

**PUBLIC SECTOR STANDARD CONDITIONS OF
CONTRACT FOR SUPPLIES, SERVICES AND
ICT CONTRACTS**

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1.0 Definitions and Interpretation

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

“Approval” or “Approved”	means the written consent of the Client.
“Authority”	means the Northern Ireland Executive Committee and Northern Ireland Departments, including, but not limited to, government ministers, government departments, government offices, government agencies and those bodies to which NI Public Procurement Policy applies.
“Award Letter”	means the letter of award issued by the Client to the Contractor informing the Contractor that their Tender has been accepted.
“Brexit”	means the United Kingdom ceasing to be a member state of the European Union.
“Business Continuity and Disaster Recovery Plan”	means the business continuity and disaster recovery plan detailed in the Specification.
“Charges”	means the charges for the provision of the Services set out in the Pricing Schedule to the Commercial Conditions of Contract or otherwise calculated in accordance with the Clause 4 and Clause 5 of the Commercial Conditions of Contract.
“Client”	means the Contracting Authority named in the Invitation to Tender; or the body(ies) listed as contract participants in the contract documentation.
“Client’s Pre-Existing Intellectual Property Rights” or “Pre-Existing IPRs”	means the Intellectual Property Rights that the Client owned or developed prior to the Commencement Date.
“Commencement Date”	means the date stipulated in the Award Letter.
“Commercial Conditions of Contract”	means the commercial clauses to be incorporated within the Contract, consisting

	of either the relevant Supplies Clauses, the Services Clauses or the ICT Clauses as identified or specified in the Award Letter.
“Commercially Sensitive Information”	means the information listed in the Freedom of Information Statement comprised of information: <ul style="list-style-type: none"> a. Which is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or b. That constitutes a trade secret.
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation (DPL). Confidential Information shall not include information which: <ul style="list-style-type: none"> i. was public knowledge at the time of disclosure (otherwise than by breach of clause 22 Confidential Information); ii. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; iii. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or iv. is independently developed without access to the Confidential Information.
“Contract”	means the Specification and any attached schedules, these Public Sector Standard Conditions of Contract, the Commercial Conditions of Contract for Supplies, Services

	and ICT, the Tender, the schedule of contract prices or rates submitted by the Contractor (as part of their Tender), any clarifications and the Award Letter.
“Contract Manager”	means the person for the time being appointed by the Client as being authorised to administer the Contract on behalf of the Client or such person as may be nominated by the Contract Manager to act on their behalf.
“Contracting Authority”	means any Contracting Authority as defined in Regulation 2 of the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016.
“Contractor”	means the persons, firms or companies that enters into this contract with the Client.
“Contract Period”	means the period from the Commencement Date to: <ul style="list-style-type: none"> i. the end of the Initial Contract Period; or ii. the end of any contract extension if the Client elects to extend the Initial Contract Period; or iii. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.
“Contractor’s Pre-Existing Intellectual Property Rights” or “Pre-Existing IPRs”	means the Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date.
“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 the Commercial Conditions of Contract.

<p>“Default”</p>	<p>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 or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other.</p>
<p>“DOTAS”</p>	<p>means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s. 132A Social Security Administration Act 1992.</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</p>

	common Law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Authority.
“General Anti-Abuse Rule”	means <ul style="list-style-type: none"> a. the legislation in Part 5 of the Finance Act 2013; and b. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
“General Change in Law”	means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to comparable services of the same or a similar nature to the supply of the Services.
“Goods”	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.
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Halifax Abuse Principle”	means the principle explained in the CJE Case C-255/02 Halifax and others.
“ICT” (Information and communications technology)	means an extended term for information technology (IT) which stresses the role of unified communications and the integration of telecommunications (telephone lines and wireless signals), computers as well as necessary enterprise software, middleware, storage, and audio-visual systems, which enable users to access, store, transmit, and manipulate Information.

“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.
“Initial Contract Period Expiry Date”	means the date on which the Initial Contract Period expires.
“Intellectual Property Rights” or “IPRs”	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
“Invitation to Tender”	means the invitation sent to a potential Contractor to submit a Tender.
“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.
“MSA 2015”	means the Modern Slavery Act 2015.
“Month”	means calendar month.

<p>“Occasion of Tax Non-Compliance”</p>	<p>means</p> <p>a. Any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <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>
<p>“Party/Parties”</p>	<p>means the Contractor and/or the Client (as appropriate).</p>
<p>“Pricing Schedule”</p>	<p>means the Schedule to the Commercial Conditions of Contract containing details of indexing, the invoicing procedure and the payment profile.</p>
<p>“Pre-Existing Intellectual Property Rights” or “Pre-Existing IPRs”</p>	<p>means the Intellectual Property Rights that the Client or the Contractor owned or developed prior to the Commencement Date.</p>
<p>“Premises”</p>	<p>means the premises detailed in the Award Letter (as applicable) or if such term is not defined it will be the address where the Services are provided.</p>
<p>“Property”</p>	<p>means any property, other than real property and Intellectual Property Rights, issued or</p>

	made available to the Contractor by the Client in connection with this Contract.
“Protocol”	means the protocol contained in Procurement Guidance Note PGN 01/12 – Contract Management Principles and Procedures and appended to Annex 2 of these Public Sector Standard Conditions of Contract.
“Public Sector Standard Conditions of Contract”	means the conditions of contract contained in this document.
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.
“Relevant Tax Authority”	means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
“Replacement Contractor”	means any third party service provider appointed by the Client to supply any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract.
“Request for Information”	Will have the meaning set out in the FOIA or the Environmental Information Regulations

	2004 as relevant (where the meaning set out for the term “request” will apply).
“Schedule”	means a schedule attached to, and forming part of, this Contract.
“Security Policy”	means the HMG Infosec Standards Security Policy Framework as set out in the Security Schedule .
“Services”	has the meaning set out in the Specification to the Commercial Conditions of Contract in relation to the performance of the Contractor's obligations under this Contract and may also be specified in the Award Letter.
“Specific Change in Law”	means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Client, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.
“Specification”	means the specification contained in Schedule 1 to the Commercial Conditions of Contract
“Staff”	means all persons employed by the Contractor to perform its obligations under this Contract together with the Contractor’s servants, agents, contractors and sub-contractors used in the performance of its obligations under this Contract.
“Supplies”	means the supply of Goods by the Contractor (or by the Contractor’s sub-contractor) under the Contract.
“Tender”	means the document(s) submitted by the Contractor to the Client in response to the Invitation to Tender for formal offers to supply it with the Services/Supplies.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006.

“Variation”	has the meaning given to it in clause 11.2 (Variation).
“Variation to Contract Form”	means the form attached at Annex 1 and referred to in clause 11.3.
“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.
- 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;
- 1.3.5 Where the word ‘including’ is used in this Contract, it will be understood as meaning ‘including without limitation’;
- 1.3.6 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.3.7 Words importing the masculine include the feminine and the neuter;
- 1.3.8 Reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.3.9 Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.

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 Entire Contract

2.1 The issue of the Award Letter by the Client will constitute an acceptance of the offer contained in the Contractor's Tender subject to the terms of the 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 evidenced as provided for in clause 11.0.

2.3 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.

3.0 Representations and Warranties

3.1 The Contractor warrants that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Contract.

3.2 The Contractor warrants and represents that:

- i. in entering this Contract it has not committed any Fraud;
- ii. as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
- iii. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- iv. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- v. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- vi. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- vii. in the three 3 years prior to the date of the Contract:
 - it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

4.0 Mistakes in Information

- 4.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein. The Contractor shall not be liable for any such discrepancies, errors or omissions if, and to the extent that, they arise due to the inaccuracy or incompleteness of any information provided to it by or on behalf of the Client.
- 4.2 The Contractor shall be responsible for the accuracy of the Contractor input into all drawings, documentation and information supplied to the Client by the Contractor in connection with the supply of the Services. In the event of becoming aware of a discrepancy, error or omission in the information supplied over the duration of the Contract that the Client reasonably believes to have an impact on the Services, the Contractor shall, in the first instance, be given the opportunity to remedy at its own cost and expense within a reasonable timeframe to be agreed between the Parties.

5.0 Conflicts of Interest

- 5.1 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.
- 5.2 The Client reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of this Contract. The actions of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

6.0 Property

- 6.1 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.
- 6.2 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.
- 6.3 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 the performance of this Contract and for no other purpose without prior Approval.
- 6.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.

6.5 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.

6.6 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.

7.0 Offers of Employment

7.1 Subject to Clause 8 (TUPE) for the duration of the Contract and for a period of 12 Months thereafter neither the Client nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the Contract management of the Services without that other Party's prior written consent. For the avoidance of doubt, 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.

8.0 TUPE

8.1 Both Parties shall comply with all of their obligations, if any, under TUPE during the Contract Period.

8.2 Contractor's Responsibilities

8.2.1 Not later than 12 Months prior to the end of the Contract Period the Contractor shall fully and accurately disclose to the Client all information that the Client may reasonably request in relation to the Contractor's staff including the following:

- i. Whether there is an organised grouping of employees and/or resources (eg a branch or division or team) which has as its primary purpose the provision of the Services to the Client.
- ii. If so, the total number of staff assigned to that organised grouping (those who spend the majority of their time working in that organised grouping).
- iii. In relation to such staff, their contracts of employment and those particulars of employment pursuant to article 33 of the Employment Rights (Northern Ireland) Order 1996 together with details of all contractual and non-contractual entitlements, including (but not limited to) salary, bonuses, allowances and, any other remuneration, any future pay settlements, any redundancy or pension entitlements.

- iv. In relation to such staff, their ages and grade, post or job title.
- v. In relation to such staff, details of any disciplinary or grievance proceedings ongoing or likely to arise, of any claims current or threatened and of any relevant proceedings which have been brought in the previous two years, or which have been concluded in that time. In relation to such staff, details of any disciplinary or grievance proceedings ongoing or likely to arise and, information of any current or pending court or tribunal cases, claims or actions, together with details of any court or tribunal cases, claims or actions brought in the previous two years.
- vi. Details of all collective agreements made through trade unions and any other relevant bodies with a brief summary of the current state of negotiations with trade unions in relation to pay or other matters and of any current industrial disputes and claims for recognition by any trade union.

If any of the Services are sub-contracted by the Contractor then the above information shall be gathered and provided to the Client no later than 12 Months prior to the end of the Contract Period in relation to the sub-contractor's staff. The Contractor shall insert into any agreement with a sub-contractor a Clause in terms similar to this Clause 8.2 requiring the sub-contractor to provide information to the Contractor which the Contractor may then provide to the Client for the purposes of TUPE and/or any retendering process.

If the Contractor becomes aware that the information provided in accordance with this clause has become untrue, inaccurate or misleading, or has reasonable grounds to suspect this is the case, it shall notify the Client promptly and promptly provide the Client with up to date information.

- 8.2.2 At intervals to be stipulated by the Client (which shall not be more frequent than every thirty days) and in any event, not less than 14 days prior to the end of the Contract Period the Contractor shall deliver to the Client a complete update of all such information which shall be disclosable pursuant to clause 8.2.1.
- 8.2.3 At the time of providing the information disclosed pursuant to clauses 8.2.1 and 8.2.2, the Contractor shall warrant the completeness and accuracy of all such information and the Client may assign the benefit of this warranty to any Replacement Contractor.
- 8.2.4 The Client may use the information it receives from the Contractor pursuant to clause 8.2.1 and 8.2.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contact Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.

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

- i. the provision of information pursuant to clause 8.2.2 and 8.2.3; and
- ii. any claim or demand by any of the Staff or a trade union arising directly or indirectly from any act, fault or omission of the Contractor or any sub-contractor of it on or before the end of the Contract Period.

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

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

9.0 Intellectual Property Rights

9.1 Save as granted under this Contract, the Client shall not acquire any right, title or interest in the Contractor's Pre-Existing IPRs and the Contractor shall not acquire any right, title or interest in the Client's Pre-Existing IPRs. For the avoidance of doubt, all Pre-Existing IPRs in or to any materials belonging to the Client prior to the Commencement Date shall remain vested in the Client (or its licensor) and all Pre-Existing IPRs in or to any materials belonging to the Contractor prior to the Commencement Date shall remain vested in the Contractor (or its licensor).

9.2 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any of the Contractor's Pre-Existing IPRs which the Client reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

- 9.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.
- 9.4 The Contractor shall not infringe any IPRs of any third party in connection with the Services and performing its obligations under this Contract. 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 (whether direct or indirect), charges, damages, costs, expenses, penalties, reasonable legal and other professional fees awarded against or incurred or paid by the Client and other liabilities which the Client may suffer or incur as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's IPRs arising out of or in connection with the Services, except where any such claim arises from:
- i. items or materials based upon designs supplied by the Client; or
 - ii. the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of this Contract.
- 9.5 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any IPRs in materials supplied or licensed by the Contractor.
- 9.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of IPRs 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).
- 9.7 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 9.4(i) or (ii).

9.8 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 IPRs by the Client or the Contractor in connection with the performance of its obligations under this Contract.

9.9 If a claim, demand or action for infringement or alleged infringement of any IPRs is made in connection with this Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:

- i. modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
- ii. procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client,

and in the event that the Contractor is unable to comply with clauses 9.9(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.

9.10 The Client may undertake, or invite a contractor or third party, outside the Contract, to undertake further work in connection to the Services, or any part of the Services ("**Further Services**"). In such circumstances, the Contractor shall:

- i. co-operate with and use its reasonable endeavours to assist that third party to undertake the Further Services; and
- ii. grant to that third party licences (including in respect of any and all IPRs owned by the Contractor) necessary to enable that third party to undertake the Further Services and such licences shall be perpetual, irrevocable, royalty-free and worldwide.
- iii. No IPRs in or derived from or arising out of any Further Services will vest in the Contractor.

9.11 The provisions of this clause 9.0 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

10.0 Assignment and sub-contracting

- 10.1 The Contractor shall not without prior Approval 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 relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 10.2 Where the Contractor enters into a sub-contract for the purpose of performing its obligations under this Contract, the Contractor shall:
- i. 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 the valid notice; and
 - ii. ensure that equally favourable payment terms to those which the Client provides for the Contractor are passed on by the Contractor to sub-contractors.
- 10.3 Where the Client has consented to the placing of sub-contracts copies of each sub-contract, will at the request of the Client, be sent by the Contractor to the Client as soon as is reasonably practicable.
- 10.4 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.
- 10.5 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Client.
- 10.6 If the rights and obligations of the Client 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 39.0 (Termination of Contract) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - ii. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Contractor.

- 10.7 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under this Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 10.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Contract.
- 10.9 On receipt of the Award Letter, the Contractor is required, as a condition of Contract, to inform their distributors of the relevant details in respect of the products and the quantities of the Contract. It is not the responsibility of the Client to advise third parties of Contract details. The performance of the nominated distributor is the responsibility of the Contractor who will ensure that adequate stock is held by their agents and that pricing and other information is updated immediately it becomes effective.

11.0 Variation

- 11.1 Unless specifically provided otherwise, the Contractor shall not be entitled to vary the Contract except as directed by the Client.
- 11.2 During the Contract Period, the Client shall be entitled to request a variation to the Specification, the Core Conditions of Contract and/or the Commercial Conditions of Contract (hereinafter called a "**Variation**").
- 11.3 The Client shall be entitled to request a Variation by notifying the Contractor in writing of the Variation by means of a Variation to Contract Form (Annex 1) and the Client shall provide the Contractor with 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.
- 11.4 In the event that a Variation does require an amendment to the Contract Price, such amendment to the Contract Price shall be calculated by the Client, being an amount which properly and fairly reflects the nature and extent of the Variation taking account of all relevant circumstances and shall be agreed in writing with the Contractor. In the event that the Parties fail to agree an amendment to the Contract Price for the Variation, the dispute shall be resolved under the Dispute Resolution Procedure under clause 34.0.

11.5 The Client shall specify a reasonable time limit, having regard to the nature of the Variation, within which the Contractor shall respond and confirm whether it accepts the request for a Variation and it shall confirm the same in writing. If the Contractor accepts the Variation, the Contractor shall perform such Variation within the specified time scale and be bound by the Contract so far as it is applicable, as though the Variation was stated in the Contract.

11.6 In the event that the Contractor reasonably believes that a Variation would:

- i. materially and adversely affect the risks to the health and safety of any person; and/or
- ii. require the Services to be performed in a way that infringes any Law; and/or
- iii. be technically impossible to implement and the Contractor has not stated on any of its Tender documentation, its Contractor solution nor the services description that it has the necessary technical capacity and flexibility required to implement the Variation, each of which the Contractor shall be required to demonstrate to the Client's reasonable satisfaction,

the Contractor shall notify the Client in writing immediately of its reasons for not being unable to accept the Variation. Within 10 Working Days of receipt of such notification, the Client shall inform the Contractor that, at the Client's sole discretion, it shall:

- i. allow the Contractor to fulfil its obligations under the Contract without being required to implement the Variation; or
- ii. terminate the Contract with immediate effect; or
- iii. attempt to agree a resolution to the matter with the Contractor if 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.

11.7 Where a resolution cannot be reached under this clause 11.0, the matter shall be dealt with under the Dispute Resolution Procedure detailed in clause 34.0.

12.0 Change of Law

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

- i. Brexit;

- ii. a General Change of Law; or
 - iii. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 12.2 If a Specific Change in Law occurs during the Contract Period (other than those referred to in clause 12.1), the Contractor shall notify the Client of the likely effects of that change, including:
- i. whether any modification is required to the Services, the Contract Price or the Contract; and
 - ii. whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 12.3 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.
- 12.4 As soon as practicable after any notification in accordance with clause 12.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:-
- i. providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
 - ii. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - iii. giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - iv. demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

13.0 Prevention of Fraud

- 13.1 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.
- 13.2 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.
- 13.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Authority (including the Client) the Client may:

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

14.0 The Contracts (Rights of Third Parties) Act 1999

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

15.0 Health and Safety

15.1 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 Client's Premises insofar as the Client is aware, and which may affect the Contractor in the performance of its obligations under the Contract.

15.2 While on the Client's Premises, the Contractor will comply with all health and safety measures.

15.3 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.

15.4 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.

15.5 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.

15.6 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 15.4 by the Contractor or any of 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 Services.

16.0 Environmental Requirements

16.1 The Contractor will provide the Services in accordance with the Client's environmental policy.

17.0 Discrimination

17.1 The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the Services required of the Contractor under this Contract he has due regard to the need to promote equality of treatment and opportunity and prevent discrimination, harassment and victimisation between:

- i. persons of different religious beliefs or political opinions;
- ii. sex, gender, married and unmarried persons and civil partnerships;
- iii. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave), shared parental or parental 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.

17.2 The Contractor will take all reasonable steps to secure the observance of clause 17.1 by all Staff.

18.0 The Human Rights Act 1998

18.1 The Contractor shall, and shall use reasonable endeavours to ensure that its Staff shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998. The Contractor agrees to indemnify and keep indemnified the Client against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this clause 18.

19.0 Modern Slavery Act 2015

- 19.1 The Contractor shall ensure that the Contractor and its Staff:
- i. do not engage in any activity, practice or conduct which constitutes an offence under the MSA 2015; and
 - ii. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the MSA 2015.
- 19.2 In performing its obligations under the Contract, the Contractor shall ensure it:
- i. has and maintains throughout the Contract Period its own policies and procedures to ensure its compliance with the MSA 2015 in accordance with any requirements of the MSA 2015; and
 - ii. includes in its contracts with its sub-contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 19.0.
- 19.3 The Contractor shall indemnify the Client against any losses, liabilities, damages, costs (including, but not limited to, legal fees) and expenses incurred by the Contractor as a result of the Contractor and/or its Staff's breach of the MSA 2015.

20.0 Bribery Act 2010

- 20.1 Both Parties shall:
- i. 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;
 - ii. 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
 - iii. 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).

20.2 The Parties agree that any breach of this clause 20.1 shall constitute a material breach which is incapable of remedy under clause 39.0 of this Agreement.

21.0 Prevention of Corruption

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

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

21.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 21.1 or 21.2, the Client may:

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

22.0 Confidentiality

22.1 Subject to clauses 23 and 24 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 Confidential Information including, but not limited to, information of a confidential nature obtained by him (concerning the other Party) by reason of this Contract except information which, the receiving party can show by reference to documentary or other evidence:

- 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) provided that the receiving party is made aware of the Contractor's confidentiality obligations under the Contract and, where in the opinion of the Client it is considered necessary, the Contractor shall ensure that the receiving party signs a confidentiality undertaking on the terms equivalent to those contained in this contract;
 - vi. the other Party has given its specific express prior written consent can be disclosed;
 - vii. in the case of the Client, disclosed to any other government department provided that such government department will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause;
 - viii. is disclosed to a Party's professional advisor who has been engaged to advise in connection with the Contract as is strictly necessary for the performance of the Contract and the disclosing party shall ensure that the professional advisor signs a confidentiality undertaking on terms equivalent to those contained in the Contract.
- 22.2 The provisions of this clause will apply during the continuance of this Contract and after its expiry or termination howsoever arising.
- 22.3 The Contractor may only disclose the Client's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff is aware of and shall comply with these obligations as to confidentiality.
- 22.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.
- 22.5 At the written request of the Client, the Contractor shall procure that those members of the Staff identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 22.6 Nothing in this Agreement shall prevent the Client from disclosing the Contractor's Confidential Information:

- i. to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;
- ii. to any Contractor or other person engaged by the Client or any person conducting a Cabinet Office Major Project Authority gateway review;
- iii. for the purpose of the examination and certification of the Client's accounts;
- iv. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources; or
- v. for the purposes of assisting in the prevention and detection of Fraud pursuant to powers inserted in the Audit and Accountability (Northern Ireland) Order 2003 by the Serious Crime Act 2007.

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

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

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

23.2 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.

24.0 Freedom of Information Act (FOIA)

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

24.2 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.

24.3 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.

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

24.5 The Contractor acknowledges that (notwithstanding the provisions of clause 24.0) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- i. without consulting the Contractor; or
- ii. following consultation with the Contractor and having taken their views into account;

provided always that where clause 24.5(i) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

24.6 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 for a period of 6 years from the end of the Contract.

25.0 Publicity, Media and Official Enquiries

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

25.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, sub-contractors, professional advisors and consultants comply with clause 25.1.

26.0 Security

26.1 The Client will be responsible for maintaining the security of its 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.

27.0 Contractor's Staff

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

27.2 The Contractor will comply with any decision of the Client under clause 27.1.

27.3 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.

27.4 If the Contractor fails to comply with clause 27.3 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.

27.5 The decision of the Client in relation to clause 27.1 will be final and conclusive.

27.6 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.

28.0 Audit

28.1 The Contractor will keep and maintain until 6 years (or for a period as detailed within the specification) after the end of the Contract, full and accurate records of the Contract and the services provided under it, including all Staff records delivering the service, 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.

- 28.2 The Client reserves the right to carry out Audits and shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 28.3 Subject to the Client's obligations of confidentiality, the Contractor shall on demand provide the Client (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- i. all information requested by the Client within the permitted scope of the audit;
 - ii. reasonable access to any sites controlled by the Contractor and to any Equipment used (whether exclusively or non-exclusively) in the provision of the Services;
 - iii. access to Staff.
- 28.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services against the applicable service levels at a level of detail sufficient to verify compliance with the service levels.
- 28.5 The Client shall use reasonable endeavours to give 5 working days notice of its intention to conduct an audit.
- 28.6 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 28.3, within 20 Working Days of any such report being delivered to the Contractor.
- 28.7 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.
- 28.8 If an audit identifies that:
- i. a Contractor Default has occurred, the Client shall serve a notice under clause 35.1 on the Contractor (a "**Notice**"). If the Contractor's Default relates to a failure to provide any information to the Client about the Charges, proposed Charges or the Contractor's costs,

then the Notice shall include a requirement for the provision of all such information;

- ii. the Client has overpaid any Charges, the Contractor shall pay to the Client the amount overpaid within 20 Working Days of receipt of a Notice. The Client may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and
- iii. the Client has underpaid any Charges, the Client shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Client if this was due to a Default by the Contractor in relation to invoicing within 20 Working Days of receipt of a Notice.

28.9 The provisions of this clause 28.0 shall survive the expiry or termination of this Agreement for a period of 24 Months, except to the extent of the provision to audit financial records which shall survive the expiry of this Agreement in line with the Client's retention policy. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with this Contract.

28.10 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 28.

29.0 Force Majeure

29.1 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.

29.2 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.

29.3 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 29.1 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.

30.0 Waiver

- 30.1 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.
- 30.2 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 30.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract. The remedies available to either Party do not exclude rights provided by Law.

31.0 Agency, partnership etc.

- 31.1 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.

32.0 Remedies cumulative

- 32.1 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.

33.0 Severance

- 33.1 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.

34.0 Dispute Resolution

- 34.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 30 days of either Party notifying the other of the dispute such

efforts shall involve the escalation of the dispute to the Accounting Officer (or equivalent) of each Party.

- 34.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.
- 34.3 If the dispute cannot be resolved by the Parties pursuant to Clause 34.1 the dispute shall be referred to mediation pursuant to the procedure set out in sub clause 34.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 34.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to any dispute resolution procedure (unless required by the Client) and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 34.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- i. A neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Law Society of Northern Ireland ("**LSNI**") to appoint a Mediator.
 - ii. The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from LSNI to provide guidance on a suitable procedure.
 - iii. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - iv. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - v. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an

opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

- vi. If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Clause 34.6.

34.6 Subject to clause 34.2, the Parties shall not institute court proceedings until the procedures set out in clauses 34.3 and 34.5 where relevant have been completed save that:

- i. the Client may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 34.7.
- ii. if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 34.7.
- iii. the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with the provisions of clause 34.7, to which the Client may in its discretion consent as it sees fit.

34.7 In the event that any arbitration proceedings are commenced pursuant to Clause 34.6, the following provisions shall apply:

- i. the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- ii. the Client shall give a written notice of arbitration to the Contractor ("**the Arbitration Notice**") stating:
 - a. that the dispute is referred to arbitration; and
 - b. providing details of the issues to be resolved;
- iii. the London Court of International Arbitration procedural rules in force at the date that the dispute was referred to arbitration in accordance with 34.7(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 34.7 (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.

35.0 Notices

- 35.1 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 to the address provided in the Award Letter. Provided the relevant communication is not returned as undelivered (which includes receiving an out of office reply from the designated email address as set out in the Award Letter), the notice or communication shall be deemed to have been given 4 hours after the notice 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.
- 35.2 All written and oral communications, all documents and the labelling and marking of all packages shall be in English.

36.0 Governing Law and Jurisdiction

- 36.1 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, subject to clause 34.0, will be subject to the exclusive jurisdiction of the Northern Ireland courts to which the Parties submit.

37.0 Tax Non-Compliance

- 37.1 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.
- 37.2 If, at any point during the Contract Period, an Occasions of Tax Non-Compliance occurs, the Contractor shall:
 - i. notify the Client in writing of such fact within 5 Working Days of its occurrence; and

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

38.0 Remedies in the Event of Inadequate Performance

38.1 The Contract Management/Monitoring Schedule (Schedule 3 of the Commercial Conditions of Contract for Supplies contracts and the Commercial Conditions of Contract for Services contracts) and the Contract and Service Management Schedule (Schedule 5 of the Commercial Conditions of Contract for ICT contracts), whichever is applicable, set out the provisions concerning the monitoring of the Contractor's performance of the Contract. If the Contractor fails to comply with any of its contractual obligations, the Client may regard this as poor performance and may manage the Contractor's poor performance using the Protocol. In managing the Contractor's poor performance in relation to this Contract, the Client may, in accordance with the Protocol, issue the following notifications to the Contractor:

- i. First Written Warning of Unsatisfactory Performance;
- ii. Second Written Warning of Unsatisfactory Performance;
- iii. Notice of Written Warning; and/or
- iv. Notice of Unsatisfactory Performance.

38.2 Notwithstanding clause 38.1, where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under this Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause 38.0 of this Contract.

38.3 In the event that the Client is of the reasonable opinion that there has been a material breach of this Contract by the Contractor, then the Client may, without prejudice to its rights under clause 38.0, do any of the following:

- i. without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that

the Contractor will once more be able to supply all or such part of the Services in accordance with this Contract;

- ii. without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- iii. make such pro rata deduction from the Contract Price to be made to the Contractor as the Client shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services in accordance with the provisions of the Contract; and/or
- iv. terminate, in accordance with clause 38.0, the whole of this Contract.

38.4 Without prejudice to its right under clause 6.0 (Recovery of Sums Due) in the Commercial Conditions of Contract, the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

38.5 If the Contractor fails to supply any of the Services in accordance with the provisions of this Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.

38.6 In the event that:

- i. the Contractor fails to comply with clause 38.5 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or
- ii. the Contractor persistently fails to comply with clause 38.5 above,

the Client may terminate this Contract with immediate effect by notice in writing.

38.7 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall indemnify the Client for all costs associated with the reconstitution of that data and shall

provide to the Client a full credit in respect of any charge levied for its transmission.

- 38.8 Without prejudice and in addition to the terms of Clause 38.4, Remedies in the Event of Inadequate Performance, the Client shall be at liberty to charge an administration fee, not in excess of 10% of the gross cost of any other services purchased, as a result of a breach of Clause 38.4. Such administration fees shall be in addition to any charge levied under Clause 38.4.

39.0 Termination of Contract

Termination on Default

- 39.1 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 the Contractor commits a Default and if:
- i. the Contractor has not remedied the Default to the reasonable satisfaction of the Client within 30 days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied. For the avoidance of doubt, the Client may terminate the Contract in reliance on this clause, independently of following the Protocol, and if the Client follows the Protocol this shall not limit, prejudice or impact upon this ability to terminate the Contract pursuant to clause 39.1. The issue of the First Written Warning under the Protocol shall be sufficient written notice for the purpose of this clause 39.1; or
 - ii. the Default is not, in the opinion of the Client, capable of remedy; or
 - iii. the Default is a material breach of the Contract (for the avoidance of doubt, this includes, but is not limited to, any failure by the Contractor to comply with its obligations set out in the Security Schedule or the Security Policy); or
 - iv. in accordance with the Protocol, the Contractor has been issued with one or more of the following notifications:
 - a) Second Written Warning of Unsatisfactory Performance; or
 - b) Notice of Written Warning; or
 - c) Notice of Unsatisfactory Performance.

Termination on Insolvency

- 39.2 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:

- 39.2.1 the Contractor is a company and in respect of the Contractor:

- i. a proposal is made for a voluntary arrangement within Part I of the Northern Ireland Order 1989 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- ii. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- iii. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to article 94 of the Insolvency (Northern Ireland) Order 1989; or
- iv. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- v. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- vi. it is or becomes insolvent within the meaning of article 102 of the Northern Ireland (Order) 1989; or
- vii. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency (Northern Ireland) Order 1989; or
- viii. any event similar to those listed in 8.1.1(i)-(vii) occurs under the Law of any other jurisdiction.

39.2.2 the Contractor is an individual and:

- i. an application for an interim order is made pursuant to articles 226-227 of the Insolvency (Northern Ireland) Order 1989 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- ii. a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- iii. a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- iv. the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of article 242 of the Insolvency (Northern Ireland) Order 1989; or
- v. a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the

Contractor's assets and such attachment or process is not discharged within 14 days; or

- vi. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health (Northern Ireland) Order 1986; or
- vii. he suspends, ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- viii. any event similar to those listed in clause 39.2.2(i)-(vii) occurs under the Law of any other jurisdiction.

39.3 Termination on Change of Control

39.3.1 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**").

39.3.2 The Client may terminate the 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 the Contract where an Approval was granted prior to the Change of Control.

39.4 Termination on Occasion of Tax Non-Compliance

39.4.1 In the event that;

- i. the warranty given by the Contractor pursuant to clause 37.1 is materially untrue; or
- ii. the Contractor commits a material breach of its obligations to notify the Client of any Occasions of Tax Non-Compliance as requested by clause 37.2; or
- iii. the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Client, are acceptable;

the Client shall be entitled to terminate this Contract by written notice of termination to the Contractor with immediate effect.

39.5 Termination on failure to pay undisputed sums of money

39.5.1 If the Client fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clause 6 (Recovery of Sums Due) in the Commercial Conditions of Contract.

39.5.2 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 39.5.1 for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest Act) 1998.

40.0 Consequences of Termination/Expiry

40.1 Upon termination for any reason or expiry of this Contract, the Contractor will:

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

40.1.2 immediately return all requested documents, information and data including, but not limited to, all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of its Staff which was obtained or produced in the course of providing the Services.

40.1.3 immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Contractor under clause 6.0. Such property shall be handed back in good working order however allowance shall be made for reasonable wear and tear at the Client's sole discretion.

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

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

40.2 If the Contractor fails to comply with clause 40.1.2, the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery)

any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

- 40.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clauses 40.1.2 and 40.1.4 free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.
- 40.4 The Contractor shall invoke any agreed exit plan (the "**Exit Plan**") (if applicable) in a reasonable period of time prior to expiry of the Contract Period or any notice of termination of the Contract, or immediately in the case of immediate termination.
- 40.5 Where the Client terminates the Contract and then makes other arrangements for the supply of Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated, no further payments shall be payable by the Client to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this clause.
- 40.6 Where the Client terminates the Contract under the Break Clause in the Commercial Conditions of Contract, the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under the Break Clause in the Commercial Conditions of Contract.
- 40.7 The Client shall not be liable under clause 40.0 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 this 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 this Contract.

40.8 Save as otherwise expressly provided in this 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 9.0 (Intellectual Property Rights), 20.0 (Bribery Act 2010), 22.0 (Confidentiality), 23.0 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 24.0 (Freedom of Information), 28.0 (Audit), 32.0 (Remedies Cumulative), and 36.0 (Governing Law and Jurisdiction), 40.0 (Consequences of Termination/Expiry).

41.0 Ineffectiveness

41.1 In the event that the Contract is declared "ineffective" pursuant to Regulation 98(2)(a) of the Public Contracts Regulations 2015 or Regulation 114 of the Utilities Contracts Regulations 2016, the Client shall have no liability to the Contractor other than in respect of Services provided prior to the date on which such "ineffectiveness" order takes effect, which cost shall be assessed in accordance with the Contract Price. Under no circumstances shall the Contractor be entitled to any payment or compensation for loss of profit for Services not provided consequent on such declaration of ineffectiveness or for loss of opportunity or reputation or breach of statutory duty or otherwise or any other remedy whatsoever as a result or in respect of any such declaration of "ineffectiveness". The Client and the Contractor acknowledge and agree that it is intended that the provisions of this clause 41.1, clause 7.0 (Offers of Employment) and clause 42.0 (Disruption) shall apply as a binding agreement between them which shall, to the extent permissible by Law, survive and operate independently of the Contract notwithstanding any declaration of ineffectiveness of the Contract.

42.0 Disruption

42.1 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.

- 42.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.
- 42.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under this Contract.
- 42.4 If the Contractor's proposals referred to in clause 42.3 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.
- 42.5 If the Contractor is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

43.0 Business Continuity and Disaster Recovery Plan

- 43.1 The Contractor shall comply with the obligations in respect of the Business Continuity and Disaster Recovery Plan including, but not limited to, developing, regularly reviewing and updating, testing and complying with appropriate disaster recovery and business continuity plans and implementing such plans at any time in accordance with the Specification.

44.0 Importance of Reputation

- 44.1 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, in relation to the Services, 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).

45.0 Priority of Documents

- 45.1 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. the Commercial Conditions of Contract;
 - iii. the Public Sector Standard Conditions of Contract;
 - iv. the Tender;
 - v. the schedule of contract prices or rates submitted as part of the Tender;

- vi. any clarifications; and
- vii. the Award Letter.

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:

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

ANNEX 2

PROTOCOL FOR MANAGING SUPPLIER POOR PERFORMANCE (PGN 01/12)