

CoPE – Terms and Conditions for Services

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STANDARD CONDITIONS OF CONTRACT FOR SERVICES

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The standard Conditions of Contract may have supplementary clauses and definitions please refer to the Purchase Order / ITT Contract Data.

1.0 Definitions and Interpretation

1.1 In this Contract, the following words will have the following meanings:

“Approval”	Means the written consent of the Client.
“Award Letter”	Means the letter of award issued by the Client to the Contractor informing the Contractor that their Tender has been accepted. The letter will be sent by secure message through the e-procurement portal or by electronic mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been issued four hours after the letter was sent in the case of secure message through the e-procurement portal or electronic mail, or sooner where the other Party acknowledges receipt of such letters.
“Business Continuity and Disaster Recovery Plan”	Means the business continuity and disaster recovery plan to be produced by the Contractor in response to the requirements detailed within the Specification.
“Client”	Means the organisation set out in the Invitation to Tender; or the body(ies) listed as contract participants in the contract documentation.
“Client Personal Data”	Means Personal Data and/or Sensitive Personal Data Processed by the Contractor or any sub-contractor on behalf of the Client or Contracting Authority, pursuant to or in connection with this Contract.
“Co-Controller”	A person or entity which jointly determines the purpose or nature in respect of which the Client Personal Data is Processed.
“Commercially Sensitive Information”	Means the information listed in the Freedom of Information Statement comprised of information: a. Which is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or b. That constitutes a trade secret.
“Confidential Information”	Means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual

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	<p>Property Rights and know-how of either Party and all Client Personal Data. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> i. was public knowledge at the time of disclosure (otherwise than by breach of clause 34 Confidential Information); ii. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; iii. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or iv. is independently developed without access to the Confidential Information.
“Contract”	Means the Specification and any attached schedules, these Conditions of Contract, the Invitation to Tender, the Tender, the schedule of contract prices or rates submitted by the Contractor (as part of their Tender), the Purchase Order and (if applicable) the Award Letter.
“Contract Manager”	Means the person for the time being appointed by the Client as being authorised to administer the Contract on behalf of the Client or such person as may be nominated by the Contract Manager to act on their behalf.
“Contracting Authority”	Means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 and Utilities Contracts Regulations 2016.
“Contract Commencement Date”	Means the date stipulated in the Award Letter.
“Contractor”	Means the person, firm or company that enters into this contract with the Client.
“Contract Period”	Means the period from the Commencement Date to: <ul style="list-style-type: none"> i. the end of the Initial Contract Period; or ii. the end of any contract extension if the Client elects to extend the Initial Contract Period; or iii. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

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“Contract Price”	Means the contract price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Contractor’s schedule of contract prices and rates included in the Contractor’s Tender, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of contract price in accordance with clause 8.4 to 8.7 (Contract Price - adjustment on extension of initial contract period).
“Data Controller”	Has the meaning given to it in Data Protection Law.
“Data Loss Event”	Means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
“Data Processor”	Has the meaning given to it in Data Protection Law.
“Data Protection Impact Assessment”	Means a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data.
“Data Protection Law”	<p>Means:</p> <ul style="list-style-type: none"> (a) any legislation in force from time to time in the United Kingdom which implements the European Community’s Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (b) the Law Enforcement Directive (EU) 2016/680; (c) with effect from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data (the "General Data Protection Regulation"); (d) with effect from implementation only, the Data Protection Act 2018; and (e) any statutory codes of practice issued by the Information Commissioner in relation to such legislation.
“Data Subject”	Has the meaning given to it in Data Protection Law.
“Default”	Means any breach of the obligations of the relevant Party (including but not limited to fundamental

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	breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other.
“DOTAS”	Means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s. 132A Social Security Administration Act 1992.
“Environmental Information Regulations”	Means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“Equipment”	Means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under this Contract.
“FOIA”	Means the Freedom of Information Act 2000.
“Force Majeure”	Means any event or occurrence which prevents a Party from performing its obligations under the Contract and which is not attributable to any act or failure to take preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster; pestilence; explosion; malicious damage; nuclear, biological or chemical warfare; or any other disaster, natural or man-made.
“Fraud”	Means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Client.

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“GDPR”	Means the General Data Protection Regulation, which is more accurately described in the definition of “Data Protection Law” above.
“General Anti-Abuse Rule”	Means a. the legislation in Part 5 of the Finance Act 2013; and b. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
“General Change in Law”	Means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.
“Good Industry Practice”	Means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Halifax Abuse Principle”	Means the principle explained in the CJE Case C-255/02 Halifax and others.
“Information”	Means all data and information which are embodied in any medium including all electronic, optical, magnetic or tangible media
“Initial Contract Period”	Means the period as detailed in the Specification not including any extension options.
“Intellectual Property Rights”	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such

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	rights, and all similar or equivalent rights or forms of protection in any part of the world.
“Invitation to Tender”	Means the invitation sent to a potential Contractor to submit a Tender.
“Key Personnel”	Means any persons specified as such in the Tender, Purchase Order or Award Letter (as the case may be), or otherwise notified by the Client to the Contractor in writing.
“Law”	Means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any statutory provision as defined by the Interpretation Act (Northern Ireland) 1954, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.
“Monitoring Schedule”	Means the Schedule containing details of the contract monitoring arrangements.
“Month”	Means calendar month.
“Occasion of Tax Non-Compliance”	<p>Means</p> <p>a. Any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <ul style="list-style-type: none"> i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>b. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the</p>

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	Effective Date or to a civil penalty for fraud or evasion.
“Party/Parties”	Means the Contractor and/or the Client (as appropriate).
“Personal Data”	Has the meaning given to it in Data Protection Law.
“Personal Data Breach”	Has the meaning given to it in Data Protection Law.
“Property”	Means the property, other than real property, issued or made available to the Contractor by the Client in connection with this Contract.
“Premises”	Means the premises detailed in the Invitation to Tender, Purchase Order or Award Letter (as applicable) or if such term is not defined it will be the address where the Services are provided.
“Pricing Schedule”	Means the Schedule containing details of the pricing profile and invoicing arrangements.
“Processing”	Has the meaning given to it in Data Protection Law and “Process” and “Processed” will be construed accordingly.
“Purchase Order”	Means the Client’s order for Services which has a unique number, and details the Services to be supplied by the Contractor to the Client in accordance with the terms of this Contract.
“Quality Standards”	Means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.
“Regulatory Bodies”	Means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.
“Relevant Tax Authority”	Means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

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“Restricted Countries”	Means any country outside the European Economic Area (which for the purposes of this Contract shall not include the United Kingdom of Great Britain and Northern Ireland in the event it leaves the European Economic Area).
“Replacement Contractor”	Means any third party service provider appointed by the Client to supply any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract.
“Request for Information”	Will have the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” will apply).
“Schedule”	Means a schedule attached to, and forming part of, this Contract.
“Sensitive Personal Data”	Means sensitive or special categories of Personal Data as defined in Data Protection Law.
“Services”	Means the services to be provided by the Contractor to the Client under this Contract as specified in the Specification, the Purchase Order or Award Letter (as applicable).
“Specific Change in Law”	Means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Client, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.
“Specification”	Means any specification for the services produced by the Contractor or supplied to the Contractor by the Client including any specification contained in the Invitation to Tender, Purchase Order or Award Letter and any documents referred to therein which set out the quantity, description, quality and contract price of the services.
“Specification Schedule”	Means the Schedule containing details of the Specification.
“Staff”	Means all persons employed by the Contractor to perform its obligations under this Contract together with the Contractor’s servants, agents, contractors and sub-contractors used in the performance of its obligations under this Contract.

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“Subject Access Request”	Means a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Law.
“Sub-processor”	Means any third party appointed to process Client Personal Data on behalf of the Contractor under this Contract.
“Sustainable Development Strategy for Northern Ireland”	Means the NI Executive’s Sustainable Development Strategy found at http://www.ofmdfmni.gov.uk/focus_on_the_future.pdf
“Tender”	Means the document(s) submitted by the Contractor to the Client in response to the Invitation to Tender for formal offers to supply it with the services.
“TUPE”	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006. Contractors shall comply with their obligations under these regulations.
“Variation”	Has the meaning given to it in clause 24.2 (Variation).
“Variation to Contract Form”	Means the form attached at Annex A and referred to in clause 24.2.
“VAT”	Means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
“Working Day”	Means a day (other than a Saturday or Sunday) on which banks are open for business in Northern Ireland.

- 1.2 Where a capitalised word is not defined in this Contract it will have the meaning given to it in the Invitation to Tender, Purchase Order or Award Letter.
- 1.3 In this Contract unless the context otherwise requires:
- 1.3.1 References to numbered clauses are references to the relevant clause in this Contract.
- 1.3.2 Any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done.

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- 1.3.3 The headings to the clauses of this Contract are for information only and do not affect the interpretation of this Contract.
- 1.3.4 Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.
- 1.3.5 Where the word 'including' is used in this Contract, it will be understood as meaning 'including without limitation'.
- 1.4 The interpretation and construction of this Contract shall be subject to the following provisions:
- i. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - ii. words importing the masculine include the feminine and the neuter;
 - iii. reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - iv. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - v. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
 - vi. headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.5 Client's Obligations

- 1.5.1 Save as otherwise expressly provided, the obligations of the Client under this Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Client to the Contractor.

2.0 **Basis of Contract**

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- 2.1 Issue of the Award Letter sent by secure message through the e-procurement portal, or by electronic mail by the Client will constitute an acceptance of the offer contained in the Contractor's tender subject to these conditions of contract.
- 2.2 Any variation to the provisions of this Contract (including any special conditions of contract agreed between the Parties) will be inapplicable unless in writing and signed by a duly authorised representative of each Party.
- 2.3 All written and oral communications, all documents and the labelling and marking of all packages shall be in English.

3.0 Initial Contract Period

- 3.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Initial Contract Period, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated or extended under clause 4.

4.0 Extension of Initial Contract Period

- 4.1 The Client shall have the option(s) to extend this Contract by the period as detailed in supplementary clause 3.2 from the end of the Initial Contract Period. If the Client intends to exercise such option(s) it must give notice to the Contractor no later than one month prior to the date on which this Contract would otherwise expire. The provisions of the Contract will apply, subject to any variation or adjustment to the Contract Price pursuant to clause 8.4 to 8.7 throughout any such extended period.

5.0 Supply of Services

- 5.1 In consideration of the amounts due under this Contract, the Contractor will, from the date set out in the Invitation to Tender, Purchase Order or Award Letter; provide the Services to the Client for the Contract Period, in accordance with this Contract.
- 5.2 In providing the Services, the Contractor will:
 - 5.2.1 co-operate with the Client in all matters relating to the Services, and comply with all the Client's instructions;
 - 5.2.2 perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice within the Contractor's industry, profession or trade;
 - 5.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and within sufficient numbers to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;

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- 5.2.4 ensure that the Services will conform with all descriptions and requirements set out in the Specification;
- 5.2.5 comply with all applicable Law (which for the avoidance of doubt includes Data Protection Law to the extent that the Contractor is at any time during its relationship with the Client (even temporarily) a Data Processor which Processes any Personal Data for, on behalf of, or in direct connection with the Client); and
- 5.2.6 provide all Equipment, tools and vehicles and such other items as are required to provide the Services.
- 5.3 If the Contractor provides Services from the Client's Premises, on completion of the Services, or termination or expiry of this Contract (whichever is the earlier) the Contractor will vacate the Client's Premises, remove his plant, Equipment and unused materials and will clear away from these Premises all rubbish arising out of the Services and leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.
- 5.4 The Client may inspect and examine the manner in which the Contractor supplies the Services, at the Premises, during normal business hours, on reasonable notice.
- 5.5 The Contractor shall provide its staff with a form of identification that is acceptable to the Client and which staff shall display on their clothing at all times when they are on the Client's premises.
- 5.6 The Contractor shall instruct its staff not to smoke on the Client's premises except where it is expressly permitted to do so.
- 5.7 Without prejudice to any other rights and remedies the Client may have pursuant to the Contract, the Contractor shall indemnify the Client for all reasonable costs incurred by the Client which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract.
- 5.8 Without prejudice to any other right of remedy of the Client, if the Client informs the Contractor that they consider that any part of the Services do not meet the Specification or the requirements of the Contract or differ in any way (other than in a minor inconsequential way) from that Specification or those requirements, and this is other than as a result of default or negligence on the part of the Client, the Contractor shall at its own expense re-schedule and re-perform the Services correctly within such reasonable time as may be specified by the Client in order to rectify the situation.

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- 5.9 The Contractor shall engage, employ and pay all monies due to Staff required to carry out this Contract and shall be entirely responsible for setting the pay and conditions of service for his staff and for any compensation payments due to them howsoever arising.
- 5.10 If in the opinion of the Client any Staff of the Contractor has behaved inappropriately or is incapable of efficiently performing his duties, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such a person without delay on being required to do so and cause the work to be performed by such other person as may be necessary, in default of which the Client may employ such other person as may be deemed necessary for the purposes of carrying out the work and recover from the Contractor the additional cost thereby incurred.
- 5.11 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 5.12 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 5.13 The Contractor shall maintain all their items of Equipment within the Premises in a safe, serviceable and clean condition.
- 5.14 The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
- i. remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
 - ii. replace such item with a suitable substitute item of Equipment.
- 5.15 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.
- 5.16 Manner of Carrying Out the Services
- 5.16.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain registration with the relevant Quality Standards authorisation body. To the extent that the standard

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of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

5.16.2 If any Services provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contract holds from such third parties in respect of those Services will be held on trust for the Client.

6.0 Representations and Warranties

6.1 The Contractor warrants that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Contract, and that this Contract is executed by a duly authorised representative of the Contractor.

6.2 The Contractor warrants and represents that:

- i. in entering this Contract it has not committed any Fraud;
- ii. as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
- iii. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- iv. it is not subject to any Contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- v. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- vi. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- vii. in the three 3 years prior to the date of the Contract:

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- it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

7.0 Business Continuity and Disaster Recovery Plan

- 7.1 The contractor must produce a business continuity and disaster recovery plan where detailed within the Specification.
- 7.2 Where required by the Client, the Contractor shall develop, regularly review and update, test and comply with appropriate disaster recovery and business continuity plans to ensure the continuity of the Services. The Contractor shall ensure that it is able to implement such plans at any time in accordance with their terms.

8.0 Contract Price

- 8.1 In consideration of the Contractor's performance of its obligations under this Contract, the Client will pay the Contract Price in accordance with this clause, and clause 8.2.
- 8.2 The Contract Price for the Services will be as stated in the Purchase Order, Award Letter, or Tender (as applicable), and no increase will be accepted by the Client unless agreed by him in writing before the issue of the Purchase Order.
- 8.3 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which will be charged in addition at the rate in force at the date as shown on the invoice.
- 8.4 The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period, in the six month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.
- 8.5 If the Parties are unable to agree a variation in the Contract Price the Contract shall terminate at the end of the Initial Contract Period.
- 8.6 If a variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day

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of any period of extension and shall apply during such period of extension.

- 8.7 Any increase/decrease in the Contract Price shall not exceed the percentage change in the index detailed within the specification between the Commencement Date and the date six months before the end of the Initial Contract Period.

9.0 Payment

- 9.1 The Client will pay the Contractor the Contract Price for the Services no later than 30 days after the receipt of a valid invoice which includes a valid Purchase Order number. Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Contract, it will ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 9.2 The Contractor shall ensure that equally favourable payment terms to those which the Client provides for the Contractor, are passed on by the Contractor to sub-contractors.
- 9.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice. The Characteristics of a Valid Invoice are detailed on Schedule 2 Pricing Schedule.
- 9.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 9.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 9.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 9.6 The Contractor shall make any payments due to the Client (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.
- 9.7 If for any reason the Contract comes to an end otherwise than at the end of a completed calendar month the Client must pay in respect of the partly completed calendar month $\frac{1}{365}$ th of the annual contract price for

each completed day worked by the Contractor in the partly completed calendar month.

10.0 Mistakes in Information

10.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

11.0 Conflicts of Interest

11.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any staff is placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

11.2 The Client reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of this Contract. The actions of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

12.0 Recovery of Sums Due

12.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), that sum may be deducted unilaterally by the Client from any sum then due, or which at any later time may become due, to the Contractor under this Contract. The Contractor will not be entitled to assert any credit, set-off or counterclaim against the Client in order to justify withholding payment of any such amount in whole or in part.

12.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

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- 12.3 The Contractor shall make all payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.
- 12.4 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

13.0 Property

- 13.1 If necessary, the Client will provide the Contractor with reasonable access at reasonable times to its Premises for the purpose of providing the Services.
- 13.2 All Equipment, tools and vehicles brought onto the Premises will be at the Contractor's risk.
- 13.3 Any equipment provided by the Client for the purpose of this Contract will remain property of the Client and will only be used for the purpose of carrying out this Contract, and will be returned promptly to the Client on expiry or termination of this Contract.
- 13.4 The Contractor will reimburse the Client for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by any Staff. Equipment supplied by the Client will be deemed to be in a good condition when received by the Contractor unless the Client is notified otherwise in writing within seven days.
- 13.5 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-Contractors and other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.
- 13.6 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.
- 13.7 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in

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connection with this Contract and for no other purpose without prior Approval.

- 13.8 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.
- 13.9 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
- 13.10 The Contractor shall use the Client's Property solely in connection with the performance of the Contract.
- 13.11 The Contractor shall notify the Contract Manager of any surplus Property belonging to the Client remaining at the end of the Contract Period and shall dispose of it as the Client may direct. Without prejudice to any other rights of the Client, the Contractor shall deliver to the Client any of the Client's Property (whether processed or not) on demand by the Client.

14.0 Key Personnel

- 14.1 Any Key Personnel will not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 14.2 Any replacements to the Key Personnel will be subject to the agreement of the Client (not to be unreasonably withheld). Such replacements will be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 14.3 In the event that the Contractor is unable to provide replacement staff, acceptable to the Client's representative, within reasonable time, then the Client reserves the right to obtain replacement staff from other sources and pass any additional cost on to the Contractor. The Client reserves the right to terminate this Contract where the failure to provide a replacement has a detrimental effect to the timely provision of the Services in accordance with clause 22 (Termination of Contract).
- 14.4 The Client shall not unreasonably withhold its agreement under clauses 14.2 or 14.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

15.0 Inspection of Premises

15.1 The Contractor is deemed to have inspected the Premises before submitting its tender so as to have understood the nature and extent of the Services to be carried out and is satisfied in relation to all matters connected with the performance of its obligations under this Contract.

16.0 TUPE

16.1 Both Parties shall comply with their obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (TUPE) if any.

16.2 Contractor's Responsibilities

16.2.1 Not later than twelve months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Client all information that the Client may reasonably request in relation to the Contractor's staff including the following:

- i. the total number of Staff assigned to providing the services;
- ii. the salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in clause 16.2.1(i);
- iii. the conditions of contract of employment/engagement of the Staff referred to in clause 16.2.1(i) and their job titles;
- iv. details of any current disciplinary or grievance proceedings ongoing or likely to arise and details of any claims current or threatened; and
- v. details of all collective agreements with a brief summary of the current state of negotiations with trade unions and of any current industrial disputes and claims for recognition by any trade union.

If the Contractor becomes aware that the information it provided pursuant to clause 16.2.1 has become untrue, inaccurate or misleading, it shall notify the Client and provide the Client with up to date information.

16.2.2 At intervals to be stipulated by the Client (which shall not be more frequent than every thirty days) and immediately prior to the end of the Contract Period the Contractor shall deliver to the Client a complete update of all such information which shall be disclosable pursuant to clause 16.2.1.

16.2.3 At the time of providing the information disclosed pursuant to clauses 16.2.1 and 16.2.2, the Contractor shall warrant the completeness and accuracy of all such information and the Client may assign the benefit of this warranty to any Replacement Contractor.

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16.2.4 The Client may use the information it receives from the Contractor pursuant to clause 16.2.1 and 16.2.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.

16.2.5 The Contractor shall indemnify and keep indemnified the Client and the any Replacement Contractor against any liabilities which the Client or any Replacement Contractor may suffer or incur as a result of or in connection with:

- i. the provision of information pursuant to clause 16.2.2 and 16.2.3; and
- ii. any claim or demand by any of the Staff or a trade union arising directly or indirectly from any act, fault or omission of the Contractor or any sub-Contractor of it on or before the end of the Contract Period.

16.2.6 The Contractor undertakes to the Client that, during the twelve months prior to the end of the Contract Period the Contractor shall not (and shall procure that any sub-Contractor shall not) without the prior consent of the Client (such consent not to be unreasonably withheld or delayed):

- i. amend or vary (or promise to amend or vary) the conditions of contract of employment or engagement of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business);
- ii. terminate or give notice to terminate the employment or engagement of any Staff (other than for reasons of misconduct, qualification or capability);
- iii. remove or vary the involvement of any of the Staff from or in the provision of the Services other than in the normal course of business.

16.3 Client's Responsibilities – only to be used when outsourcing for the first time

16.3.1 The Client shall indemnify and keep indemnified the Contractor against any liabilities which the Contractor may suffer or incur as a result of or in connection with any claim or demand by any of the client's staff or their trade union arising directly or indirectly from any act, fault or omission of the Client on or before the Commencement Date.

17.0 Insurance

17.1 The Contractor will effect and maintain with a reputable insurance company, a policy or policies of insurance providing an adequate level and duration of cover in respect of all risks which may be incurred by

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the Contractor in respect of its performance of the Contract including death, personal injury, loss or damage to property or any other loss.

- 17.2 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability.
- 17.3 The cover referred to above shall be held for the duration of the Contract Period and any additional period detailed in the Specification.
- 17.4 The Contractor will give to the Client, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

18.0 Indemnity

- 18.1 Neither Party excludes or limits liability to the other Party for:
- i. Death or personal injury caused by its negligence; or
 - ii. Fraud; or
 - iii. Fraudulent misrepresentation; or
 - iv. Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 18.2 Subject to clause 18.3, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 18.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

19.0 Intellectual Property Rights

- 19.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:

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- i. furnished to or made available to the Contractor by or on behalf of the Client shall remain vested in the Client and its licensors; and
 - ii. generated by the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall vest and remain vested in the Client and the Contractor hereby assigns the Intellectual Property Rights referred to in this clause 19.1(ii) to the Client.
- 19.2 The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP materials prepared in accordance with clause 19.1(ii). This assignment shall take effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
- 19.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.
- 19.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, successor organisations, the replacement Contractor or to any other third party supplying services to the Client.
- 19.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Contracting Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
 - i. items or materials based upon designs supplied by the Client; or
 - ii. the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of this Contract.
- 19.6 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of

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any Intellectual Property Right in materials supplied or licensed by the Contractor.

- 19.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- i. shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
 - ii. shall take due and proper account of the interests of the Client; and
 - iii. shall not settle or compromise any claim without the Client's prior written consent (not to be unreasonably withheld or delayed).
- 19.8 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under this Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Client in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 19.5(i) or (ii).
- 19.9 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Client or the Contractor in connection with the performance of its obligations under this Contract.
- 19.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- i. modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

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- ii. procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client,

and in the event that the Contractor is unable to comply with clauses 19.10(i) or (ii) within 20 Working Days of receipt of the Contractor's notification the Client may terminate this Contract with immediate effect by notice in writing.

- 19.11 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

20.0 Intellectual Property Indemnity

- 20.1 The Contractor will indemnify, and keep indemnified, the Client in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or Staff.

21.0 Assignment and sub-contracting

- 21.1 The Contractor will not without the written consent of the Client assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of this Contract or any part thereof. The Client may, in the granting of such consent, provide for additional conditions of contract relating to such assignment, sub-contract, novation or disposal. The Contractor will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 21.2 Where the Contractor enters into a sub-contract for the purpose of performing its obligations under this Contract, it will comply with the sub-contractor payment provision in clauses 9.1 and 9.2.
- 21.3 Where the Client has consented to the placing of sub-contracts copies of each sub-contract, will at the request of the Client, be sent by the Contractor to the Client as soon as is reasonably practicable.
- 21.4 The Client may assign, novate, or otherwise dispose of its rights and obligations under this Contract without the consent of the Contractor provided that such assignment, novation or disposal will not increase the burden of the Contractor's obligations under this Contract.

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- 21.5 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Client.
- 21.6 If the rights and obligations under this Contract are assigned, novated or otherwise disposed of to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “Transferee”):
- i. the rights of termination of the Client in clause 22.1.3 (Termination of Contract) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - ii. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Contractor.
- 21.7 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under this Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 21.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Contract.
- 21.9 On receipt of the Contract award, the Contractor is required, as a condition of Contract, to inform their distributors of all relevant details eg: products, quantities, prices, etc. It is not the responsibility of the Client to advise third parties of Contract details. The performance of the nominated distributor is the responsibility of the Contractor who will ensure that adequate stock is held by their agents and that pricing and other information is updated immediately it becomes effective.

22.0 Termination of Contract

22.1 Without prejudice to any other right or remedy it might have, the Client may terminate this Contract by written notice to the Contractor with immediate effect if:

22.1.1 the Contractor is in material breach of any obligation which is not capable of remedy; or

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- 22.1.2 the Contractor is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied; or
- 22.1.3 the Contractor becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 22.1.3) in consequence of debt in any jurisdiction.
- 22.2 Where the Client terminates the Contract and then makes other arrangements for the supply of Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated, no further payments shall be payable by the Client to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this clause.
- 22.3 Where the Client terminates this Contract under clause 62.0 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 62.0 (Break).
- 22.4 The Client shall not be liable under clause 22.3 to pay any sum which:
- i. was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - ii. when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to

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the Contractor if this Contract had not been terminated prior to the expiry of the Contract Period; or

- iii. is a claim by the Contractor for loss of profit, due to early termination of the Contract.

22.5 Save as otherwise expressly provided in the Contract:

- i. termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- ii. termination of this Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clause 6.0 (Representations and Warranties), 9.0 (Payment), 12.0 (Recovery of Sums Due), 19.0 (Intellectual Property Rights), 33.0 (Bribery Act 2010), 32.0 (Data Protection Act), 35.0 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 36.0 (Freedom of Information), 40.0 (Audit), 47.0 (Remedies Cumulative), 51.0 (Governing Law and Jurisdiction), and 55.0 (Termination on Insolvency and Change Control).

23.0 Consequences of Termination/Expiry

23.1 Upon termination or expiry of this Contract, the Contractor will:

23.1.1 give all reasonable assistance to the incoming provider of the Services;

23.1.2 return all requested documents, information and data to the Client as soon as reasonably practicable;

23.1.3 assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress;

23.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence.

23.2 If the Contractor fails to comply with clause 23.1.2, the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-Contractors where any such items may be held.

23.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clauses

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23.1.2 and 23.1.4 free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

23.4 The Contractor shall invoke the Exit Plan (if applicable) in a reasonable period of time prior to expiry of the Contract Period or any notice of termination of the Contract, or immediately in the case of immediate termination.

24.0 Variation

24.1 The Client may request a variation to the specification and/or conditions of contract. Such a change is hereinafter called a "Variation".

24.2 The Client may request a Variation by notifying the Contractor in writing of the "Variation" by means of a Variation to Contract Form (Annex A) and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

24.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;

- i. allow the Contractor to fulfil its obligations under this Contract without the variation to the Specification;
- ii. terminate this Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause 49.0.

25.0 Change of Law

25.1 The Contractor shall neither be relieved of its obligations to provide the Services in accordance with the provisions of the Contract nor be entitled to an increase in the Contract Price as the result of:

- i. a General Change of Law; or
- ii. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.

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- 25.2 If a specific Change in Law occurs during the Contract Period (other than those referred to in clause 25.1), the Contractor shall notify the Client of the likely effects of that change, including:
- i. whether any modification is required to the Services, the Contract Price or the Contract; and
 - ii. whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 25.3 Any increase or decrease in the Contract Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause shall be implemented by way of a fair and reasonable adjustment to be agreed between the Parties.
- 25.4 As soon as practicable after any notification in accordance with clause 25.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:-
- i. providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-Contractors;
 - ii. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - iii. giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - iv. demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

26.0 Prevention of Fraud

- 26.1 The Contractor will take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Client.
- 26.2 The Contractor will notify the Client immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 26.3 If the Contractor or its Staff commits fraud in relation to this or any other contract with the Client, the Client may:
- i. terminate this Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional

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expenditure incurred by the Client throughout the remainder of the Contract; or

- ii. recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this clause.

27.0 The Contracts (Rights of Third Parties) Act 1999

- 27.1 A person who is not a Party to the Contract will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

28.0 Health and Safety

- 28.1 The Contractor will promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client will promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 28.2 While on the Client's Premises, the Contractor will comply with all health and safety measures.
- 28.3 The Contractor will notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 28.4 The Contractor shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 28.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Client on request.
- 28.6 The Contractor shall notify the Client immediately where it becomes aware of any breach of the health and safety legislation, codes of practice or guidance referenced at clause 28.4 by the Contractor or any of its staff. The Contractor shall provide promptly any information and data to the Client as may be requested from time to time by the Client relating to health and safety in respect of the provision of the Service.

29.0 Discrimination

- 29.1 The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation and shall use his best endeavours to ensure that in his employment policies and

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practices and in the delivery of the Services required of the Contractor under this Contract he has due regard to the need to promote equality of treatment and opportunity between:

- i. persons of different religious beliefs or political opinions;
- ii. men and women or married and unmarried persons;
- iii. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
- iv. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- v. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- vi. persons of different ages; and
- vii. persons of differing sexual orientation.

29.2 The Contractor will take all reasonable steps to secure the observance of clause 29.1 by all Staff.

30.0 Environmental Requirements

30.1 The Contractor will provide the Services in accordance with the Client's environmental policy and in accordance with the Sustainable Development Strategy for Northern Ireland.

31.0 Protection of Information Assurance

31.1 When handling Information belonging to or supplied by the Client, the Contractor will ensure the security of the data is maintained in line with the protective marking given to that data by the Client, and by adopting the appropriate elements of the Cabinet Office Security Policy Framework and supporting documents and any successors thereof as agreed with the Client and set out in the Tender Document, Award Letter or Specification.

31.2 The Client reserves the right to inspect the physical location of the Information store or processing, back-up arrangements and review at appropriate intervals to be agreed with the Client any information assurance processes and procedures in place.

32.0 Data Protection Act

32.1 With respect to the Parties' rights and obligations under this Contract, the Parties acknowledge that the Client will normally be regarded as a Data Controller when it is solely responsible for determining the purposes and manner in which Client Personal Data is to be

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Processed. If the Contractor has occasion to determine the purpose and manner in which Client Personal Data is to be processed (for example pursuant to an online platform or application controlled by the Contractor), then it will be a Data Controller, and will be a Co-Controller if these determinations are exercised jointly with the Client. If the Contractor Processes Personal Data (including online identifiers or IP addresses) on behalf of the Client, it will be a Data Processor.

- 32.2 The Contractor shall comply with all of its obligations under Data Protection Law and, if processing Client Personal Data, shall only carry out such Processing for the purposes of performing its obligations under this Contract.
- 32.3 Notwithstanding the general obligation in clause 32.2, where the Contractor is processing Client Personal Data as a Data Processor the Contractor shall:
- i. provide all reasonable assistance to the Client in preparing a Data Protection Impact Assessment (“DPIA”), or where the Processing presents a specific risk to privacy, carry out a DPIA in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Law), and make the results of such an assessment available to the Client;
 - ii. Process the Client Personal Data only in accordance with instructions from the Client as set out in this Contract or as otherwise notified by the Client;
 - iii. Process the Client Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor’s obligations under this Contract or as is required by Law or any Regulatory Body;
 - iv. use its reasonable endeavours to assist the Client in complying with any obligations under Data Protection Law and shall not perform its obligations under this Contract in such a way as to cause the Client to breach any of its obligations under Data Protection Law;
 - v. notify the Client without undue delay if it determines or is notified that an instruction to Process Client Personal Data is incompatible with any obligations under Data Protection Law to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
 - vi.i maintain, and make available to the Client on its request, documentation which describes the Processing operations for which it is responsible under this Contract including:

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- vi.i the purposes for which Client Personal Data is Processed;
 - vi.ii the types of Client Personal Data and categories of Data Subject involved;
 - vi.iii the source(s) of the Client Personal Data;
 - vi.iv any recipients of the Client Personal Data;
 - vi.v the location(s) of any overseas Processing of Client Personal Data (which will include cloud-hosting locations, warehousing or routing of Client Personal Data at any point of its transfer or journey);
 - vi.vi retention periods for different types of Client Personal Data; and
 - vi.vii a general description of the security measures in place to protect Client Personal Data.
- vii. implement appropriate technical and organisational measures to protect the Client Personal Data against unauthorised or unlawful Processing and Data Loss Events. These measures shall be appropriate to protect against unauthorised or unlawful Processing or Data Loss Event, having regard to the nature of the Client Personal Data which is to be protected; the harm which might result from the unauthorised or unlawful processing or Data Loss Event; the state of technological development; and cost of implementing any measures.
- viii. take all reasonable steps to ensure the reliability and integrity of any Staff required to access Client Personal Data and ensure that they are aware of and comply with the Contractor's duties under this clause 32; are informed of the confidential nature of Client Personal Data; are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor; and have undergone adequate training in the use, care, protection and handling of Client Personal Data;
- ix. ensure that Staff do not process Client Personal Data except in accordance with this Contract;
- x. notify the Client without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this clause 32,

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including the unauthorised or unlawful use, storage, or Processing of Client Personal Data, or a Data Loss Event;

- xi. having notified the Client of a breach in accordance with clause 32.3.x, keep the Client properly and regularly informed in writing until the breach has been resolved to the satisfaction of the Client;
- xii. fully cooperate as the Client requires with any investigation or audit in relation to Client Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to the Contract, in relation to compliance with Data Protection Law or in relation to any actual or suspected breach), whether by the Authority (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and shall do so both during the Contract and after its termination or expiry (for so long as the Party concerned retains and/or Processes Client Personal Data); and
- xiii. if required to do so by Data Protection Law, appoint a designated Data Protection Officer.

32.4 The Contractor shall notify the Client immediately (and subsequently provide further information to the Customer as details become available) if it receives:

- i. a Subject Access Request (or any other request which purports to be a Subject Access Request);
- ii. a request to rectify, block or erase any Client Personal Data;
- iii. any other request complaint or communication relating to either Party's obligations under Data Protection Legislation in connection with the Client Personal Data;
- iv. any communication from the Information Commissioner or any other regulatory authority in connection with Client Personal Data;
- v. a request from any third party for disclosure of Client Personal Data where compliance with such request is required or purported to be required by Law; or
- vi. if it becomes aware of a Data Loss Event.

32.5 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Law and any complaint, communication or request made under clause 32.4 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

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- i. the Client with full details and copies of the complaint, communication or request;
- ii. such assistance as is reasonably requested by the Client to enable the Client to comply with a Subject Access Request within the relevant timescales set out in the Data Protection Law;
- iii. the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
- iv. assistance as requested by the Client following any Data Loss Event;
- v. assistance as requested by the Client with respect to any request from the Information Commissioner's Office ("ICO"), or any consultation by the Client with the ICO.

32.6 Before allowing any Sub-processor to process any Client Personal Data related to this Contract, the Contractor must:

- i. notify the Client in writing of the intended Sub-processor and processing;
- ii. obtain the written consent of the Client;
- iii. enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 32 such that they apply to the Sub-processor;
- iv. provide the Client with such information regarding the Sub-processor as the Client may reasonably require; and
- v. remain fully liable for all acts or omissions of any Sub-processor.

32.7 The Contractor shall not, and shall procure that any Sub-processor shall not, Process or otherwise transfer any Client Personal Data in or to any Restricted Countries unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- i. the Client or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;
- ii. the Data Subject has enforceable rights and effective legal remedies;
- iii. the Contractor complies with its obligations under Data Protection Law by providing an adequate level of protection to any Client Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
- iv. the Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the Processing of the Client Personal Data.

32.8 Following termination or expiry of this Contract, howsoever arising,

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the Contractor shall on written instructions from the Client, securely delete or securely and promptly return to the Client or a recipient nominated by it (in such usable format as and to the extent the Client may reasonably require) the Client Personal Data (and any copies of it) to the Client unless the Contractor is required by Law to retain the Client Personal Data. In the absence of any such instructions from the Client, the Contractor shall after 12 months from the expiry or termination of this Contract securely destroy the Client Personal Data.

- 32.9 Client Personal Data may not be Processed following termination or expiry of this Contract save as permitted by clause 32.8.
- 32.10 For the avoidance of doubt, and without prejudice to clause 32.8, the obligations in this clause 32 shall apply following termination or expiry of this Contract to the extent the Party concerned retains, has access to or use of, or Processes Client Personal Data.
- 32.11 The indemnity in clause 18 shall apply to any breach of this clause 32 and shall survive termination or expiry of this Contract.

33.0 Bribery Act 2010

33.1 Both Parties shall:

- have and shall maintain in place throughout the Contract Period their own policies and procedures to ensure compliance with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will ensure that all such policies and procedures are enforced;
- comply with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and with their own anti-bribery and anti-corruption policies (including any relevant industry code on anti-bribery and anti-corruption), in each case as may be updated from time to time; and
- not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 (or which would constitute such an offence if the offending activity, practice or conduct had been carried out in the UK).

The Parties agree that any breach of this clause 33.1 shall constitute a material breach which is incapable of remedy under clause 22.1.1 of this Agreement.

34.0 Confidentiality

34.1 Subject to clauses 35 and 36 each Party will keep confidential and not disclose, and will procure that his employees and the employees of any sub-contractor keep confidential and do not disclose, any information of

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a confidential nature obtained by him (concerning the other Party) by reason of this Contract except information which:

- i. is in the public domain otherwise than by reason of a breach of this provision;
- ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- iii. was in a Party's possession without restriction as to its disclosure prior to receiving such Information from the other Party;
- iv. is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;
- v. is necessary for a Party to disclose for the purposes of the performing its obligations under this Contract (but only to the extent it is necessary to do so);
- vi. the other Party has given its specific express prior written consent can be disclosed;
- vii. in the case of the Client, disclosed to any other government department provided that such government department will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause.

34.2 The provisions of this clause will apply during the continuance of this Contract and after its expiry or termination howsoever arising.

34.3 The Client is authorised by the Contractor to disclose confidential and secret information to persons(s) as may be notified to the Contractor from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain the market price for the Goods supplied hereunder, such exercise being commonly referred to as "benchmarking". The Client shall use all reasonable endeavours to ensure that such person(s) keeps the information confidential and does not make use of the information except for the purpose for which the disclosure is made.

34.4 The Contractor may only disclose the Client's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff is aware of and shall comply with these obligations as to confidentiality.

34.5 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.

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- 34.6 At the written request of the Client, the Contractor shall procure that those members of the Staff identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 34.7 Nothing in this Agreement shall prevent the Client from disclosing the Contractor's Confidential Information:
- i. to any Contracting Authority or any other Contracting Client. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;
 - ii. to any Contractor or other person engaged by the Client or any person conducting a Cabinet Office Major Project Authority gateway review;
 - iii. for the purpose of the examination and certification of the Client's accounts;
 - iv. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources; or
 - v. for the purposes of assisting in the prevention and detection of fraud pursuant to powers inserted in the Audit and Accountability (Northern Ireland) Order 2003 by the Serious Crime Act 2007.

35.0 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

- 35.1 The Contractor will comply with, and will ensure that its Staff complies with, the provisions of:
- i. the Official Secrets Acts 1911 to 1989; and
 - ii. Section 182 of the Finance Act 1989.

35.2 In the event that the Contractor or its Staff fail to comply with this clause, the Client reserves the right to terminate the Contract by giving notice in writing to the Contractor.

36.0 Freedom of Information (FOIA)

- 36.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and will provide all necessary assistance to the Client to enable it to comply with all Information disclosure obligations.

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- 36.2 The Contractor shall ensure that any sub-Contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- i. Provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client's request; and
 - ii. provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 36.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 36.4 In no event shall the Contactor respond directly to a Request for Information unless expressly authorised to do so by the Client.
- 36.5 The Contractor acknowledges that (notwithstanding the provisions of clause 36.0) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:
- i. without consulting the Contractor; or
 - ii. following consultation with the Contractor and having taken their views into account;
- provided always that where clause 36.5(i) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 36.6 The Contractor will ensure that all Information relevant to this Contract is retained for disclosure and if requested, permit the Client to inspect such records as requested from time to time.
- 36.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule

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is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause 36.0.

37.0 Publicity, Media and Official Enquiries

37.1 Without prejudice to the Client's obligations under the FOIA, the Contractor will not make any press announcement or publicise this Contract or any part thereof in any way, except with the prior written consent of the Client.

37.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, sub-contractors, professional advisors and consultants comply with clause 37.1.

38.0 Security

38.1 The Client will be responsible for maintaining the security of their Premises in accordance with its standard security requirements. While on the Client's Premises the Contractor will comply with all security requirements, and will ensure that all Staff comply with such requirements.

38.2 Where the Services are provided from the Contractor's Premises, the Contractor will, at their own cost, comply with all security requirements specified by the Client in writing.

39.0 Contractor's Staff

39.1 The Client may refuse to admit onto, or withdraw permission to remain on the Premises, to any member of the Contractor's Staff or any person employed or engaged by any member of the Contractor's Staff.

39.2 The Contractor will comply with any decision of the Client under clause 39.1.

39.3 If requested, the Contractor will provide a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Premises in connection with this Contract.

39.4 The Contractor's Staff will comply with any rules, regulations and requirements specified by the Client.

39.5 If the Contractor fails to comply with clause 39.3 within one month of the date of the request, and in the reasonable opinion of the Client such failure may be prejudicial to the interests of the Client, then the Client may terminate the Contract, provided always that such termination will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Client.

39.6 The decision of the Client in relation to clause 39.1 and 39.2 will be final and conclusive.

- 39.7 The Contractor and its Staff shall observe and comply with such rules, regulations and the Client's policies applicable to the conduct of personnel, including those relating to security arrangements, health and safety (including in relation to compliance with any risk assessments), anti-bribery and corruption, and use of information technology, as may be in force from time to time as determined by the Client. The Contractor acknowledges that it is the Contractor's responsibility to make its Staff aware of such policies and of the requirement to comply with them. The Contractor shall indemnify the Client in respect of any loss or damage suffered or incurred by the Client as a result of the failure of the Contractor or its Staff to comply with this Condition (including the cost of making good any damage caused by the Contractor or its Staff to the Client's premises, other than fair wear and tear). For the avoidance of doubt, this includes damage to the fabric of buildings, plant, fixed equipment or fittings, and loss or damage to the Client's data, records or systems.
- 39.8 The Contractor shall manage its Staff effectively and responsibility at all times in accordance with relevant Law, which shall include to avoid doubt, the Code of Practice on Workforce Matters in Public Sector Service Contracts – Northern Ireland.

40.0 Audit

- 40.1 The Contractor will keep and maintain until 6 years (or for a period as detailed within the specification) after the end of the Contract, full and accurate records of the Contract including the services provided under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor will on request afford the Client or the Client's representatives such access to those records as may be reasonably requested by the Client in connection with the Contract.
- 40.2 The Client reserves the right to carry out Audits and shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 40.3 Subject to the Client's obligations of confidentiality, the Contractor shall on demand provide the Client (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- i. all information requested by the Client within the permitted scope of the audit;
 - ii. reasonable access to any sites controlled by the Contractor and to any Equipment used (whether exclusively or non-exclusively) in the provision of the Services;
 - iii. access to Staff.

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- 40.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services against the applicable service levels at a level of detail sufficient to verify compliance with the service levels.
- 40.5 The Client shall endeavour to give 5 working days notice of its intention to conduct an audit.
- 40.6 The Contractor will provide the Client with copies of all reports following any audits carried out by third parties relative to the matters specified in clause 40.3, within 20 Working Days of any such report being delivered to the Contractor.
- 40.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a Contractor Default by the Contractor in which case the Contractor shall reimburse the Client for all the Client's reasonable costs incurred in the course of the audit.
- 40.8 If an audit identifies that:
- i. a Contractor Default has occurred, the Client shall serve a notice under clause 50.1 on the Contractor (a "Notice"). If the Contractor's Default relates to a failure to provide any information to the Client about the Charges, proposed Charges or the Contractor's costs, then the Notice shall include a requirement for the provision of all such information;
 - ii. the Client has overpaid any Charges, the Contractor shall pay to the Client the amount overpaid within 20 Working Days of receipt of a Notice. The Client may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and
 - iii. the Client has underpaid any Charges, the Client shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Client if this was due to a Default by the Contractor in relation to invoicing within 20 Working Days of receipt of a Notice.
- 40.9 The provisions of this clause 40.0 shall survive the expiry or termination of this Agreement for a period of 24 months, except to the extent of the provision to audit financial records which shall survive the expiry of this Agreement in line with the Client's retention policy. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with this Contract.
- 40.10 Where the Contractor has sub-contracted part of the Contract, the Contractor shall procure that its sub-contractors, and any sub-contractors of sub contractors, provide to the Client access, monitoring, data and information equivalent to that required of the Contractor under

this clause 40.

41.0 Force Majeure

- 41.1 Neither Party will have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from Force Majeure. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than one Month, either Party may terminate this Contract by written notice to the other Party.
- 41.2 Any failure or delay by the Contractor in performing its obligations under this Contract which results from any failure or delay by an agent, sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 41.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 41.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

42.0 Entire contract

- 42.1 This Contract contains the whole contract between the Parties and supersedes and replaces any prior written or oral contracts, representations or understandings between them. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.

43.0 Waiver

- 43.1 Any waiver or relaxation either partly, or wholly of any of the conditions of the Contract will be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 43.2 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 43.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any

other or subsequent breach of this Contract. The remedies available to either Party do not exclude rights provided by law.

44.0 Agency, partnership etc

44.1 This Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

45.0 Tax Arrangements of Public Sector Appointees

45.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

45.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or equivalent and all other statutes and regulations relating to NICs in respect of that consideration.

45.3 The Client may, at any time during the term of this contract, request the Contractor to provide information which demonstrates how the Contractor complies with clauses 45.1 and 45.2 above or why those clauses do not apply to them.

45.4 A request under clause 45.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.

45.5 The Client may terminate this contract if:-

- i. in the case of a request mentioned in Clause 45.3 above:-
 - the Contractor fails to provide information in response to the request within a reasonable time; or
 - the Contractor provides information which is inadequate to demonstrate either how the Contractor complies with clauses 45.1 and 45.2 above or why those Clauses do not apply to them;
- ii. in the case of a request mentioned in clause 45.4 above, the Contractor fails to provide the specified information within the specified period; or

- iii. it receives information which demonstrates that, at any time when clauses 45.1 and 45.2 apply to the Contractor, the Contractor is not complying with those clauses.

45.6 The Client may supply any information which it receives under clause 45.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

46.0 Monitoring of Contract Performance

46.1 The Contractor will comply with the monitoring arrangements set out in the Specification, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

47.0 Remedies cumulative

47.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract (whether under this Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

48.0 Severance

48.1 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and will not in any way affect any other circumstances of, or the validity or enforcement of this Contract.

49.0 Dispute Resolution

49.1 The Parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of, or in connection with the Contract. If the dispute cannot be resolved by the Parties within a reasonable period, the dispute may, by agreement between the Parties, be referred to a neutral adviser or mediator ("the Mediator"). If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act, either Party will be able to apply to an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the Parties will meet with the Mediator to agree a procedure for negotiations.

49.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings. The Parties agree to be bound by any written agreement once signed by both Parties. If the Parties fail to appoint a

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Mediator, or fail to reach agreement within one month of the Mediator being appointed, either Party may exercise any remedy that it has under this Contract.

- 49.3 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 49.4 In the event that any arbitration proceedings are commenced pursuant to clause 49.1, the following provisions shall apply:
- i. the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - ii. the Client shall give a written notice of arbitration to the Contractor (“the Arbitration Notice”) stating:
 - a. that the dispute is referred to arbitration; and
 - b. providing details of the issues to be resolved;
 - iii. the London Court of International Arbitration procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 49.4(ii) shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - iv. the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
 - v. if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by the Client under clause 49.4(ii) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the Law Society of Northern Ireland;
 - vi. the arbitration proceedings shall take place in Belfast and in the English language; and
 - vii. the arbitration proceedings shall be governed by, and interpretations made in accordance with, Northern Ireland law.

50.0 Notices

- 50.1 Any notice or other communication which is to be given by either Party to the other shall be sent by secure message through the e-procurement portal, or by electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 4 hours after the letter was issued in the case of secure message through the e-

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procurement portal or electronic mail, or sooner where the other Party acknowledges receipt of such letters.

51.0 Governing Law and Jurisdiction

51.1 The validity, construction and performance of this Contract, and all contractual and non contractual matters arising out of it, will be governed by Northern Ireland law and will be subject to the exclusive jurisdiction of the Northern Ireland courts to which the Parties submit.

52.0 Prevention of Corruption

52.1 The Contractor shall not offer or give, or agree to give, to the Client or any other public body or any person employed by or on behalf of the Client or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other Contract with the Client or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such Contract.

52.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other public body or any person employed by or on behalf of the Client or any other public body in connection with this Contract.

52.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 52.1 or 52.2, the Client may:

- i. terminate this Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
- ii. recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those clauses.

53.0 Tax Non-Compliance

53.1 The Contractor represents and warrants that as at the Award Date, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

53.2 If, at any point during the Contract Period, an Occasions of Tax Non-Compliance occurs, the Contractor shall:

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- i. notify the Client in writing of such fact within 5 Working Days of its occurrence; and
- ii. promptly provide to the Client:
 - details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - such other information in relation to the Occasions of Tax Non-Compliance as the Client may reasonably require.

54.0 Remedies in the Event of Inadequate Performance

- 54.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under this Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause 22.0 of this Contract.
- 54.2 In the event that the Client is of the reasonable opinion that there has been a material breach of this Contract by the Contractor, then the Client may, without prejudice to its rights under clause 22.0, do any of the following:
- i. without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with this Contract;
 - ii. without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - iii. make such pro rata deduction from the Contract Price to be made to the Contractor as the Client shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services in accordance with the provisions of the Contract; and/or
 - iv. terminate, in accordance with clause 22.0, the whole of this Contract.

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- 54.3 Without prejudice to its right under clause 12.0, the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 54.4 If the Contractor fails to supply any of the Services in accordance with the provisions of this Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.
- 54.5 In the event that:
- i. the Contractor fails to comply with clause 54.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or
 - ii. the Contractor persistently fails to comply with clause 54.4 above,
- the Client may terminate this Contract with immediate effect by notice in writing.
- 54.6 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall indemnify the Client for all costs associated with the reconstitution of that data and shall provide to the Client a full credit in respect of any charge levied for its transmission.
- 54.7 Without prejudice and in addition to the terms of Clause 54.2, Remedies in the Event of Inadequate Performance, the Client shall be at liberty to charge an administration fee, not in excess of 10% of the gross cost of any other services purchased, as a result of a breach of Clause 54.2. Such administration fees shall be in addition to any charge levied under Clause 54.2.

55.0 Termination on Insolvency and Change of Control

- 55.1 The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("change of control"). The Client may terminate this Contract by notice in writing with immediate effect within six months of:

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- i. being notified that a change of control has occurred; or
- ii. where no notification has been made, the date that the Client becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

56.0 Termination on Occasion of Tax Non-Compliance

56.1 In the event that;

- i. the warranty given by the Contractor pursuant to clause 53.1 is materially untrue; or
- ii. the Contractor commits a material breach of its obligations to notify the Client of any Occasions of Tax Non-Compliance as requested by clause 53.2; or
- iii. the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Client, are acceptable;

the Client shall be entitled to terminate this Contract by giving notice of termination to the Contractor.

57.0 Disruption

57.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Client, its employees or any other Contractor employed by the Client.

57.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

57.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under this Contract.

57.4 If the Contractor's proposals referred to in clause 57.3 are considered insufficient or unacceptable by the Client acting reasonably, then this Contract may be terminated with immediate effect by the Client by notice in writing.

57.5 If the Contractor is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

58.0 Security of Supply

58.1 Financial Distress

58.1.1 Upon request from the Client at any time, the Contractor shall provide to the Client last up to date audited accounts, up to date credit ratings (where the Contractor is rated by a ratings agency) and/or such other ratings and/or creditworthiness reports as the Parties mutually agree in writing) relating to the Contractor.

58.1.2 Where the ratings/reports referred to in clause 58.1.1 indicate any negative change to the Contractor's failure or delinquency scores over the previous reported position or any significant deterioration in the financial position of the Contractor, the Client shall be entitled to request and the Contractor shall make available its relevant personnel for a meeting (in person or by teleconference) to review the reasons behind such changes and any proposed action by the Contractor to remedy it. The Client shall furthermore be entitled to set reasonable thresholds below which further reports or meetings will be triggered and/or below which the Client will have the rights set out at clause 58.1.3.

58.1.3 Where (i) the Client would be entitled to request a meeting or call pursuant to clause 58.1.2 on three or more occasions during the Contract Period; or (ii) the thresholds referenced at clause 58.1.2 have been breached, and in each case no reasonable explanation has been provided by the Contractor, the Client shall have the right to terminate the Contract forthwith on notice to the Contractor. For these purposes, a reasonable explanation would include a bona fide restructuring exercise which would have no adverse consequences for the performance of the Contractor's obligations under the Contract.

58.2 Guarantee or other security

58.2.1 Where required by the Client, the Contractor shall procure that the Guarantor shall, within 10 working days of a written request at any time to do so from the Client, execute and deliver to the Client a Guarantee together with a certified copy extract of the board minutes of the Guarantor approving the execution of such Guarantee, or such other form of security reasonably requested by the Client in all the circumstances.

59.0 Non-Solicitation

59.1 For the duration of the Contract Period and for a period of 12 months thereafter, neither Party shall employ or offer employment to any staff of the other Party who have been associated with the delivery or receipt of the Services without the prior written approval of the Client's Contract Manager. A Party shall not be prevented from employing or offering employment to any member of staff of the other Party where it

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can demonstrate that the relevant individual was responding to a bona fide job advertisement.

60.0 Importance of Reputation

60.1 The Contractor acknowledges that the Client is subject to scrutiny by the general public and by Regulatory Bodies. The Contractor shall not take any action or omit to take any action, whether in relation to the supply of the Goods or the Services or otherwise, which in the reasonable opinion of the Contract Manager would, or would be likely to, harm the reputation of the Client (including in respect of the Contractor's dealings with its Sub-contractors and any third parties).

61.0 Priority of Documents

61.1 In the event of, and only to the extent of, any conflict between these conditions of contract and any document referred to herein, the conflict shall be resolved in accordance with the following order of precedence:

- i. the Specification including Schedules;
- ii. these conditions of contract;
- iii. any other document referred to in these conditions of contract;
- iv. the Invitation to Tender; and
- v. the Tender.

VARIATION TO CONTRACT FORM

CONTRACT TITLE:

.....

FOR THE PROVISION OF:

.....

CONTRACT REF: VARIATION NO: DATE: / /

BETWEEN:

[Empty rectangular box for names]

1. This Contract is varied as follows:

[Empty rectangular box for variation details]

2. Words and expressions in this Variation shall have the meaning/s given to them in this Contract.

3. This Contract, including any previous Variation(s), shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Client	For: The Contractor
Signature:	Signature:
Full Name:	Full Name:
Grade:	Grade:
Date:	Date:

SCHEDULE 1 SPECIFICATION SCHEDULE

Please refer to the Purchase Order / ITT Scope.

SCHEDULE 2 PRICING SCHEDULE

Please refer to the Purchase Order / ITT Pricing Schedule.

Valid Invoices

Valid invoices are those which are legible, from which a clear scanned image can be produced, and which clearly show the following information:

- (a) Contracting Authority/Client name
- (b) where related to a purchase order (PO), the wording "Purchase Order" or "PO" followed by the PO number, or where not related to a PO, the contact name in the Contracting Authority/Client (ie. the person requesting the goods)
- (c) the invoice number, or where a utility bill, the account number
- (d) payment terms
- (e) invoice date / tax point
- (f) Contractor name, address, postcode and VAT registration number
- (g) remittance name and address where this is different to (f) above
- (h) goods / service details which match the PO details, including quantity billed, item description, unit of measure, unit price and total value
- (i) the agreed charge, including any discounts, handling and freight charges and a breakdown clearly showing each VAT amount and the applicable VAT rate (and where not complete, a breakdown of the relevant work or services as they relate to this charge or an explanation of a difference in expected charge)

The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Contract (including where such invoice does not contain the relevant Quotation or Purchase Order number(s)) or which covers, or purports to relate to Goods and/or Services which have not been provided in accordance with the Contract. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.

SCHEDULE 3 CONTRACT MANAGEMENT/MONITORING SCHEDULE

Please refer to the Purchase Order / ITT Scope & Pricing Schedule where monitoring provisions may be linked to performance indicators highlighted in the Specification Schedule and payment milestones where applicable.

The successful Contractor's performance on this Contract will be managed as per specification and regularly monitored see [PGN 01/12 Contract Management – Procedures and Principles](#). Contractors not delivering on contract requirements is a serious matter. It means the public purse is not getting what it is paying for. If a contractor fails to reach satisfactory levels of contract performance they will be given a specified time to improve. If, after the specified time, they still fail to reach satisfactory levels of contract performance, the matter will be escalated to senior management in [insert name of CoPE] for further action. If this occurs and their performance still does not improve to satisfactory levels within the specified period, it may be regarded as an act of grave professional misconduct and they may be issued with a Certificate of Unsatisfactory Performance and this Contract may be terminated. The issue of a Certificate of Unsatisfactory Performance will result in the contractor being excluded from all procurement competitions being undertaken by Centres of Procurement Expertise on behalf of bodies covered by the Northern Ireland Procurement Policy for a period of twelve months from the date of issue of the certificate.