

**[DRAFTING NOTE - REMOVE THIS PAGE FROM FINAL FORM CONTRACT
ACCELERATOR STAGE
ACCELERATOR PARTICIPANT TERMS AND CONDITIONS**

Where a consortium or joint venture is taking part in the Challenge, a lead participant will enter into these Terms and Conditions. The CivTech® Team and the Challenge Sponsor reserve the right to require that another member of a consortium or joint venture team shall enter into the Accelerator Terms and Conditions instead of the party that entered into the Exploration Stage Participant Terms and Conditions.

Each party is solely responsible for taking its own separate legal advice in respect of these Terms and Conditions.]

**ACCELERATOR STAGE
ACCELERATOR PARTICIPANT TERMS AND CONDITIONS**

1 BACKGROUND

- 1.1 **[INSERT NAME OF CHALLENGE SPONSOR]** (the “**Challenge Sponsor**”) set a challenge being: **[INSERT DETAILS OF CHALLENGE PROBLEM]** (the “**Challenge Problem**”) as part of the CivTech Programme being run by the CivTech Team on behalf of the Scottish Ministers (the “**CivTech Team**”) (the “**Challenge**”).
- 1.2 **[INSERT DETAILS OF ACCELERATOR PARTICIPANT(WHERE PARTICIPANT IS A CONSORTIUM / JOINT VENTURE INSERT DETAILS OF THE LEAD PARTICIPANT)]** (“**You**” / “**Your**”) submitted a proposed solution to the Challenge Problem (“**Your Solution**”), and You have been selected as an accelerator participant by the Challenge Sponsor to take part in the Accelerator Stage of the Challenge.
- 1.3 The Challenge Sponsor and the CivTech Team have set out below the terms and conditions upon which You shall take part in the Challenge as an accelerator participant.
- 1.4 The CivTech Programme comprises the following stages: Exploration Stage, Accelerator Stage, and Pre-Commercialisation Stage (if applicable) (the “**CivTech Programme**”).
- 1.5 [The CivTech Team and the Challenge Sponsor are both part of the Scottish Government but each have different roles in the context of the CivTech Programme.] **[Drafting note: this paragraph should be included where the Challenge Sponsor is part of the Scottish Government.]**

2 WHAT DOES BEING AN ACCELERATOR PARTICIPANT MEAN?

- 2.1 You have been selected as an accelerator participant to progress to the next stage of the Challenge where You will work with the Challenge Sponsor and the CivTech Team over a creation period of fifteen weeks to further progress, develop, and test Your Solution (the “**Accelerator Stage**”).
- 2.2 As an accelerator participant, You shall:
- 2.2.1 engage actively in the Accelerator Stage with the Challenge Sponsor, the CivTech Team, where applicable the Citizens (as defined below), other accelerator participants, and the Product Steering Group (as defined below);
- 2.2.2 continue to progress, develop, and test Your Solution over the course of the Accelerator Stage (taking on board any further information / insight the Challenge Sponsor, the CivTech Team, the Citizens (if any), and the Product Steering Group may provide to You), taking consideration of the reasonable requirements of the Challenge Sponsor and maintaining satisfactory progress in check gate reviews and in accordance with the Product Roadmap (as defined below);
- 2.2.3 maintain and update a product development roadmap which sets out how You plan to develop Your Solution during the Accelerator Stage (the “**Product Roadmap**”) as agreed with the Challenge Sponsor and the CivTech Team and promptly bring to the attention of the Challenge Sponsor and the CivTech Team where the progress in connection with Your Solution does not meet the requirements of the Product Roadmap and provide further information on request;
- 2.2.4 participate actively in any workshops / meetings and check gate reviews / training / video and conference calls / other activities (including delivering pitches and attending interviews) that the Challenge Sponsor and/or the CivTech Team may organise during the Accelerator Stage. Attendance (either in person or remotely) at all workshops / meetings and check gate reviews / training / video and conference calls / other activities organised by the Challenge Sponsor and/or the CivTech Team is compulsory unless otherwise agreed with the Challenge Sponsor and CivTech Team at the start of the Accelerator Stage;

- 2.2.5 participate in a demonstration day (“**Demo Day**”) where You will be able to demonstrate the sellable features of Your Solution in public;
 - 2.2.6 participate in any filming that may take place as part of the Accelerator Stage (including the filming of Your pitches and filming on the Demo Day);
 - 2.2.7 engage actively in the Accelerator Stage in accordance with any specific training provided to You by the Challenge Sponsor and/or the CivTech Team;
 - 2.2.8 engage actively in the Accelerator Stage in accordance with any specific guidance or information provided to You, whether at check gate reviews or otherwise, as well as any reasonable requests of the Challenge Sponsor (for example, any data that is created as part of Your Solution or otherwise made available to You for use in the Challenge must be easily extractable);
 - 2.2.9 participate collaboratively as a member of the Product Steering Group (see paragraph 5 (*Product Steering Group*)) and take into consideration the reasonable requirements of the Challenge Sponsor and feedback given in check gate reviews; and
 - 2.2.10 if any source code forms part of Your Solution, ensure that such source code is (i) stored at a location agreed by You and the Challenge Sponsor (both acting reasonably), (ii) maintained and kept up to date as it is developed during the Accelerator Stage and (iii) maintained in a format agreed by You and the Challenge Sponsor (both acting reasonably). You agree to provide the Challenge Sponsor with access to such source code and the related technical specification in the following circumstances: (i) where required by the Product Roadmap, (ii) promptly upon request and (iii) as part of check gate reviews.
- 2.3 The obligations outlined in paragraph 2.2 are mandatory, and the Challenge Sponsor and/or the CivTech Team reserve the right to remove You from the Accelerator Stage if You fail to comply with these obligations, as per the terms of paragraph 7.1.1 (*Removal from the Accelerator Stage*).
 - 2.4 The Accelerator Stage will be delivered in accordance with government guidance and applicable legislation from time to time. As a consequence of the Covid-19 pandemic, participation in the Accelerator Stage will likely be a hybrid of remote (using internet and other technologies) and in-person working. If permitted by legislation and government guidance and where all parties agree, we may ask You to attend the CivTech Team’s studio at CodeBase in Edinburgh or another location for specific purposes such as meetings. Attendance in person will always be agreed on a case-by-case basis and taking into account any concerns You may have.
 - 2.5 You must actively participate in the Accelerator Stage working remotely and/or attending in person at such location and at such time as agreed by You, the Challenge Sponsor and the CivTech Team in accordance with paragraph 2.4.
 - 2.6 You will need to have available Your own laptop, mobile phone, internet connection, licences etc. as You may require, to participate in the Accelerator Stage (these will not be provided to You by the Challenge Sponsor or the CivTech Team). You agree to use any programmes / platforms / software for Your participation in the Accelerator Stage as specified by the Challenge Sponsor and/or the CivTech Team.
 - 2.7 Any use of the source code forming part of Your Solution by the Challenge Sponsor shall at all times be subject to the terms of paragraph 8 (*Who owns any intellectual property rights that are created?*).

3 WHAT IS THE CHALLENGE SPONSOR’S ROLE?

- 3.1 Along with the CivTech Team, the Challenge Sponsor will be engaging with You during the Accelerator Stage. This shall include:
 - 3.1.1 providing to You the Challenge Sponsor’s subject matter expertise and sector knowledge in relation to the Challenge Problem;

- 3.1.2 being an active member of the team working with You to develop Your Solution (the team being: (i) the Challenge Sponsor; (ii) where applicable, the Citizens; and (iii) You) by contributing to workshops, meetings, video and conference calls and other activities forming part of the Accelerator Stage (e.g. the Demo Day) (this includes a commitment by the Challenge Sponsor to input a minimum of half a day of time each week during the Accelerator Stage); and
- 3.1.3 participating as a member of the Product Steering Group (see paragraph 5 (*Product Steering Group*)) and providing feedback on the Challenge Sponsor's reasonable requirements and participating in check gate reviews.

4 WHAT IS THE CIVTECH TEAM'S ROLE?

- 4.1 The CivTech Team will be in charge of the general day-to day running of the Challenge and will also be available to provide You with general business advice. The CivTech Team will also be participating as a member of the Product Steering Group (see paragraph 5 (*Product Steering Group*)) and participating in check gate reviews.
- 4.2 The CivTech Team may identify individuals or citizen groups to act as citizens to assist with the development of Your Solution (the "**Citizens**") (if Your Solution is a citizen-facing solution).

5 PRODUCT STEERING GROUP

- 5.1 The Product Steering Group shall be made up of one representative from each of: (i) the Challenge Sponsor; (ii) the Digital Directorate (part of the Scottish Government); (iii) the CivTech Team; (iv) You (including feedback from the Citizens (if any)); and (v) specialists and/or (vi) Sub-contractors (as defined in paragraph 11.5 (*Transfer/sub-contracting*)) (as and when appropriate / required). Your membership of the Product Steering Group shall remain consistent throughout the Accelerator Stage.
- 5.2 The Challenge Sponsor, the CivTech Team and You shall participate in the Product Steering Group including attending weekly meetings and/or video / conference calls of the Product Steering Group to:
 - 5.2.1 agree the continuous improvement of the product roadmap and delivery of Your Solution;
 - 5.2.2 agree the design of Your Solution and co-designing of Your Solution with input, where applicable, from the Citizens;
 - 5.2.3 conduct check gate reviews at which You report on the progress of Your Solution and which (provided that progress is satisfactory and any agreed conditions including milestones are met) will release the next instalment of the Development Sum to be paid to You, as outlined in paragraph 6.1.1 (*Does the Accelerator Participant get paid for their work during the Accelerator Stage?*). The check gate reviews shall be conducted approximately every four weeks.
 - 5.2.4 agree user research and engagement.
- 5.3 All decisions of the Product Steering Group shall be made unanimously among the Challenge Sponsor, the CivTech Team and You.

6 DOES THE ACCELERATOR PARTICIPANT GET PAID FOR THEIR WORK DURING THE ACCELERATOR STAGE?

- 6.1 You will be paid a development sum of £30,000 plus VAT (if applicable) (the "**Development Sum**") by the Challenge Sponsor and the CivTech Team jointly for Your participation in the Accelerator Stage in accordance with the below paragraphs:
 - 6.1.1 the Development Sum shall be paid in instalments subject to satisfactory progress being reported on Your Solution during the relevant check gate review and following participation at Demo Day, the amounts to be set by the Challenge Sponsor and the CivTech Team in consultation with the Product Steering Group;

- 6.1.2 the first monthly payment shall be paid to You following satisfactory progress being reported on Your Solution during the first check gate review;
 - 6.1.3 thereafter, the remaining payments of the Development Sum shall be made to You via staged payments, the staged payments shall be subject to both successful check gate reviews that assess the progress that has been made in relation to Your Solution (including meeting any agreed milestones) and participation at Demo Day; and
 - 6.1.4 if the Challenge Sponsor and the CivTech Team are of the reasonable view that satisfactory progress has not been made or any of the conditions or milestones agreed in connection with a check gate review or Demo Day participation have not been met, the Challenge Sponsor and the CivTech Team may withhold payments until such time that sufficient progress has been made.
- 6.2 All payments due to You from the Challenge Sponsor and the CivTech Team in accordance with these Terms and Conditions shall be paid to You by the CivTech Team and payment by the CivTech Team will satisfy its own and the Challenge Sponsor's payment obligations.
- 6.3 The Development Sum is paid per accelerator participant team (i.e. only one payment of the Development Sum regardless of the number of individuals or companies within an accelerator participant team). You will be responsible for distributing the Development Sum amongst the accelerator participant team in accordance with any agreed payment arrangements. The Challenge Sponsor and the CivTech Team shall have no involvement in this distribution.
- 6.4 Unless the Challenge Sponsor and the CivTech Team agree to make a hardware repayment to You in accordance with paragraph 6.5, the Development Sum shall be the only payment due from the Challenge Sponsor and the CivTech Team in relation to participation in the Accelerator Stage, and the Challenge Sponsor and the CivTech Team will not be responsible for the payment of any additional expenses that may be incurred during participation in the Accelerator Stage.
- 6.5 If the hardware costs in connection with Your Solution are significant or exceed the Development Sum, the Challenge Sponsor and the CivTech Team may, in its/their sole discretion, agree to reimburse You for all or part of Your necessary and properly incurred hardware costs. This reimbursement is not guaranteed and is subject to such limits and other conditions as the Challenge Sponsor may determine. Any hardware purchased / entirely paid for by the Challenge Sponsor shall belong to the Challenge Sponsor unless otherwise agreed in writing between You and the Challenge Sponsor. Where the Challenge Sponsor pays for part of any hardware, then the ownership of such hardware shall be separately agreed between You and the Challenge Sponsor.

7 REMOVAL FROM THE ACCELERATOR STAGE

- 7.1 The Challenge Sponsor and/or the CivTech Team may remove You from the Accelerator Stage if:
- 7.1.1 You do not participate in the Accelerator Stage in accordance with paragraph 2 (*What does being an Accelerator Participant mean?*) and/or otherwise breach any of Your other obligations as outlined under these Terms and Conditions, and fail to remedy such non-participation and/or other breach no later than two (2) days after receiving a written notice from the Challenge Sponsor and/or the CivTech Team requesting that You do so; or
 - 7.1.2 You engage in any conduct or activity which in the Challenge Sponsor and/or the CivTech Team's reasonable opinion damages or has the potential to damage the Challenge Sponsor and/or the CivTech Team's reputation and/or the reputation of the Scottish Ministers and/or the CivTech Programme; or
 - 7.1.3 You have engaged a Sub-contractor and there is a disagreement with or involving the Sub-contractor or the Sub-contractor ceases to be engaged by You such that in the Challenge Sponsor and/or the CivTech Team's reasonable opinion You are no longer able to take part purposefully in the Accelerator Stage.

- 7.2 If You are removed from the Accelerator Stage in accordance with paragraph 7.1, You will not receive any further payment of the Development Sum or any hardware repayment from the Challenge Sponsor and/or the CivTech Team as outlined in paragraphs 6.1 and 6.5 (and in some cases the Challenge Sponsor and/or the CivTech Team may be forced to recover any of the Development Sum and/or hardware repayment that have already been paid to You).
- 7.3 It may be that during the Accelerator Stage, the Challenge Sponsor and the CivTech Team are of the view that the objectives of the Challenge and/or the CivTech Programme are not being met or will not be capable of being met by Your Solution or generally. In such a case the Challenge Sponsor and/or the CivTech Team may notify You that the Challenge Sponsor and the CivTech Team are stopping Your participation in the Accelerator Stage although You will be entitled to retain any of the Development Sum that You have already received at the date of such notification (provided that such view has not been reached due to a failure by You to perform Your obligations as outlined in these Terms and Conditions). Your right to retain any of the hardware repayment is determined by the Challenge Sponsor.
- 7.4 If You are removed from the Accelerator Stage in terms of paragraphs 7.1 or 7.5 or if Your participation in the Accelerator Stage is stopped in terms of paragraph 7.2:
- 7.4.1 the Challenge Sponsor and the CivTech Team shall be entitled to engage with another participant from the Exploration Stage that was not successful in the original Accelerator Stage selection process, offering the opportunity to take part in the Accelerator Stage to another participant; or
- 7.4.2 If You are part of a joint venture or consortium, the CivTech Team and the Challenge Sponsor reserve the right to continue the Accelerator Stage with another member of Your team as lead participant and enter into Accelerator Participant Terms and Conditions with that other member of Your team. Where another member of Your team is to enter into the Accelerator Participant Terms and Conditions as the lead participant, You shall ensure that such other member of Your team has all necessary rights to use the Background Intellectual Property (as defined in paragraph 8.5) and the Foreground Intellectual Property (as defined in paragraph 8.2) for the purposes of performing the Accelerator Participant Terms and Conditions.
- 7.5 Without prejudice to any rights that have accrued under these Terms and Conditions or any of their other rights or remedies, the Challenge Sponsor and/or the CivTech Team may at any time terminate Your participation in the Accelerator Stage with immediate effect by giving written notice to You if:
- 7.5.1 You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or admit inability to pay Your debts or are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986;
- 7.5.2 You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with Your creditors other than for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of You;
- 7.5.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of You other than for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of You;
- 7.5.4 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over You;
- 7.5.5 the holder of a qualifying floating charge over Your assets has become entitled to appoint or has appointed an administrative receiver;
- 7.5.6 a person becomes entitled to appoint a receiver over Your assets or a receiver is appointed over Your assets;

- 7.5.7 a creditor or encumbrancer of Yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days;
- 7.5.8 any event occurs, or proceeding is taken, with respect to You in any jurisdiction to which You are subject that has an effect equivalent or similar to any of the events mentioned in paragraphs 7.5.1 to 7.5.7 (inclusive); or
- 7.5.9 You suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of Your business.

8 WHO OWNS ANY INTELLECTUAL PROPERTY RIGHTS THAT ARE CREATED?

- 8.1 This paragraph is in addition to any existing licences that may already have been granted and licensing obligations undertaken by the parties to each other in accordance with the Exploration Stage Terms and Conditions.
- 8.2 Subject at all times to paragraph 8.5, as between You and the Challenge Sponsor, You will own any Intellectual Property Rights that are created: (i) by or on behalf of You or by the Challenge Sponsor (and, if relevant, through the use of any hardware provided/made available to You by the Challenge Sponsor) during and as part of Your and the Challenge Sponsor's participation in the CivTech Programme; and (ii) by any Citizens and/or specialists assisting You during and as part of participation in the CivTech Programme where the relevant specialist and/or Citizen transfers such Intellectual Property Rights to You and/or any Sub-contractor ("**Foreground Intellectual Property**"), so that You are able to continue to develop and commercialise Your Solution.
- 8.3 If You engage a Sub-contractor. You are responsible for granting the rights set out in this paragraph 8 to the Challenge Sponsor and the CivTech Team.
- 8.4 Subject at all times to paragraph 8.5, for the purposes of paragraph 8.2 if the Challenge Sponsor creates any Intellectual Property Rights during and as part of the Challenge Sponsor's participation in the CivTech Programme, the Challenge Sponsor hereby assigns (by way of future assignment), to the extent that these are capable of being assigned, such Intellectual Property Rights to You, and shall ensure that any applicable moral rights that may subsist in the aforementioned Intellectual Property Rights are waived in favour of You.
- 8.5 Any Intellectual Property Rights existing prior to Your participation in the CivTech Programme and used in connection with Your Solution ("**Background Intellectual Property**") are and shall remain the exclusive property of the party owning it (including where applicable, the third party from whom its right to use the Background Intellectual Property has derived). This includes Intellectual Property Rights which pre-exist in any hardware used to develop Your Solution, which shall be considered the Background Intellectual Property of the owner of such hardware. You will be required to identify and confirm in writing any Background Intellectual Property before commencing the Accelerator Stage (including the details of any licences to which the Background Intellectual Property is subject).
- 8.6 You hereby grant to the Challenge Sponsor a royalty free, perpetual, non-exclusive licence to use, modify and develop any of the Foreground Intellectual Property (including any source code forming part of the Foreground Intellectual Property) for the purposes of using, testing, and developing Your Solution for the business purposes of the Challenge Sponsor as outlined in the Schedule (*Business purposes*).
- 8.7 Subject to paragraph 8.10, You hereby grant to the Challenge Sponsor a perpetual and non-exclusive licence to grant sub-licences to others to use, modify and develop any of the Foreground Intellectual Property for the purposes of using, testing, and developing Your Solution for the business purposes of the Challenge Sponsor as outlined in the Schedule (*Business purposes*), provided that:
- 8.7.1 this shall not include a right for the relevant third party to access any source code forming part of the Foreground Intellectual Property (unless otherwise agreed in writing between the Challenge Sponsor and You);

- 8.7.2 the Challenge Sponsor or its sub-licensee(s) agree to pay You a reasonable royalty in connection with each sub-licence, which royalty shall be negotiated in good faith between You and the Challenge Sponsor or each sub-licensee, acting reasonably; and
- 8.7.3 the relevant sub-licensee and You, acting reasonably, enter into a confidentiality agreement to be negotiated in good faith

provided always that where You fail to engage in negotiations or act reasonably or in good faith under paragraphs 8.7.2 and/or 8.7.3, then paragraphs 8.7.2 and 8.7.3 shall not apply and the relevant Intellectual Property Rights may be sub-licensed without these conditions being met.

- 8.8 Subject to paragraph 8.10, You hereby grant to the Challenge Sponsor a royalty free, perpetual, non-exclusive licence to use (and the right to grant sub-licences to others to use in so far as required to exercise the rights in respect of any sub-licence granted under paragraph 8.7) the Background Intellectual Property for the purposes of using, testing, and developing Your Solution for the business purposes of the Challenge Sponsor as outlined in the Schedule (*Business purposes*), provided that the licence shall not include a right for the Challenge Sponsor or any sub-licensee to access any source code forming part of the Background Intellectual Property (unless otherwise agreed in writing between the Challenge Sponsor and You). In addition, the Challenge Sponsor's right to grant sub-licences is subject to the following conditions:

- 8.8.1 the Challenge Sponsor or its sub-licensee(s) agree to pay You a reasonable royalty in connection with each sub-licence, which royalty shall be negotiated in good faith between You and the Challenge Sponsor, or each sub-licensee, acting reasonably; and
- 8.8.2 the relevant sub-licensee and You, acting reasonably, enter into a confidentiality agreement to be negotiated in good faith

provided always that where You fail to engage in negotiations or act reasonably or in good faith under paragraphs 8.8.1 and/or 8.8.2, then paragraphs 8.8.1 and 8.8.2 shall not apply and the relevant Intellectual Property Rights may be sub-licensed without these conditions being met.

- 8.9 Where the Challenge Sponsor agrees these are required, the Challenge Sponsor hereby grants to You a non-exclusive, royalty-free, perpetual licence to use, modify and develop (and the right to grant sub-licences to others to use, modify and develop) the Challenge Sponsor's background Intellectual Property Rights ("**Challenge Sponsor Background Intellectual Property**"), to the extent such Challenge Sponsor Background Intellectual Property is capable of being licensed by the Challenge Sponsor, for the sole purpose of continuing to develop and commercialise Your Solution (where this is applicable, the specific Challenge Sponsor Background Intellectual Property subject to this licence will be documented by the Challenge Sponsor and You in writing).
- 8.10 Notwithstanding any other term, if any of the events outlined in paragraphs 7.5.1 to 7.5.9 (*Removal from the Accelerator Stage*) occur:
- 8.10.1 the licence granted under paragraph 8.7 shall be deemed to include the right for the Challenge Sponsor to grant any sub-licensees the right to access any source code forming part of the Foreground Intellectual Property and the conditions outlined in paragraphs 8.7.1 to 8.7.3 shall not apply; and
- 8.10.2 the licence granted under paragraph 8.8 shall be deemed to: (i) include a right for the Challenge Sponsor to access the source code forming part of the Background Intellectual Property (and grant any sub-licensees such right of access); and (ii) include the right for the Challenge Sponsor to modify, and develop the Background Intellectual Property, including any source code (and grant sub-licences in relation to the same) and the conditions outlined in paragraphs 8.8.1 and 8.8.2 shall not apply.
- 8.11 You hereby grant to the Challenge Sponsor and the CivTech Team a non-exclusive, royalty-free licence to use the Foreground Intellectual Property and the Background Intellectual Property for the purposes of their participation in the Accelerator Stage and as required to fulfil their obligations and exercise their rights as outlined in these Terms and Conditions for the duration of the Accelerator Stage.

- 8.12 If, within the period of two (2) years following the expiry of the Accelerator Stage, You have: (i) not commercially exploited the Foreground Intellectual Property; and (ii) the Challenge Sponsor and/or the CivTech Team are of the view You are not using Your best endeavours to do so, You shall, if requested by the Challenge Sponsor and/or the CivTech Team, assign all right, title and interest in and to the Foreground Intellectual Property free of charge to the Challenge Sponsor. When determining whether You have commercially exploited the Foreground Intellectual Property, the Challenge Sponsor and the CivTech Team shall take into account factors such as whether You continue to work with the Challenge Sponsor in connection with Your Solution, any research and development in connection with the Foreground Intellectual Property, any attempts by You to secure external financing / investment in connection with Your Solution and whether You have entered into any commercial agreements which generate revenue or in-kind benefits from the use of the Foreground Intellectual Property. You may provide relevant evidence and representations in connection with such matters which shall be given due consideration by the Challenge Sponsor and the CivTech Team.
- 8.13 You hereby warrant that You own or otherwise have the right to use and licence the use of the Foreground Intellectual Property and the Background Intellectual Property.
- 8.14 You shall indemnify the Challenge Sponsor and the CivTech Team against all liabilities, costs, expenses, damages and losses suffered or incurred by the Challenge Sponsor and/or the CivTech Team as a result of or in connection with any claim brought against the Challenge Sponsor and/or the CivTech Team for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with Your participation in the CivTech Programme, or the Challenge Sponsor and/or the CivTech Team's use of Your Solution in accordance with these Terms and Conditions, to the extent that the claim is attributable to Your and/or any Sub-contractor's acts or omissions.
- 8.15 For the purposes of these Terms and Conditions, "**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 8.16 If You are removed from the Accelerator Stage pursuant to either paragraph 7.1 or 7.4 (*Removal from the Accelerator Stage*) or if the Accelerator Stage is not considered to be successful and the parties do not wish to continue their working relationship, then, if requested by the Challenge Sponsor, You agree to enter into negotiations to agree the terms on which You will assign the Foreground Intellectual Property to the Challenge Sponsor. Such terms are likely to include payment of a reasonable sum by the Challenge Sponsor to You and may include other conditions agreed between You and the Challenge Sponsor, both parties acting reasonably.

9 WHAT HAPPENS WHEN THE ACCELERATOR STAGE HAS BEEN COMPLETED?

- 9.1 The Challenge Sponsor will discuss with You the possibility of continuing the Challenge Sponsor's working relationship with You in relation to Your Solution if the Challenge Sponsor and the CivTech Team consider that the Accelerator Stage has been a success. However, the Challenge Sponsor and the CivTech Team shall not in any way be obligated to continue to develop any further relationship with You and/or enter into any contract with You in relation to Your Solution or otherwise. If You, the Challenge Sponsor, and the CivTech Team agree to continue the working relationship this shall be based on the terms of the Pre-Commercialisation Agreement (amended as necessary to take account of the specific nature of Your continued working relationship with the Challenge Sponsor and the CivTech Team).
- 9.2 If You are part of a joint venture or consortium, the CivTech Team and the Challenge Sponsor reserve the right to require that another member of Your team shall enter into the Pre-Commercialisation Stage Agreement as the lead participant. Change of the lead participant shall be agreed among the parties. Where another member of Your team is to enter into the Pre-Commercialisation Stage Agreement as the lead participant, You shall ensure that such other member of Your team has all necessary rights to use the

Background Intellectual Property and the Foreground Intellectual Property for the purposes of performing the Pre-Commercialisation Stage Agreement.

10 LIMITATION OF LIABILITY

- 10.1 The Challenge Sponsor and the CivTech Team will not be liable to You in any way for not continuing a working relationship with You and/or for not entering into any contract with You in relation to Your Solution or otherwise.
- 10.2 Subject to paragraph 10.3:
- 10.2.1 any advice and data that is provided to You by the Challenge Sponsor and/or the CivTech Team is for general information purposes only, and the Challenge Sponsor and the CivTech Team do not accept any liability in relation to any such advice and data;
- 10.2.2 and subject to paragraph 10.4, Your total liability to the Challenge Sponsor and the CivTech Team shall in no circumstances exceed the Development Sum;
- 10.2.3 the combined total liability of the Challenge Sponsor and the CivTech Team to You shall in no circumstances exceed the Development Sum; and
- 10.2.4 and subject to paragraph 10.4, none of the parties shall be liable to the other parties in respect of any:
- (a) loss of profits or anticipated savings; or
 - (b) loss of revenue or income; or
 - (c) loss of use or production; or
 - (d) loss of business, contracts or opportunities; or
 - (e) special, indirect or consequential loss or damage.
- 10.3 Nothing in these Terms and Conditions will limit or exclude any liability:
- 10.3.1 for death or personal injury resulting from negligence;
- 10.3.2 for fraud or fraudulent misrepresentation; or
- 10.3.3 that cannot be excluded or limited by applicable law.
- 10.4 Your liability under the following paragraphs shall be unlimited:
- 10.4.1 paragraph 8.14 (*Who Owns Any Intellectual Property Rights That Are Created?*);
- 10.4.2 paragraph 11.12 (*Applicable Law*); and
- 10.4.3 paragraph 11.4 (*Confidentiality*).
- 10.5 The limitations and exclusions of liability set out in this paragraph 10 are subject to paragraph 10.3 and govern all liabilities arising under these Terms and Conditions, including liabilities arising in contract, in delict (including negligence) and for breach of statutory duty, or otherwise, except to the extent expressly provided otherwise in these Terms and Conditions.

11 ADDITIONAL PROVISIONS

- 11.1 **Audit:** The Challenge Sponsor and the CivTech Team acting through themselves or through their Audit Agents shall have the right to audit You and/or any Sub-contractor (by way of being able to access any records and information relating to the Accelerator Stage (including all documentation and correspondence relating to financial and other transactions) that You and/or any Sub-contractor may hold) during the Accelerator Stage and for a period of 24 months thereafter, for the purposes of monitoring the Accelerator Stage and to assess Your compliance with the obligations set out in these Terms and Conditions. This right may be exercised by giving You no less than 5 Working Days' advance written notice. For the

purposes of these Terms and Conditions, “**Audit Agent**” shall mean: (i) the Challenge Sponsor and the CivTech Team’s internal and external auditors; (ii) the Challenge Sponsor and the CivTech Team’s statutory or regulatory auditors; (iii) Audit Scotland or the Auditor General, their staff and/or any of their appointed representatives; (iv) any party formally appointed by the Challenge Sponsor and the CivTech Team to carry out audit or similar review functions; and (v) successors or assignees of any of the above and “**Working Day**” shall mean a day, other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business. The CivTech Team will meet Your reasonable, unavoidable and directly incurred costs in connection with any audit carried out by the CivTech Team, provided that such costs are agreed by it in advance and in writing. If, as a result of any audit, You are found to have breached these Terms and Conditions, You shall meet Your own costs in connection with such audit and You shall return all payments relating to the audit made to You by the CivTech Team. You shall inform any Sub-contractors of this audit right and shall secure audit rights as set out in this paragraph in favour of the CivTech Team and the Challenge Sponsor from all Sub-contractors.

- 11.2 **Applicable Law:** We all agree at all times to comply with all applicable laws (including but not limited to anti-bribery and anti-corruption laws including the Bribery Act 2010, and equality laws) throughout the Accelerator Stage.
- 11.3 **Freedom of Information Requests:** You acknowledge that the Challenge Sponsor and the CivTech Team are subject to freedom of information legislation, and You will work with the Challenge Sponsor and/or the CivTech Team as may be required for the Challenge Sponsor and/or the CivTech Team to be able to comply with their obligations under such legislation and acknowledge that the Challenge Sponsor and/or the CivTech Team may be required to disclose information relating to You and/or any Sub-contractors, the Challenge Problem, the Challenge, Your Solution and the Accelerator Stage as part of such obligations (although prior to such disclosure it will be considered whether any exemptions apply).
- 11.4 **Confidentiality:** You, the Challenge Sponsor, and the CivTech Team (the “**Receiving Parties**”) acknowledge that as part of the Accelerator Stage we may receive trade secrets and/or confidential information in relation to each other and other accelerator participants. Subject to paragraph 11.3 (*Freedom of Information Requests*), all such information which is designated as confidential or which is otherwise clearly confidential in nature constitutes “**Confidential Information**”, and each Receiving Party agrees: (i) not to divulge the Confidential Information belonging to any other party to any third party (except that You may disclose the Confidential Information to any Sub-contractor who needs to know such information for the purposes of the Accelerator Stage and the CivTech Programme, provided that You ensure that such Sub-contractor to whom You disclose the Confidential Information complies with this paragraph 11.4); and (ii) only to use the Confidential Information for the purposes of the Accelerator Stage and the CivTech Programme. The confidentiality obligation contained in this paragraph 11.4 shall not apply to: (a) information which is or becomes part of the public domain other than through a breach of this paragraph 11.4; (b) information which was already in the Receiving Party’s possession prior to its disclosure; or (c) any information that may be required to be disclosed by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.5 **Transfer/sub-contracting:** You shall not assign, transfer, charge or deal in any other manner with these Terms and Conditions nor any of Your rights under them, nor sub-contract any of Your obligations without the prior written consent of the Challenge Sponsor and the CivTech Team.

Notwithstanding the foregoing, the Challenge Sponsor and the CivTech Team approve sub-contracting to the following sub-contractor(s): ***[INSERT NAME(S) OF ANY SUB-CONTRACTOR(S), INCLUDING ALL JOINT VENTURE / CONSORTIUM MEMBERS OR MARK AS NONE OR NOT APPLICABLE]*** (each a “**Sub-contractor**”).

Engaging Sub-contractors does not relieve You of any obligation or duty attributable to You under these Terms and Conditions. You are responsible for the acts and omissions of any Sub-contractors as though they are Your own. You shall ensure that the Sub-contractors comply with these Terms and Conditions.

- 11.6 **Further Assurances:** You will, at the reasonable request of the Challenge Sponsor and/or the CivTech Team, do all acts and execute all documents which may be necessary to give full effect to these Terms and Conditions.

- 11.7 **Amendments:** Any amendments to these Terms and Conditions must be agreed by You, the Challenge Sponsor and the CivTech Team, be set out in writing and expressly state the parties' intention to vary these Terms and Conditions.
- 11.8 **Rights of Third Parties:** Except in respect of Audit Agents as referred to in paragraph 11.1 (*Audit*), no person other than You, the Challenge Sponsor and the CivTech Team shall have any right to enforce any of the provisions of these Terms and Conditions which, expressly or by implication, confer a benefit on that person, and these Terms and Conditions do not give rise to any other rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term herein.
- 11.9 **Data Protection:** You confirm that You have received any consents that are required from any individuals for the processing of any of their personal data by the Challenge Sponsor and the CivTech Team as is necessary in relation to: (i) Your participation in the Accelerator Stage; (ii) the running and management of the Challenge; and (iii) the promotion of the CivTech Programme. The CivTech Team shall process personal data in accordance with its privacy policy from time to time and You confirm that You have drawn this to the attention of all the individuals in Your team and will do so if the privacy policy is subsequently amended. You also confirm that You have received waivers in respect of any image rights that may be required in respect of any filming / photography / other activities that may take place during the Accelerator Stage.
- 11.10 **Publicity:** You agree to participate in any publicity activities that are arranged by the Challenge Sponsor and/or the CivTech Team as reasonably requested.
- 11.11 **Procurement Regulations:** These Terms and Conditions are a research and development agreement excluded from the Public Contracts (Scotland) Regulations 2015 under and in terms of Regulation 15 and excluded from the Procurement Reform (Scotland) Act 2014 in terms of Section 4.
- 11.12 **Interpretation:** In these Terms and Conditions, the following rules apply: (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) a reference to a party includes its personal representatives, successors or permitted assignees; (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted; (d) a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; (e) any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; (f) a reference to "writing" or "written" includes e-mails but not faxes; (g) any references to these Terms and Conditions shall include the Schedule which is hereby incorporated as part of these Terms and Conditions.
- 11.13 **Counterparts.** These Terms and Conditions may be executed in any number of counterparts, each of which when executed and delivered to the CivTech Team shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of the executed signature pages of a counterpart of these Terms and Conditions by email (in PDF, JPEG or other agreed format) to the CivTech Team shall take effect as delivery of an executed counterpart of these Terms and Conditions.

11.14 **Law and Jurisdiction:** These Terms and Conditions shall be considered as a contract made in Scotland and according to Scots Law and subject to the exclusive jurisdiction of the Scottish Courts.

BOTH YOU AND THE CHALLENGE SPONSOR MUST RETURN A SIGNED COPY OF THESE TERMS AND CONDITIONS TO THE CIVTECH TEAM TO ACKNOWLEDGE THAT THE CHALLENGE SPONSOR AND YOU HAVE READ, UNDERSTOOD, AND ACCEPT THESE TERMS AND CONDITIONS BEFORE PARTICIPATING IN THE ACCELERATOR STAGE.

Challenge Sponsor Name:	
Signatory name:	
Signatory title / role:	
Authorised Signature of [INSERT CHALLENGE SPONSOR NAME]:	
Date:	
Place:	

Accelerator Participant Name:	
Signatory name:	
Signatory title:	
Authorised Signature of [INSERT ACCELERATOR PARTICIPANT NAME]:	
Date:	
Place:	

This is the Schedule referred to in the foregoing Accelerator Participant Terms and Conditions

**Schedule
Business Purposes**

[DRAFTING NOTE: INSERT DEFINITION OF "BUSINESS PURPOSES OF THE CHALLENGE SPONSOR" THAT THE LICENCES OUTLINED IN PARAGRAPHS 8.6, 8.7 AND 8.8 APPLY TO]