

To a fair extent

Greatly

10. Please indicate your overall satisfaction with the contribution of the Adviser

Very dissatisfied

Dissatisfied

Neutral

Satisfied

Very satisfied

Please write any constructive comments you may have:

11. Please indicate which role you played on the panel for this round: *

- Panel Chair (but not Body Chair - see option 3 below)
- Body Chair (panel member)
- Panel Chair and Body Chair

5. Questions on the 2022 Code

(only asked of panel chair)

12. Under the 2022 Code, panel chairs have a specific responsibility to represent the minister on the appointment panel and to make final decisions in relation to key aspects of the process. Please indicate how far you feel you were able to shape the appointments process in your role as panel chair? *

- Not at all
- Very little
- Somewhat
- To a fair extent
- Greatly

Please write any constructive comments you may have in the space below:

(Only asked of body chair)

13. Under the 2022 Code, succession planning is highlighted as an important factor in achieving a successful outcome for an appointment round. Body chairs and boards themselves clearly have a key role to play in ensuring that they are planning for succession. Please indicate how far you feel you were able to contribute to discussions around succession planning and to influence what was sought in your role as body chair and panel chair combined. *

- Not at all
- Very little
- Somewhat
- To a fair extent
- Greatly

Please write any constructive comments you may have in the space below:

6. Contact at a later date

14. Whilst we recognise the importance of the appointment process itself in delivering what is sought at this point in time it would also be hugely helpful to know how effective the appointment has been in enhancing board performance once the person has been in the position for a period of time. May we contact you again in a year's time about this? *

Yes

No

Please provide any additional comment, if relevant:

7. Thank You

15. Thank you for taking the time to provide this feedback on the PAA performance and the appointments process; If you have any final comments, please leave these in the box below.

Annexe Two – Definitions

In this Agreement:

“Agreement” and “Service Level Agreement” mean the contract between the Commissioner and the PAA consisting of the tender, this agreement and other documents such as policies (or parts thereof) specified in the tender and in the agreement;

“The Code” means the Code of Practice for Ministerial Appointments to Public Bodies in Scotland;

“Data Protection Laws” means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to privacy and the Processing of Personal Data to which a party to this Agreement is subject, including: (a) the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation and (b) the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (the “UK GDPR”);

“Data Controller”, “Data Processor”, “Data Subject”, “Data Subject Access Request” “Personal data”, “Processing”, and “Special category data” have the meanings given in the Data Protection Laws;

“Data Security Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;

“PAA” and “PAAs” means the Public Appointments Adviser with whom the agreement has been entered into;

“Personal Data” means personal data, including Special Category Data detailed in Schedule One of this Agreement to be shared between the PAA and the Commissioner and provided to the PAA by the Scottish Ministers for the purposes of fulfilling the Agreement;

“Supervisory Authority” has the meaning given in the Data Protection Laws. In Scotland, this is the Information Commissioner’s Office (ICO); and

“Tender” means the document setting out the Commissioner’s requirements for the Service Level Agreement and the tenderer’s response.

“Works” means the Deliverables and all records, reports, documents, papers, guidance, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, specification, instructions, toolkits, plans, data, databases, patterns, models, inventions, ideas, discoveries, developments, improvements, innovations and all other materials in whatever form (including hard copy and electronic form) which are prepared, created or developed by the PAA when carrying out functions on behalf of the Commissioner.

The headings in this Agreement are inserted for convenience only and shall not affect its construction.

A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Annexe Three – Data Protection

1. COMPLIANCE WITH DATA PROTECTION LAWS

1.1 The PAA and the Commissioner acknowledge that under the Data Protection Laws, the Commissioner is a Data Controller and the PAA is a Data Processor when processing personal data under the terms of the Agreement. Each party must ensure compliance with its obligations under the Data Protection Laws at all times for the duration of the Agreement.

2. USE, DISCLOSURE AND PUBLICATION

2.1 The PAA agrees to process the personal data described in Part 1 of Schedule One of this agreement for the purposes of fulfilling their obligations under this Agreement, or in pursuance of any other written instructions of the Commissioner communicated to the PAA from time to time, and strictly for no other purpose unless legally required to do so. In such a case, the PAA shall inform the Commissioner of that legal requirement before commencing such processing, unless that law prohibits such information being disclosed on important grounds of public interest.

2.2 The PAA will not disclose or share the data processed under the Agreement with any third party without the written authority of the Commissioner.

2.3 The PAA is prohibited from publishing, copying, transferring or duplicating any personal data they hold in terms of this agreement without the written authority of the Commissioner.

2.4 The PAA must have their own policies and procedures for the handling of records including personal data. The Commissioner has provided an information security policy to all PAAs for reference purposes.

2.5 The PAA agrees to store or record the personal data processed under the Agreement in a structured, commonly used and machine readable or otherwise accessible form.

2.6 The PAA shall not process or otherwise transfer any Personal Data in or to any country outside the UK without the Commissioner's prior written consent.

2.7 The PAA shall not engage a sub-contractor to carry out Processing in connection with the Agreement.

3 PURPOSE

3.1 In performing their obligations under the Agreement the PAA will process personal data on behalf of the Commissioner.

3.2 In addition to disclosure by the Commissioner, the Scottish Ministers will provide personal data to the PAA in order to comply with section 3 (1) of the Public Appointments

and Public Bodies etc. (Scotland) Act 2003 which places an obligation on them to provide the Commissioner with such information as the Commissioner reasonably requires in the exercise of his functions. The Commissioner will provide personal data to the PAA in pursuance of the Agreement. The data is provided in order that PAAs can:

- promote compliance with the Code;
- examine the methods and practices employed by the Scottish Ministers in the making of appointments, and recommendations for appointment, to the specified authorities
- if the Commissioner considers it appropriate, examine the making by the Scottish Ministers of any appointment, or recommendation for appointment, to any of the specified authorities.

3.3 The Commissioner (whether directly or through the Scottish Ministers) will provide the PAA with information relating to the methods and practices employed by the Scottish Ministers in the making of appointments to the specified authorities on both live and previous appointment rounds. Such information, relating as it does to the activities and behaviours of selection panel members and others engaged in the appointment process, as well as to the performance of applicants and candidates during the stages of appointment rounds and once appointed, will of necessity include personal data. Detail of the specific types and volumes of this personal data, and the duration for which the PAA is permitted to process it, is provided in Schedule One of this Agreement.

3.4 The Commissioner will process the PAA's personal data for the purposes of fulfilling the terms of the Agreement. Detail of the specific types and volumes of this data is provided in Part 2 of Schedule One of this Agreement. The Commissioner will process the PAA's personal data in accordance with the Commissioner's data protection policy (a copy of which can be provided upon request).

4 DATA SECURITY

4.1 The PAA must ensure the security of personal data processed by them in terms of this Agreement.

4.2 The PAA must implement and ensure that it continues to have in place appropriate technical and organisational measures (which may, from time to time, be subject to review and approval by the Commissioner) to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures, having regard to the nature of the processing and the risks posed, may include as appropriate:

- the pseudonymisation and encryption of personal data and password protection (including two factor authentication (2FA) where possible) for access to any device used to store or transfer data;
- ensuring that processing systems and services are able to provide ongoing confidentiality, integrity, availability and resilience in relation to the processing of personal data. In practical terms this includes ensuring that the operating systems and

software are appropriately licensed, security fixes for the operating system and software are regularly applied and reliable cyber security software is installed;

- ensuring that systems have the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- implementation of a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

4.3 The PAA must ensure that the technical and organisational measures employed facilitate immediate detection of relevant infringement events.

4.4 The PAA agrees to notify the Commissioner of any material change to the measures they employ in pursuance of clause 4.2 of this Schedule One.

5 DATA SUBJECTS' RIGHTS AND REQUESTS FOR INFORMATION

5.1 The Commissioner and the PAA shall each ensure that they process the Personal Data fairly and lawfully during the term of the Agreement

5.2 Individuals have rights in relation to their personal data under the Data Protection Laws. Those rights include:

- i. The right to be informed
- ii. The right of access
- iii. The right to rectification
- iv. The right to erasure
- v. The right to restrict processing
- vi. The right to data portability
- vii. The right to object
- viii. Rights in relation to automated decision making and profiling

5.3 The PAA must advise the Commissioner without undue delay, or in any event within three days of receipt, of any request made to them for information or notification under the Data Protection Laws, including:

- any request, complaint or communication from a data subject relating to personal data or the PAA's or Commissioner's obligations under the Data Protection Laws;
- any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Agreement; and
- any request from a third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order.

5.4 The PAA shall assist the Commissioner in responding to any Data Subject access request and to ensure compliance with its obligations under the Data Protection Laws with respect to security, privacy impact assessments and consultations with Supervisory Authorities or regulators.

6 DATA SECURITY BREACHES AND REPORTING PROCEDURES

6.1 The PAA must notify any alleged, suspected, threatened or actual Data Breach in relation to any personal data processed by them under this Agreement to the Commissioner without undue delay and in any event no later than 24 hours after becoming aware of it, following the procedure in Schedule Two of the Agreement.

6.2 The PAA shall assist the Commissioner in relation to the Commissioner's obligation to notify any Data Breach to the Supervisory Authority and with communication of a Data Breach to a Data Subject.

7 OTHER DATA PROTECTION OBLIGATIONS

7.1 From time to time the PAA will support the Commissioner with preparation of data protection impact assessments and with consultation with the Supervisory Authority on data protection measures.

7.2 The PAA will act only under the Commissioner's instructions in relation to any activities undertaken to resolve any complaints or comply with any requests from individuals under clause 5 of this Schedule One.

8 DUTY OF CONFIDENCE

8.1 The PAA will treat personal data that they process in terms of the Agreement in the strictest confidence. The Commissioner's confidentiality policy provides guidance.

9 FREEDOM OF INFORMATION

The PAA recognises that the Commissioner is a public authority for the purposes of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and may be required to disclose information about the Agreement, the services provided by the PAA under the Agreement. The PAA agrees to

(a) provide all reasonable assistance and information to the Commissioner as is necessary to enable the Commissioner to comply with its obligations under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;

(b) transfer to the Commission all requests for information relating to this Agreement that it receives as soon as practicable and in any event within three (3) days of receipt; and

(c) not respond directly to the request for information unless authorized in writing to do so by the Commissioner.

The PAA acknowledges that the Commissioner may be required under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 to disclose information without consulting or obtaining consent from the Supplier. The Commissioner shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

10 RECORD KEEPING, RETENTION, AND INSPECTION

10.1 The PAA must delete or return all personal data processed in terms of the Agreement if requested by the Commissioner to do so at any time.

10.2 The PAA shall, at the conclusion of the provision of services in relation to any particular assignment the PAA is engaged in under the terms of the Agreement, delete or return as required all Personal Data that they have processed in relation to that assignment. The Personal Data will (at the Commissioner's sole discretion) be deleted or returned to either the Commissioner or the Scottish Ministers as appropriate and depending on which party provided the information to the PAA for the purposes of the assignment.

10.3 The PAA must provide such information as is necessary to enable the Commissioner to be assured of the PAA's compliance with the requirements imposed by the Agreement and the Data Protection Laws in terms of data protection.

10.4 The PAA will allow the Commissioner, the Commissioner's employees, auditors and/or authorised agents reasonable access to any relevant premises or systems, during normal business hours, to inspect any procedures, measures and records used or employed by the PAA in relation to the processing of personal data in terms of this Agreement and contribute as is reasonable to those audits and inspections.

10.5 The PAA shall inform the Commissioner, if in their opinion, an instruction from the Commissioner infringes any obligation under the Data Protection Laws.

10.6 The PAA must maintain written records including in electronic form, of all processing activities carried out in pursuance of the Agreement or otherwise on behalf of the Commissioner. This record must contain the name and contact details of the PAA, the Commissioner and the Commissioner's data protection officer (see the Commissioner's Data Protection Policy for details), the categories of processing carried out by the PAA on behalf of the Commissioner and a general description of the technical and organisational security measures referred to in clause 4 of this Schedule One.

10.7 If requested, the PAA must make any records that are requested available to the Supervisory Authority and co-operate with the Supervisory Authority in the performance of its tasks.

11 TERMINATION

11.1 The PAA shall, on termination of this Agreement, delete or return (as required by the Commissioner) any personal data which they have processed under the Agreement.

11.2 In the event legislation requires the PAA to retain Personal Data contrary to the provisions of clauses 10.1 or 11.1 of this Schedule One, the PAA shall notify the Commissioner accordingly unless the law prohibits such disclosure.

12 AMENDMENTS AND RESOLUTION OF DISPUTES

12.1 The PAA and the Commissioner agree to negotiate in good faith any amendments to this Agreement or the Schedules that may be required to ensure that both meet all their

obligations under Data Protection Laws. However the PAA shall be bound to accept any changes made in this regard by the Commissioner.

12.2 The provisions set out in this annexe are without prejudice to any obligations and duties imposed directly on the PAA under Data Protection Laws and the PAA agrees to comply with those obligations and duties.

12.3 In the event of a dispute or claim brought by a data subject or action on the part of the ICO concerning the processing of personal data against either the PAA or the Commissioner, the parties will inform each other about any such disputes or claims, and will cooperate with a view to resolving them amicably in a timely fashion.

13 GOVERNING LAW

13.1 This Agreement and any dispute or claim (in connection with it or its subject matter or formation) shall be governed by and construed in accordance with the law of Scotland.

SCHEDULE ONE – DESCRIPTION OF PERSONAL DATA AND DURATION OF PROCESSING

Part 1

Personal data to be processed by the PAA in terms of the Agreement

The personal data of data subjects involved in the public appointments process, including but not limited to:

- Names
- Addresses including email addresses
- Application and monitoring forms which may include protected characteristics under the Equality Act 2010 such as gender, sexual orientation, religion or belief and ethnicity
- Political affiliation
- The views of PAAs, Scottish Government officials, independent panel members and public body chairs on applicants, on appointees and on each other's performance, views, beliefs, activities and behaviours.

Duration of the processing

When PAAs are allocated to oversee all or part of an appointment round they are provided with briefing material by the Commissioner and subsequently with applications and panel member assessments of them by the Scottish Ministers. When the PAA's involvement in a round ceases and when they have produced their final report for the Commissioner they should destroy the information provided by the Commissioner and either return or destroy the information provided by the Scottish Ministers.

When PAAs are engaged in thematic reviews or ad hoc projects they are provided with information by both the Commissioner and by the Scottish Ministers. When the PAA's involvement in a review or project ceases they should destroy the information provided by the Commissioner and either return or destroy the information provided by the Scottish Ministers.

If unclear, the Nominated Officer can give direction as to the cessation of a PAA's involvement in appointment rounds, reviews and ad hoc activities to ensure that the duration of processing is limited appropriately.

Part 2

The personal data of the PAA to be processed by the Commissioner

Personal data provided by the PAA relating to their ability to fulfil the role of a PAA and to allow for administration of the Agreement, including but not limited to:

- Contact details, which are forwarded to others for the fulfilment of assignments
- data on the PAA's personal health and wellbeing
- the PAA's banking details to allow for the remuneration of invoices and expenses

- the PAA's availability or otherwise to take on assignments and reasons for doing so or not and information on the PAA's experience, expertise and specialisms.
- review forms containing the views of appointment round participants on the PAA's contribution to appointments processes. These are forwarded to the Scottish Ministers with a view to securing ongoing improvements to the appointments process.

The Commissioner also processes personal data the PAA provides during tendering processes, including diversity monitoring information, in order to comply with his obligations under the Equality Act 2010.

Duration of the processing

For the term of the Agreement plus seven years or such further term as agreed between the PAA and the Commissioner.

SCHEDULE TWO - DATA SECURITY BREACHES

Data Breaches can arise as a result of both accidental and deliberate causes. The Commissioner has obligations in relation to data breaches which the PAA has an obligation to assist with as detailed elsewhere in this Agreement. Where a Data Breach has occurred, the Commissioner and the PAA have an obligation to establish the likelihood and the severity of the resulting risk to people's rights and freedoms as a result.

The Commissioner, on becoming aware of a breach, must

- make all reasonable attempts to contain it. For example, contact IT Support to contain a virus or retrieve documents from backup.
- identify what the risks to an individual's rights and freedoms might be. It's important to focus on the potential negative consequences for individuals.
- assess the likelihood of the risks occurring. If it's likely that a risk will occur, then the Supervisory Authority must be notified of the Data Breach; if it's unlikely to occur then the Data Breach does not have to be reported. In any event, the Data Breach and the reasons for reporting or not reporting to the Supervisory Authority should be documented.
- finally, assess the likelihood and impact of the risk occurring. If this is assessed as 'high' then those concerned directly should be informed without undue delay.

PROCEDURE TO BE FOLLOWED BY PAA IN THE EVENT OF A DATA SECURITY BREACH

In the event of a Data Breach the PAA must contact the Commissioner's Public Appointments Team, within 24 hours of discovering it, and provide the following information:

- the nature of the breach, including – where possible – the categories and approximate number of individuals and personal data records concerned
- the name and contact details of the PAA's Data Protection Officer or relevant person (this may simply be the PAA)
- a description of the likely consequences of the Data Breach; and
- a description of the measures taken or proposed to be taken to respond to the Data Breach.

The Commissioner's Public Appointments Team will inform its Corporate Services Team and agree the next steps to take.

The Commissioner's Corporate Services Team and/or Public Appointments Team will provide guidance on how the results of the Data Breach are to be handled.

