

## CoPE – Terms and Conditions for Supplies

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## **STANDARD CONDITIONS OF CONTRACT FOR SUPPLIES**

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**Note:**

**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 Date”	Means issue date of the Award Letter.
“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 given in the case of secure message through the e-procurement portal or electronic mail or two Working Days after the day on which the letter was posted, 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: <ul style="list-style-type: none"> <li>i. Which is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or</li> <li>ii. That constitutes a trade secret.</li> </ul>
“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,

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	<p>Intellectual Property Rights and know-how of either Party and all Client Personal Data within the meaning of the Data Protection Law. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> <li>i. was public knowledge at the time of disclosure;</li> <li>ii. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</li> <li>iii. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>iv. which is independently developed without access to the Confidential Information.</li> </ul>
“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 Commencement Date”	Means the date stipulated in the Award Letter.
“Contracting Authority”	Means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 or The Utilities Contracts 2016.
“Contracting Counterparty”	Means a legal entity exposed to risk through the contract.
“Contractor”	Means the person, firm or company that enters into this contract with the Client
“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.
“Contract Period”	<p>Means the period from the Commencement Date to:</p> <ul style="list-style-type: none"> <li>i. the end of the Initial Contract Period; or</li> <li>ii. the end of any contract extension if the Client elects to extend the Initial Contract Period; or</li> <li>iii. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.</li> </ul>

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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 8.5 to 8.8 (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"> <li>(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;</li> <li>(b) the Law Enforcement Directive (EU) 2016/680;</li> <li>(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");</li> <li>(d) with effect from implementation only, the Data Protection Act 2018; and</li> <li>(e) any statutory codes of practice issued by the Information Commissioner in relation to such legislation.</li> </ul>
“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 breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party 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.
“Delivery Date”	Means the date of delivery of the Goods to the client as detailed in the Specification.

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<p>“DOTAS”</p>	<p>Means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue &amp; 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.</p>
<p>“Environmental Information Regulations”</p>	<p>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.</p>
<p>“FOIA”</p>	<p>Means the Freedom of Information Act 2000.</p>
<p>“Force Majeure”</p>	<p>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.</p>
<p>“Fraud”</p>	<p>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.</p>
<p>“GDPR”</p>	<p>Means the General Data Protection Regulation, which is more accurately described in the definition of “Data Protection Law” above.</p>
<p>“General Anti-Abuse Rule”</p>	<p>Means</p> <ul style="list-style-type: none"> <li>i. The legislation in Part 5 of the Finance Act 2013; and</li> <li>ii. Any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.</li> </ul>
<p>“Goods”</p>	<p>Means any such goods as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Contract as specified in the Specification.</p>



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“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 CJEU 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 patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Invitation to Tender”	Means the invitation made available to a potential Contractor to submit a Tender.
“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 monitoring arrangements.
“Month”	Means calendar month.
“Occasion of Tax Non-Compliance”	Means 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:

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	<p>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;</p> <p>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> <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 Effective Date or to a civil penalty for fraud or evasion.</p>
“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.
“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 “Deliver To” address as specified in the Purchase Order.
“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.
“Property”	Means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.
“Purchase Order”	Means the Client’s order for the Goods which has a unique purchase order number, and details the Goods 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.

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“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.
“Replacement Contractor”	Means any third party Contractor appointed by the Client to supply any goods which are substantially similar to any of the Goods and which the Client receives in substitute for any of the Goods following the expiry, termination or partial termination of the 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).
“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).
“Schedule”	Means a schedule attached to, and forming part of, the Contract.
“Sensitive Personal Data”	Means sensitive or special categories of Personal Data as defined in Data Protection Law.
“Specification”	Means any specification for the Goods 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 Goods.
“Specification Schedule”	Means the Schedule containing details of the Specification.
“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 Goods.
“Staff”	Means all persons employed by the Contractor to perform its obligations under this Contract together with the

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	Contractor’s servants, agents, Contractors and sub-contractors used in the performance of its obligations under this Contract.
“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 <a href="http://www.ofmdfmni.gov.uk/focus_on_the_future.pdf">http://www.ofmdfmni.gov.uk/focus_on_the_future.pdf</a>
“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 Goods.
“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;
- 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;

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1.3.5 where the word ‘including’ is used in this Contract, it will be understood as meaning ‘including without limitation’.

### 1.4 Client’s Obligations.

1.4.1 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

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 4.1 (Extension of Initial Contract Period).

## 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 8.5 - 8.8 (Contract Price adjustment on extension of the Initial Contract Period) throughout any such extended period.

## 5.0 Quality and Guarantee of the Goods to be supplied

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- 5.1 The Contractor will supply the Goods to the Client in accordance with the Specification. The Contractor warrants, represents, undertakes and guarantees that the Goods supplied under this Contract will:
- 5.1.1 where applicable be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
  - 5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - 5.1.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor;
  - 5.1.4 be free from design defects;
  - 5.1.5 be fit for any purpose held out by the Contractor or made known to the Contractor by the Client expressly or by implication, and in this respect the Client relies on the Contractor's skill and judgement. The Contractor acknowledges and agrees that the Approval by the Client of any designs provided by the Contractor will not relieve the Contractor of any of its obligations under this sub-clause.
- 5.2 The Client may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this clause the Client may (without prejudice to other rights and remedies) either:
- i. have such Goods promptly, and in any event within five Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - ii. treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other goods in replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

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- 5.3 The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client's acceptance of them.
- 5.4 The Contractor hereby guarantees the Goods for the period from the date of delivery to the date 12 months thereafter or as otherwise specified in the Instructions to Tender or Tender, against faulty materials or workmanship. If the Client shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge.
- 5.5 Any Goods rejected or returned by the Client as described in clause 5.6 shall be returned to the Contractor at the Contractor's risk and expense.
- 5.6 The Goods
- 5.6.1 If requested by the Client, the Contractor shall provide the Client with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.
- 5.6.2 The Client reserves the right to substitute to new or improved products should these be developed by the Contractor during the period of Contract and where alternative sources of supply become available these will be considered by the Client in relation to value for money and the Client reserves the right to consider same.
- 5.6.3 The Client's right of rejection shall continue irrespective of whether the Client has in law accepted the Goods. In particular, taking delivery, inspection, use or payment by the Client of the Goods or part of them shall not constitute acceptance, waiver or Approval and shall be without prejudice to any right of remedy that the Client may have against the Contractor, provided that the right of rejection shall cease within a reasonable time from the date on which the Client discovers or might reasonably be expected to discover the latent defect or other relevant breach of Contract.
- 5.6.4 If any Goods provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contractor holds from such third parties in respect of those Goods will be held on trust for the Client.
- 5.6.5 In the event of the goods being recalled, initiated by the manufacturer of the goods, the Secretary of State for Health or Medicines and Healthcare products Regulatory Organisation (or any such similar regulatory body), the Contractor shall, without delay and at its own expense, arrange for the collection of such goods and credit the Client

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for any goods delivered but unused by the Client including part used packs.

### **6.0 Delivery**

- 6.1 The Contractor will deliver the Goods to the Premises on the Delivery Date at the time specified in the Invitation to Tender, Purchase Order or Award Letter.
- 6.2 Each delivery of the Goods will be accompanied by a delivery note which shows the Purchase Order number and the type and quantity of the Goods.
- 6.3 In particular the Goods shall be marked with the Contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 6.4 Where any access to the Premises is necessary in connection with delivery or installation the Contractor and his sub-contractors will at all times comply with the reasonable requirements of the Client's security arrangements.
- 6.5 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time promised or specified in the Specification, the Client may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Client.
- 6.6 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Client, the point of delivery shall be when the Goods are loaded on the Client's vehicle.
- 6.7 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Client or duly authorised person shall reasonably direct.
- 6.8 Property and risk in the Goods shall, without prejudice to any other rights or remedies of the Client, including the Client's rights and remedies under clause 6.9, pass to the Client at the time of acceptance of delivery as per clauses 6.5 and 6.6.
- 6.9 The Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Client elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 Working Days and to refund to the



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Client any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Client may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Client.

- 6.10 The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- 6.11 Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments. If, however, the Client does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Client, entitle the Client to terminate the whole of any unfulfilled part of this Contract without further liability to the Client.
- 6.12 Without prejudice and in addition to the terms of clause 6.5 the Client shall be at liberty to charge an administration fee, not in excess of 10% of the gross cost of any other goods purchased, as a result of a breach of clause 6.5. Such administration fees shall be in addition to any charge levied under clause 6.5.
- 6.13 In the case of non-delivery the Client shall, provided that the Client has been advised in writing of the dispatch of the Goods, within 10 days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

### **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 timely delivery of any Goods. 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 of the Goods will be as stated in the Purchase Order, Award Letter, or Tender (as applicable), and no increase will be

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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 will include the costs of packaging, insurance, delivery, unloading, stacking and carriage of the Goods. No extra charges will be effective unless agreed in writing and signed by the Client.
- 8.5 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.
- 8.6 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.
- 8.7 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 of any period of extension and shall apply during such period of extension.
- 8.8 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 Goods following delivery of the Goods, 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.

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- 9.3 The Contractor will ensure that each invoice contains all appropriate references and a detailed breakdown of the work completed and Goods 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 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 the Contract. Any amounts due under this clause 9.4 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.
- 9.5 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.

### **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 Goods 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 the 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.
- 12.3 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **13.0 Packaging**

- 13.1 The Goods will be packed and marked in a proper manner and in accordance with the Client's instructions and any statutory requirements and any requirements of the carriers tasked by the Contractor with delivering the Goods.
- 13.2 All packaging materials will be consistent with the Client's environmental policy and considered non-returnable.

### **14.0 Environmental Requirements**

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

### **15.0 Cancellation of Orders**

- 15.1 The Client will have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been delivered to the Client. The cancellation will be notified in writing. Without prejudice to the generality of the foregoing, the Client will pay the Contract Price (or where applicable, that part of the Contract Price) for Goods which have been delivered to the Client or at the date of the notice of cancellation are in transit and the costs of materials which the Contractor has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the Contractor of those materials for a refund.

### **16.0 Property**

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- 16.1 Property and risk of the Goods will, without prejudice to any of the rights or remedies of the Client, pass to the Client on completion of delivery. Delivery of the Goods will be completed once the Goods have been unloaded from the transporting vehicle at the Premises and the Client has signed for the delivery.
- 16.2 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 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.
- 16.3 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.
- 16.4 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with this Contract and for no other purpose without prior Approval.
- 16.5 The Contractor shall ensure the security of the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods, in accordance with the Client's reasonable security requirements as required from time to time.
- 16.6 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.
- 16.7 The Contractor shall use the Client's Property solely in connection with the performance of the Contract.
- 16.8 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.

### **17.0 Guarantee of Title**

17.1 The Contractor warrants that:

- i. it has full clear and unencumbered title to all the Goods;
- ii. it has full capacity and authority to enter into this Contract; and
- iii. at the date of delivery of any of the Goods it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Client. From that date the Client will acquire a valid and unencumbered title to the Goods.

## **18.0 Insurance**

18.1 The Contractor will effect and maintain with a reputable insurance company, a policy of insurance providing an adequate level and duration of cover in respect of all risks which may be incurred by the Contractor in respect of its performance of the Contract including death, personal injury, loss or damage to property or any other loss.

18.2 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.

18.3 The cover referred to above shall be held for the duration of the contract period and any additional period detailed in the Specification.

18.4 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.

## **19.0 Indemnity**

19.1 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.

19.2 Subject to clause 19.3, 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 Goods 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.

- 19.3 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.

## **20.0 Intellectual Property Rights**

- 20.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- 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;
  - 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 20.1(ii) to the Client.
- 20.2 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 20.1(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.
- 20.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor in the performance of the Contract.
- 20.4 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, the Replacement Contractor or to any other third party supplying services to the Client.

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- 20.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Goods 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 the Contract.
- 20.6 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 20.7 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).
- 20.8 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 20.5(i) and (ii).
- 20.9 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 Rights by the Client or the Contractor in connection with the performance of its obligations under the Contract.



20.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights 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 Goods without reducing the performance or functionality of the same, or substitute alternative Goods 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 Goods or to the substitute Goods; or
- ii. procure a licence to use and supply the Goods, 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 20.10(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.

20.11 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 to use the Goods and exercise its rights and take the benefit of this Contract.

## **21.0 Intellectual Property Indemnity**

21.1 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 Goods, to the extent that the claim is attributable to the acts or omission of the Contractor or Staff.

## **22.0 Assignment and sub-contracting**

22.1 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.

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- 22.2 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.
- 22.3 Where the Client has consented to the placing of sub-Contracts, copies of each sub-Contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.
- 22.4 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.
- 22.5 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, affect the validity of the Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Client.
- 22.6 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 23.0 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.
- 22.7 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the 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.
- 22.8 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 the Contract.
- 22.9 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

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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.

- 22.10 Further to clause 6.0, Delivery, Contractors must give at least 4 weeks' notice of changes in distribution arrangements to the Client for consideration prior to acceptance by the Client.

### **23.0 Termination of Contract**

- 23.1 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:

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

23.1.2 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

23.1.3 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 23.1.3) in consequence of debt in any jurisdiction.

23.2 Where the Client terminates the Contract and then makes other arrangements for the supply of Goods, 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 Goods 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.

23.3 Where the Client terminates this Contract under clause 60.0 (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

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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 60.0 (Break).

23.4 The Client shall not be liable under clause 23.3 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 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.

23.5 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 clauses 5.0 (Quality and Guarantee of the Goods to be Supplied), 9.0 (Payment), 12.0 (Recovery of Sums Due), 20.0 (Intellectual Property Rights), 26.0 (Bribery Act 2010), 31.0 (Data Protection Act), 32.0 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 33.0 (Freedom of Information), 37.0 (Audit), 43.0 (Remedies Cumulative), 48.0 (Governing Law and Jurisdiction), 52.0 (Termination on Insolvency and Change of Control) and 54.0 (Recovery upon 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

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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 46.0.

### **25.0 Change of Law**

25.1 The Contractor shall neither be relieved of its obligations to provide the Supplies 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 Supplies is known at the Commencement Date.

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 Goods, 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:

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- 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 Goods; and
- iv. demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

### **26.0 Bribery Act 2010**

#### 26.1 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).

26.2 The Parties agree that any breach of clause 26.1 shall constitute a material breach which is incapable of remedy under clause 23.1.1 of this Agreement.

### **27.0 Prevention of Fraud**

27.1 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.

27.2 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.

27.3 If the Contractor or its Staff commits fraud in relation to this or any other contract with the Client, the Client may:

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27.3.1 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 Goods and any additional expenditure incurred by the Client throughout the remainder of the Contract; or

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

### **28.0 The Contracts (Rights of Third Parties) Act 1999**

28.1 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 consent of both Parties.

### **29.0 Health and Safety**

29.1 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.

29.2 While on the Premises the Contractor will comply with all health and safety measures.

29.3 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.

29.4 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.

29.5 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.

29.6 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 29.4 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 Goods.

### **30.0 Discrimination**

- 30.1 The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation and shall use its best endeavours to ensure that in its employment policies and practices and in the delivery of the services required of the Contractor under this Contract it 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.
- 30.2 The Contractor will take all reasonable steps to secure the observance of clause 30.1 by all Staff.

### **31.0 Data Protection**

- 31.1 With respect to the Parties' rights and obligations under the 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 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.
- 31.2 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.



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- 31.3 Notwithstanding the general obligation in clause 31.2, 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 endeavors 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. 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:
    - 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);

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- vi.vi retention periods for different types of Client Personal Data; and
  - v.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 31; 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 31, 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 31.3.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 Client (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

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xiii. if required to do so by Data Protection Law, appoint a designated Data Protection Officer.

31.4 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.

31.5 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 31.4 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

- 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.

31.6 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 31 such that

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- 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.
- 31.7 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.
- 31.8 Following termination or expiry of this Contract, howsoever arising, 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.
- 31.9 Client Personal Data may not be Processed following termination or expiry of this Contract save as permitted by clause 31.8.
- 31.10 For the avoidance of doubt, and without prejudice to clause 31.8, the obligations in this clause 31 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.
- 31.11 The indemnity in clause 19 shall apply to any breach of this clause 31 and shall survive termination or expiry of this Contract.

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

32.1 The Contractor will comply with, and will ensure that its Staff comply with, the provisions of:

- i. the Official Secrets Acts 1911 to 1989; and
- ii. Section 182 of the Finance Act 1989.

32.2 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.

**33.0 Freedom of Information (FOIA)**

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

33.2 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.

33.3 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

33.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

33.5 The Contractor acknowledges that (notwithstanding the provisions of clause 33.0) 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

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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 33.5(i) applies the Client shall, in accordance with any relevant guidance issued under the FOIA, 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.

33.6 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.

33.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause 33.0.

### **34.0 Publicity, Media and Official Enquiries**

34.1 Without prejudice to the Client's obligations under the FOIA or the Environmental Information Regulations 2004, neither Party will make any press announcement or publicise this Contract or any part thereof in any way, except with the prior written consent of the other Party.

34.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, sub-contractors, professional advisors and consultants comply with clause 34.1.

### **35.0 Security**

35.1 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.

### **36.0 Contractor's Staff**

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

36.2 The Contractor will comply with any decision of the Client under clause 36.1.

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- 36.3 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.
- 36.4 The Contractor's Staff will comply with any rules, regulations and requirements specified by the Client.
- 36.5 If the Contractor fails to comply with clause 36.3 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.
- 36.6 The decision of the Client in relation to clause 36.1 and 36.2 will be final and conclusive.
- 36.7 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.
- 36.8 The Contractor shall manage its Staff effectively and responsibly 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.

### **37.0 Audit**

- 37.1 The Contractor will keep and maintain until six 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 Goods supplied 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.
- 37.2 The Client reserves the right to carry out Audits and shall use its reasonable endeavours to ensure that the conduct of each audit does

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not unreasonably disrupt the Contractor or delay the supply of the Goods.

- 37.3 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 Supplies;
  - iii. access to Staff.
- 37.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance in the supply of the Goods against the applicable service levels at a level of detail sufficient to verify compliance with the service levels.
- 37.5 The Client shall endeavour to give 5 working days notice of its intention to conduct an audit.
- 37.6 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 37.3, within 20 Working Days of any such report being delivered to the Contractor.
- 37.7 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.
- 37.8 If an audit identifies that:
- i. a Contractor Default has occurred, the Client shall serve a notice under clause 47.0 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



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- 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.

37.9 The provisions of this clause 37.0 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 the Contract.

37.10 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 37.

### **38.0 Confidentiality**

38.1 Subject to clause 32 and 33 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 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

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disclosed Information which are no less onerous than this clause.

- 38.2 The provisions of this clause will apply during the continuance of this Contract and after its expiry or termination howsoever arising.
- 38.3 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.

### **39.0 Force Majeure**

- 39.1 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.
- 39.2 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.
- 39.3 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 39.1 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.

### **40.0 Entire Contract**

- 40.1 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.

### **41.0 Waiver**

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- 41.1 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.
- 41.2 The failure of either Party to insist upon strict performance of any provision of the 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 the Contract.
- 41.3 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 47.0 (Notices).

### **42.0 Agency, partnership etc**

- 42.1 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.

### **43.0 Remedies Cumulative**

- 43.1 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.

### **44.0 Monitoring of Contract Performance**

- 44.1 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.

### **45.0 Severance**

- 45.1 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.

### **46.0 Dispute Resolution**

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- 46.1 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.
- 46.2 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 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.
- 46.3 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.
- 46.4 In the event that any arbitration proceedings are commenced pursuant to clause 46.1, 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 Contract (“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 46.4(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 46.4(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.

#### **47.0 Notices**

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

#### **48.0 Governing Law and Jurisdiction**

- 48.1 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.

#### **49.0 Non-Delivery**

- 49.1 On dispatch of any consignment of the Goods the Contractor shall send the Client an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, provided that the Client has been advised in writing of the dispatch of the Goods, within 10 Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute Goods within the timescales specified by the Client or terminate this Contract in accordance with clause 6.5 (Delivery).
- 49.2 Failure by the Contractor to deliver the Goods or any part of them within the time agreed shall entitle the Client to terminate this Contract and purchase other Goods of the same or similar description to make good such default and recover from the Contractor the amount by which the cost of purchasing other Goods exceeds the amount that would have been payable to the Contractor in respect of the Goods replaced by such purchase provided that the Client uses all reasonable endeavours to mitigate its losses in this respect.

#### **50.0 Prevention of Corruption**

- 50.1 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

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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.

- 50.2 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 the Contract.
- 50.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 50.1 or 50.2, 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 Goods 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.

### **51.0 Tax Non-Compliance**

- 51.1 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.
- 51.2 If, at any point during the Contract Period, an Occasions of Tax Non-Compliance occurs, the Contractor shall:
- i. notify the Contracting Authority in writing of such fact within 5 Working Days of its occurrence; and
  - ii. promptly provide to the Contracting Authority:
    - details of the steps which the Supplier 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 Authority may reasonably require.

### **52.0 Termination on Insolvency and Change of Control**

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52.1 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:

- 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.

### **53.0 Termination on Occasion of Tax Non-Compliance**

53.1 In the event that;

- i. the warranty given by the Contractor pursuant to clause 51.1 is materially untrue; or
- ii. the Contractor commits a material breach of its obligations to notify the Contracting Authority of any Occasions of Tax Non-Compliance as requested by clause 51.2; or
- iii. the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Contracting Authority, are acceptable;

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

### **54.0 Recovery upon Termination**

54.1 On the termination of this Contract for any reason, the Contractor shall:

- i. immediately return to the Client all Confidential Information, Personal Data and IP materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Goods;
- ii. immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Contractor under clause 16.2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- iii. assist and co-operate with the Client to ensure an orderly transition of the provision of the Goods to the Replacement Contractor and/or the completion of any work in progress.

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

54.2 If the Contractor fails to comply with clause 54.1(i) and (ii), 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.

54.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 54.1(iii) and (iv) 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.

## **55.0 Disruption**

55.1 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.

55.2 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 the Contract.

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

55.4 If the Contractor's proposals referred to in clause 55.3 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.

## **56.0 Warranties and Representations**

56.1 The Contractor warrants and represents that:

- i. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
- ii. in entering this Contract it has not committed any Fraud;



## CoPE – Terms and Conditions for Supplies

- iii. 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;
- iv. 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;
- v. 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;
- vi. 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;
- vii. 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;
- viii. in the 3 years prior to the date of the Contract:
  - a. 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;
  - b. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- ix. 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.

### **57.0 Non-Solicitation**

- 57.1 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 Goods 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

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

### **58.0 Importance of Reputation**

58.1 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).

### **59.0 Priority of Documents**

59.1 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:

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1. This Contract is varied as follows:

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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:**

<p>For: The Client</p> <p>Signature: .....</p> <p>Full Name: .....</p> <p>Grade: .....</p> <p>Date: .....</p>	<p>For: The Contractor</p> <p>Signature: .....</p> <p>Full Name: .....</p> <p>Grade: .....</p> <p>Date: .....</p>
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**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.**

#### **“CHARACTERISTICS OF A VALID INVOICE” - ADVICE FOR CONTRACTORS**

##### **1. Criteria for 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 10 digit 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.