

29 July 2024

Our Ref: FOI 471

Request

We received your request on 22 July 2024 for the following information:

I am writing to request information through the freedom of information act 2000 .

1, Provide a copy of OCS contract for Bradan Court Rathcoole .

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

Our response

At present Bradan Court is covered by an Ad Hoc arrangement whereby we can ask OCS to provide cover as required. This cover will be based on the attached terms.

This concludes our response.

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

PROVISION OF A SECURITY GUARDING SERVICE

Tender Ref: T1546

Contents page

1.0	Definitions and Interpretation
2.0	Entire Contract
3.0	Representations and Warranties
4.0	Mistakes in information
5.0	Conflicts of Interest
6.0	Property
7.0	Offers of Employment
8.0	Transfer of Undertakings (Protection of Employment) (TUPE)
9.0	Intellectual Property Rights
10.0	Assignment and sub-contracting
11.0	Variation
12.0	Change of Law
13.0	Prevention of Fraud
14.0	The Contracts (Rights of Third Parties) Act 1999
15.0	Health and Safety
16.0	Environmental Requirements
17.0	Discrimination
18.0	The Human Rights Act 1998
19.0	Modern Slavery Act 2015
20.0	Bribery Act 2010
21.0	Prevention of Corruption
22.0	Confidentiality
23.0	Official Secrets Act 1911 to 1989, Section 182 of the Finance Act 1989
24.0	Freedom of Information Act
25.0	Publicity, Media and Official Enquiries
26.0	Security
27.0	Contractor's staff
28.0	Audit
29.0	Force Majeure
30.0	Waiver
31.0	Agency, partnership etc.
32.0	Remedies cumulative
33.0	Severance
34.0	Dispute Resolution
35.0	Notices
36.0	Governing Law and Jurisdiction
37.0	Tax Non-Compliance
38.0	Remedies in the Event of Inadequate Performance
39.0	Termination of Contract
40.0	Consequences of Termination/Expiry
41.0	Ineffectiveness
42.0	Disruption

43.0 Business Continuity and Disaster Recovery Plan

44.0 Importance of Reputation

45.0 Priority of Documents

Annex 1 Variation to Contract Form

Annex 2 Protocol for Managing Poor Supplier Performance

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”	<p>means the information listed in the Freedom of Information Statement comprised of information:</p> <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”	<p>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:</p> <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.

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

“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts or at common Law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the 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.
“Occasion of Tax Non-Compliance”	<p>means</p> <p>a. Any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <ul style="list-style-type: none"> i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>b. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for Fraud or evasion.</p>
“Party/Parties”	means the Contractor and/or the Client (as appropriate).
“Pricing Schedule”	means the Schedule to the Commercial Conditions of Contract containing details of indexing, the invoicing procedure and the payment profile.
“Pre-Existing Intellectual Property Rights” or “Pre-Existing IPRs”	means the Intellectual Property Rights that the Client or the Contractor owned or developed prior to the Commencement Date.
“Premises”	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.

“Property”	means any property, other than real property and Intellectual Property Rights, issued or 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 Contract 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 invoices 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.

ANNEX 1

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)**

COMMERCIAL CONDITIONS OF CONTRACT FOR SERVICES CONTRACTS

Provision of a Security Guarding Service

Tender ref: T1546

These Services clauses MUST be read in conjunction with the Public Sector Standard Conditions of Contract.

Contents

1.0	Interpretation
2.0	Contract Period
3.0	Extension of the Contract Period
4.0	Contract Price
5.0	Payment
6.0	Recovery of Sums Due
7.0	Supply of Services
8.0	Access to Premises
9.0	Provision and Removal of Equipment
10.0	Inspection of Premises
11.0	Late Delivery of Services
12.0	Staff and Key Personnel
13.0	Indemnity
14.0	Not Used
15.0	Protection of Information Assurance
16.0	Break
17.0	Contractor's Premises Security
18.0	Tax Arrangements of Public Sector Appointees
19.0	Monitoring of Contract Performance
20.0	Social Considerations
21.0	Security
22.0	Licence to Occupy Premises
23.0	Not Used
24.0	Data Protection
Schedule 1	Specification Schedule
Schedule 2	Pricing Schedule
Schedule 3	Contract Management/Monitoring Schedule
Schedule 4	Social Consideration Schedule
Schedule 5	Security Schedule
Schedule 6	Processing, Personal Data and Data Subjects
Schedule 7	Not Used

1.0 Interpretation

- 1.1 These Commercial Conditions of Contract shall at all times be read in conjunction with the Public Sector Standard Conditions of Contract. If there is any ambiguity or inconsistency in or between the Public Sector Standard Conditions of Contract and the Commercial Conditions of Contract, the Commercial Conditions of Contract shall take precedence.
- 1.2 The definitions set out in the Public Sector Standard Conditions of Contract shall apply to the Contract, including to these Commercial Conditions of Contract, unless otherwise expressly defined in these Commercial Conditions of Contract. For the avoidance of doubt, any references to clauses stated in these Commercial Conditions of Contract shall be in relation to the clauses which are contained in the Commercial Conditions of Contract unless expressly stated otherwise.
- 1.3 In these Commercial Conditions of Contract, the following words will have the following meanings:

“Affiliates”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
“Client Data”	means:- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Client; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Client is the Data Controller.
“Client System”	means the Client’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this Contract which is owned by the Client or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the

	Services.
“Contractor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of the contractor's obligations under this Contract.
“Contractor Software”	means software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services.
“Contractor System”	means the information and communications technology system used by the Contractor in implementing and performing the Services including the Software, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client’s System).
“Control”	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “ Controls ” and “ Controlled ” shall be interpreted accordingly.”
“Controller” “Processor” “Data Subject” “Personal Data Breach” “Data Protection Officer”	have the meaning given in the GDPR.
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	means: i. the GDPR, the LED and any applicable

	<p>national implementing Laws amended from time to time;</p> <p>ii. the DPA 2018 to the extent that it relates to processing of personal data and privacy; and</p> <p>iii. all applicable Law about processing of personal data and privacy.</p>
“Data Protection Schedule”	means the Schedule to the Commercial Conditions of Contract entitled ‘ <i>Processing, Personal Data and Data Subjects.</i> ’
“Data Subject”	has the meaning given in the GDPR.
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“DPA 2018”	means Data Protection Act 2018
“Equipment”	means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under this Contract.
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679).
“ICT Environment”	means the Client System and the Contractor System.
“Joint Controller”	means where two or more Controllers jointly determine the purposes and means of processing.
“Joint Controller Agreement Schedule”	means the Schedule to the Commercial Conditions of Contract entitled ‘Joint Controller Agreement’.
“Key Personnel”	means any persons specified as such in the Tender or the Specification (as the case may be), or otherwise notified by the Client to the Contractor in writing.
“LED”	Law Enforcement Directive (Directive (EU) 2016/680).
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause

	undesired effects on program files, data or other information, executable code or application software macros whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
“Personal Data”	means personal data (as defined in the GDPR) which is Processed by the Contractor or any sub-contractor on behalf of the Client or the Authority pursuant to or in connection with this Contract.
“Process”	has the meaning given to it under the GDPR and “ Processed ” and “ Processing ” shall be construed accordingly.
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
“Purchase Order”	means the Client’s order for Services which has a unique number, and details the Services to be supplied by the Contractor to the Client in accordance with the terms of this Contract.
“Software”	means the Contractor’s Software or the Third Party Software.
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
“Third Party Software”	means software which is proprietary to any third party (other than an Affiliate of the Contractor) which in any case will be or is proposed to be used by the Contractor for the purposes of providing the Services.

2.0 Contract Period

- 2.1 This Contract will commence on the Contract Commencement Date for a period of 24 months (the Initial Contract Period) and shall expire automatically at the end of the Initial Contract Period, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause 3.0.
- 2.2 The Client shall have the option to extend this Contract by any period or periods up to and including 36 months commencing from the Initial Contract Period Expiry Date (the “**Extension Period**”). If the Client intends to exercise such option it must give notice in writing to the Contractor to invite the Contractor to agree to extend the Contract prior to the end of Initial Contract Period.
- 2.3 The Contractor shall notify the Client in writing within the reasonable timescale as specified by the Client of its decision as to whether it agrees to accept any proposed extension of the Contract.

3.0 Extension of the Contract Period

- 3.1 If it is agreed by both Parties that the Contract is to be extended under clause 2.2, the provisions of the Contract will apply, subject to any variation or adjustment to the Contract Price pursuant to clause 4.3 of this Contract, for the duration of any such extended period.
- 3.2 If the Contractor does not agree in writing to accept any proposed extension of the Contract within the timescale as specified by the Client, the Contract shall automatically terminate at the Initial Contract Period Expiry Date or upon the expiry of any current extension period (if the Contract has continued past the Initial Contract Period Expiry Date).

4.0 Contract Price

- 4.1 In consideration of the performance of the Contractor’s obligations under the Contract, the Client shall pay the Contract Price in accordance with this clause, clause 5.0 and Schedule 2 (Pricing Schedule) during the Contract Period.
- 4.2 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which will be charged in addition at the rate in force at the date as shown on the invoice.
- 4.3 In the event that the Contractor agrees to extend the Initial Contract Period, any variation to the Contract Price shall not exceed the following:
 - i. For the Extension Period, any variation to the Contract Price shall not exceed the percentage change in the Consumer Price Index as

published by the Office of National Statistics (the “**Percentage Change**”) between the Commencement Date and the date 6 Months before the expiry of the Initial Contract Period.

- ii. For any further extensions to the Contract any further variation to the Contract Price shall not exceed the Percentage Change between the commencement date of the current contract extension period and the date 6 Months prior to the expiry of the current extension period.

5.0 Payment

- 5.1 The Client will pay the Contractor the Contract Price for the Services no later than 30 days after the receipt of a valid invoice in accordance with Schedule 2 (Pricing Schedule).
- 5.2 The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Specification and Schedule 2. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.
- 5.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice. The characteristics of a valid invoice are detailed in Schedule 2 (Pricing Schedule).
- 5.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 5.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 5.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 5.6 The Contractor shall make any payments due to the Client (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

6.0 Recovery of Sums Due

- 6.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), that sum may be deducted unilaterally by the Client from any sum then due, or which at any later time may become due, to the Contractor under this Contract.
- 6.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 6.3 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

7.0 Supply of Services

- 7.1 In consideration of the amounts due under this Contract Price, the Contractor will provide the Services to the Client during the Contract Period in accordance with the Specification which shall include the Contractor complying with any obligations set out in the Specification.
- 7.2 If any Services provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contractor holds from such third parties in respect of those Services will be held on trust for the Client.
- 7.3 In providing the Services, the Contractor shall:
 - 7.3.1 co-operate with the Client in all matters relating to the Services, and comply with all the Client's instructions;
 - 7.3.2 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and within sufficient numbers to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;
 - 7.3.3 provide Staff with a form of identification that is acceptable to the Client and which staff shall display on their clothing at all times when they are on the Client's Premises
 - 7.3.4 instruct its Staff not to smoke on the Client's Premises except where it is expressly permitted to do so.
 - 7.3.5 ensure that the Services will conform with all descriptions and requirements set out in the Specification;

- 7.3.6 provide all Equipment, tools and vehicles and such other items as are required to provide the Services;
- 7.3.7 at all times comply with the Quality Standards, and where applicable maintain registration with the relevant Quality Standards authorisation body; and
- 7.3.8 the Contractor shall perform all its obligations under the Contract in accordance with all applicable Law and Good Industry Practice.
- 7.4 Without prejudice to any other right of remedy of the Client, if the Client informs the Contractor that it considers that any part of the Services does not meet the Specification or the requirements of the Contract or differs in any way (other than in a minor inconsequential way) from the Specification or its requirements, and this is other than as a result of Default or negligence on the part of the Client, the Contractor shall at its own expense re-schedule and re-perform any part of the Services correctly within such reasonable time as may be specified by the Client.
- 7.5 The Client envisages that it may require additional services and/or goods to be provided by the Contractor during the Contract Period. While the precise scope and extent of such additional services cannot be agreed at this time, the intention is for any such additional services to be included within the scope of this Contract in accordance with the Variation Procedure set out in Clause 11 of the Public Sector Standard Conditions of Contract, the precise scope and extent of such additional services being agreed between the Parties. Without limiting the generality of the above, as at the Commencement Date, the Client envisages that it may require those additional services identified under the "Potential Services" heading in the Specification. For the avoidance of doubt, the terms of the Contract shall apply to any such additional services.

8.0 Access to Premises

- 8.1 The Client may inspect and examine the manner in which the Contractor supplies the Services, at the Premises, during normal business hours, on reasonable notice to the Contractor.
- 8.2 If necessary, the Client will provide the Contractor with reasonable access at reasonable times to its Premises for the purpose of providing the Services.

9.0 Provision and Removal of Equipment

- 9.1 The Contractor shall provide all the Equipment necessary for the supply of Services.
- 9.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

- 9.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed by both Parties in writing, Equipment brought onto the Premises will remain the property of the Contractor.
- 9.4 The Contractor shall maintain all their items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Client shall be entitled at any time during the Contract Period to order in writing, that the Contractor at its own expense and as soon as reasonably practicable:
- i. remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
 - ii. replace such item with a suitable substitute item of Equipment.
- 9.6 If the Contractor provides Services from the Client's Premises, on completion of the Services, or upon the termination or expiry of the Contract (whichever is the earliest date) the Contractor will vacate the Client's Premises, remove his plant, Equipment and unused materials and will clear away from these Premises all rubbish arising out of the Services and leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

10.0 Inspection of Premises

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

11.0 Late Delivery of Services

- 11.1 Failure by the Contractor to provide the Services or any part of them within the time agreed shall entitle the Client to terminate this Contract and purchase other Services of the same or similar description to make good such default and recover from the Contractor the amount by which the cost of purchasing other Services exceeds the amount that would have been payable to the Contractor in respect of the Services

replaced by such purchase provided that the Client uses all reasonable endeavours to mitigate its losses in this respect.

- 11.2 Without prejudice and in addition to the terms of clause 11.1 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 11.1. Such administration fees shall be in addition to any charge levied under clause 11.1.
- 11.3 Having given careful consideration to this matter, all monies payable by the Contractor under clause 11.1 and 11.2 are considered by the Parties to be a genuine pre-estimate of the losses which the Client will incur in relation to the Contractor's failure to deliver the Services by the time agreed it being impossible to quantify the actual aggregate losses sustainable by the Client in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Client might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Contractor waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause 11.0. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.
- 11.4 Each Party confirms that (i) it has taken specific legal advice on the effect of this clause and (ii) based on such advice, it does not enter into this Contract in anticipation that, or with any expectation that this clause will be unenforceable for any reason.

12.0 Staff and Key Personnel

- 12.1 The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- 12.2 The Contractor shall engage, employ and pay all monies due to Staff required to carry out this Contract and shall be entirely responsible for setting the pay and conditions of service for his Staff and for any compensation payments due to them howsoever arising.
- 12.3 If in the opinion of the Client any Staff of the Contractor has behaved inappropriately or is incapable of efficiently performing his duties, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such a person

without delay on being required to do so and cause the work to be performed by such other person as may be necessary, in default of which the Client may employ such other person as may be deemed necessary for the purposes of carrying out the work and recover from the Contractor the additional cost thereby incurred.

- 12.4 Any Key Personnel will not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 12.5 Any replacements to the Key Personnel will be subject to the agreement of the Client. Such replacements will be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 12.6 In the event that the Contractor is unable to provide replacement Staff, acceptable to the Client's representative, within reasonable time, then the Client reserves the right to obtain replacement Staff from other sources and pass any additional cost on to the Contractor. The Client reserves the right to terminate this Contract where the failure to provide a replacement has a detrimental effect to the timely provision of the Services in accordance with clause 40.0 (Termination of Contract, Public Sector Standard Conditions of Contract).
- 12.7 The Client shall not unreasonably withhold its agreement under clause 12.5. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

13.0 Indemnity

- 13.1 Neither Party excludes or limits liability to the other Party for:
- i. Death or personal injury caused by its negligence; or
 - ii. Fraud; or
 - iii. Fraudulent misrepresentation; or
 - iv. Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 13.2 Subject to clause 13.3, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the delay, late or purported supply, of the Services or the performance, non-performance or delay in performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or

damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

- 13.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.
- 13.4 Subject always to clause 13.1, the liability of either Party for Defaults shall be subject to the following financial limits:
- i. the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the Property of the other under or in connection with this Contract shall in no event exceed one million pounds (£1,000,000); and
 - ii. the annual aggregate liability under this Contract of either Party for all Defaults (other than a Default governed by clause 13.4(i) shall in no event exceed one hundred and fifty per cent (150%) of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises.
- 13.5 Subject always to clause 13.1; in no event shall either Party be liable to the other for any:
- i. loss of profits, business, revenue or goodwill; and/or
 - ii. indirect or consequential loss or damage.
- 13.6 The provisions of clause 13.5 will not limit the Client's right to recover for;
- i. additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;
 - ii. wasted expenditure or charges rendered unnecessary and incurred by the Client arising from a Default by the Contractor;
 - iii. additional cost of procuring replacement services for the remainder of the term of the Contract;
 - iv. additional costs to maintain the Services arising from a Default by the Contractor;
 - v. anticipated savings; and
 - vi. any costs and losses arising from delay in performance.

- 13.7 The Contractor shall effect and maintain with a reputable company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 13.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 13.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 13.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 13.2.

14.0 Not Used

15.0 Protection of Information Assurance

- 15.1 When handling Information belonging to or supplied by the Client, the Contractor will ensure the security of the data is maintained in line with the protective marking given to that data by the Client, and by adopting the appropriate elements of the Cabinet Office Security Policy Framework and supporting documents and any successors thereof as agreed with the Client and set out in the Tender, Award Letter or Specification.
- 15.2 The Client reserves the right to inspect the physical location of the Information store or processing, back-up arrangements and review at appropriate intervals to be agreed with the Client any information assurance processes and procedures in place.

16.0 Break

- 16.1 The Client shall have the right to terminate the Contract in all or part at any time by giving three months' written notice to the Contractor.
- 16.2 In addition to clause 40.7 of the Public Sector Standard Conditions of Contract, termination of this Contract shall not affect the continuing

rights, remedies or obligations of the Client or the Contractor under clauses 5.0 (Payment), 6.0 (Recovery of Sums Due), 13.0 (Liability, Indemnity and Insurance), 14.0 (Professional Indemnity).

17.0 Contractor's Premises Security

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

18.0 Tax Arrangements of Public Sector Appointees

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

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

- 18.3 The Client may, at any time during the term of this contract, request the Contractor to provide information which demonstrates how the Contractor complies with clauses 18.1 and 18.2 above or why those clauses do not apply to them.

- 18.4 A request under clause 18.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.

- 18.5 The Client may terminate this contract if:-

- i. in the case of a request mentioned in Clause 18.3 above:-
 - the Contractor fails to provide information in response to the request within a reasonable time; or
 - the Contractor provides information which is inadequate to demonstrate either how the Contractor complies with clauses 18.1 and 18.2 above or why those Clauses do not apply to them;
- ii. in the case of a request mentioned in clause 18.4 above, the Contractor fails to provide the specified information within the specified period; or

- iii. it receives information which demonstrates that, at any time when clauses 18.1 and 18.2 apply to the Contractor, the Contractor is not complying with those clauses.

- 18.6 The Client may supply any information which it receives under clause 18.5(iii) to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

19.0 Monitoring of Contract Performance

- 19.1 The Contractor shall comply with the monitoring arrangements set out in Schedule 3 (Contract Management/Monitoring) to these Commercial Conditions of Contract including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.

20.0 Social Considerations

- 20.1 The Contractor shall comply with the obligations set out in Schedule 4 (Social Considerations) to these Commercial Conditions of Contract in connection with social considerations.

21.0 Security

- 21.1 The Contractor shall comply with the obligations set out in Schedule 5 (Security Schedule) to these Commercial Conditions of Contract in connection with any security requirements.

22.0 Licence to Occupy Premises

- 22.1 Any land or Premises made available from time to time to the Contractor by the Client in connection with this Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under this Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract.
- 22.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.
- 22.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.

22.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

22.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Client retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

23.0 Not Used

24.0 Data Protection

24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor unless otherwise specified in the Data Protection Schedule. The only processing that the Contractor is authorised to do is listed in the Data Protection Schedule by the Client and may not be determined by the Contractor.

24.2 The Contractor shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.

24.3 The Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

24.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with the Data Protection Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
- (c) ensure that:
 - i. the Staff do not process Personal Data except in accordance with this Contract (and in particular the Data Protection Schedule);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. the Client or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;

- ii. the Data Subject has enforceable rights and effective legal remedies;
- iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
- iv. the Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

(e) at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

24.5 Subject to clause 24.6, the Contractor shall notify the Client immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

24.6 The Contractor's obligation to notify under clause 24.5 shall include the provision of further information to the Client in phases, as details become available.

24.7 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 24.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

- (a) the Client with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Client following any Data Loss Event;
 - (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 24.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 Staff, unless:
 - (a) the Client determines that the processing is not occasional;
 - (b) the Client determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 24.9 The Contractor shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 24.10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 24.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
 - (a) notify the Client in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Client;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 24.0 such that they apply to the Sub-processor; and
 - (d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
- 24.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 24.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 24.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30

Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 24.15 Where the Parties include two or more Joint Controllers as identified in the Data Protection Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Joint Controller Agreement Schedule in replacement of Clauses 24.1-24.14 for the Personal Data under Joint Control.

SCHEDULE 1 - SPECIFICATION SCHEDULE

See separate document entitled "Specification"

SCHEDULE 2 - PRICING SCHEDULE

See separate document entitled 'Pricing Schedule'

1. INTRODUCTION

1.1. This Schedule 2 details:

1.1.1. the Invoicing Procedure; and

1.1.2. the Payment Profile.

2. INVOICING PROCEDURE

2.1. The Contractor shall, following the Commencement Date submit invoices via email directly to the relevant Regional Facilities team;

North Region	NorthEast.Facilities@nihe.gov.uk
South Region	South.Facilities@nihe.gov.uk
Belfast Region	Belfast.Facilities@nihe.gov.uk

All invoices must also be copied to accounts payable
accounts.payable@nihe.gov.uk

2.2. For an invoice to be considered valid it must be legible, from which a clear scanned image can be produced, and clearly show the following information:

- (a) where related to a purchase order (PO), the wording "Purchase Order" or "PO" followed by the 10 digit PO number, or where not related to a PO, the contact name in the AUTHORITY (i.e. the person requesting the Services)
- (b) the invoice number, or where a utility bill, the account number
- (c) payment terms
- (d) invoice date / tax point
- (e) supplier name, address, postcode and VAT registration number
- (f) remittance name and address where this is different to (f) above
- (g) goods / service details which match the PO details, including quantity billed, item description, unit of measure, unit price and total value

- (h) the agreed charge, including any discounts and a breakdown clearly showing each VAT amount and the applicable VAT rate (and where not complete, a breakdown of the relevant work or services as they relate to this charge or an explanation of a difference in expected charge).
- 2.3. Separate invoices for each building must be presented on a monthly basis, within the first 7 days of the month. Email should be entitled with the month being claimed, building name and address and title of Contract.
- 2.4. Invoices cannot be approved for payment unless accompanied by all the relevant signed timesheets (copies can be sent in electronic format).
- 2.5. Invoices for the key holding/first responder services annual retainer fee will be presented on an annual basis.
- 2.6. Invoices for key holding/first responder services annual retainer fee and a monthly summary indicating all invoices along with details of total hours claimed per building must be sent to central.facilities@nihe.gov.uk

3. INVOICE PAYMENT

- 3.1. The Client shall pay all valid invoices submitted in accordance with the provisions of this Schedule 2 and in accordance with the provisions of clause 5 (Payment).
- 3.2. The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Contract (including where such invoice does not contain the relevant Purchase Order number(s)) or which covers, or purports to relate to Goods and/or Services which have not been provided in accordance with the Contract. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.
- 3.3. In the event of a disputed invoice, the Client shall make payment in respect of any undisputed amount in accordance with the provisions of clause 5 and return the invoice to the Contractor within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Contractor shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Contractor accepts the Client's proposed amendments. If it does then the Contractor shall supply with the response a replacement valid invoice. If it does not then the matter shall be dealt with in accordance with the provisions of clause 6.2 (Recovery of Sums Due).

4. PAYMENT PROFILE

- 4.1. The Payment Profile in respect of the Services provided under this Contract is as follows:

Payment will be made in arrears against an invoice received on a monthly basis for each building and on an annual basis for key holding/first responder annual retainer fee.

The amount payable will be determined according to the itemised work carried out including clock on/off times and total daily shift hours per operative in relation to the Service provided in the previous month using the rates entered in the Pricing Schedule.

The Housing Executive will reimburse the Contractor for their services upon presentation of a valid invoice.

SCHEDULE 3 - CONTRACT MANAGEMENT/MONITORING SCHEDULE

As part of its contract management procedures, the Client will apply the Protocol for Managing Poor Supplier Performance contained in Annex D of [Procurement Guidance Note PGN 01/12 – Contract Management Principles and Procedures](#).

The Protocol sets out a series of five escalating stages to enable the Client to manage poor performance by Contractors.

At Stage 4, as an alternative to terminating the contract, a Notice of Written Warning can be issued to the Contractor.

At Stage 5, as an alternative to terminating the contract, a Notice of Unsatisfactory Performance can be issued to the Contractor.

If a Contractor has received more than one current Notice of Written Warning the Northern Ireland Housing Executive at its discretion, can consider the Contractor's exclusion from future procurement competitions, being undertaken on behalf of bodies covered by the Northern Ireland Public Procurement Policy, for a period of 12 months.

If a Contractor is subject to a Notice of Unsatisfactory Performance the Northern Ireland Housing Executive, at its discretion, can consider the Contractor's exclusion from future procurement competitions, being undertaken on behalf of bodies covered by the Northern Ireland Public Procurement Policy, for a period of 3 years.

A central Register of suppliers in receipt of current Notices and Terminations will be maintained by Construction & Procurement Delivery (CPD) and will be publicly available on its website. This Register will cover all procurements by bodies subject to [Northern Ireland Public Procurement Policy](#).

SCHEDULE 4 – SOCIAL CONSIDERATIONS SCHEDULE

PGN 01/13 Integrating Social Considerations into Contracts

The Housing Executive has stated that there will be social considerations with this arrangement – Buy Social. Please see 15.0 Social Sustainability of the Specification for details on this requirement.

SCHEDULE 5 - SECURITY SCHEDULE

- The Contractor shall not delete or remove any proprietary notices contained within or relating to the Client Data.
- The Contractor shall not store, copy, disclose, or use the Client Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Client.
- To the extent that Client Data is held and/or processed by the Contractor, the Contractor shall supply that Client Data to the Client as requested by the Client.
- The Contractor shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.
- The Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date backups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at no less than monthly intervals.
- The Contractor shall ensure that any system on which the Contractor holds any Client Data, including back-up data, is a secure system that complies with the Client's Security Policy.

If the Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Client may:

- a. require the Contractor (at the Contractor's expense) to restore or procure the restoration of Client Data and the Contractor shall do so as soon as practicable but not later than two weeks; and/or
- b. itself restore or procure the restoration of Client Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements.

If at any time the Contractor suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Client immediately and inform the Client of the remedial action the Contractor proposes to take.

With respect to the parties' rights and obligations under this Contract, the parties agree that the Client is the Data Controller and that the Contractor is the Data Processor.

The Contractor shall:

- a. Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Client to the Contractor during the Contract Period);
- b. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- c. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- d. take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- e. obtain prior written consent from the Client in order to transfer the Personal Data to any sub-contractors or Affiliates for the provision of the Services;
- f. ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Schedule;
- g. ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client;
- h. notify the Client (within [five] Working Days) if it receives:
 - i. a request from a Data Subject to have access to that person's Personal Data; or
 - j. a complaint or request relating to the Client's obligations under the GDPR;
- k. provide the Client with full cooperation and assistance in relation to any complaint or request made, including by:
 - l. providing the Client with full details of the complaint or request;

- m. complying with a data access request within the relevant timescales set out in the GDPR and in accordance with the Client's instructions;
- n. providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and
- o. providing the Client with any information requested by the Client;

permit the Client or its authorised representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 29.0 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;

provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Client); and

not Process Personal Data outside the European Economic Area without the prior written consent of the Client and, where the Client consents to a transfer, to comply with:

- a. the obligations of a Data Controller under the GDPR by providing an adequate level of protection to any Personal Data that is transferred; and
- b. any reasonable instructions notified to it by the Client.

The Contractor shall comply at all times with the GDPR and shall not perform its obligations under this Contract in such a way as to cause the Client to breach any of its applicable obligations under the GDPR.

The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

The Client shall notify the Contractor of any changes or proposed changes to the Security Policy.

If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Variation in accordance with clause 11 of the Public Sector Standard Conditions of Contract. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.

Malicious Software

The Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available.

Malicious Software from the ICT Environment.

If Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

Any cost arising out of the actions of the parties taken in compliance with these provisions shall be borne by the parties as follows:

- i. by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Client Data (whilst the Client Data was under the control of the Contractor); and
- ii. by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

Security Clearance Requirements

Staff involved in the delivery of the Service must have Access NI enhanced clearance before working on the Premises.

SCHEDULE 6 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Client, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Client at its absolute discretion

1. The Contractor shall comply with any further written instructions with respect to processing by the Client.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Client and Contractor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor in accordance with Clause 24.1.
Subject matter of the processing	<p>Processing is needed in order to ensure that the Contractor can effectively deliver the Contract for the provision of a province wide security guarding service, key holding/first responder services and ad hoc guarding services.</p> <p>The Housing Executive has CCTV systems within each of the properties in the contract. Some of Contractor's Staff may require using Body Worn Video (BWV) camera/s. The Contractor will have access to this data as a course of their requirement in the Contract.</p> <p>The Contractor will also hold business and personal contract details for staff members who are deemed key holders of properties.</p> <p>The processing is needed in order to ensure that the Contractor can effectively deliver the contract to provide a service to members of staff and the public.</p>
Duration of the processing	<p>The duration of the processing will be for the duration of the Contract Period.</p> <p>CCTV images will be stored for a max of 30 days then deleted automatically by the system.</p>
Nature and purposes of the processing	<p>The nature of the data is storage and use of site plans of premises, contact names and work telephone numbers of Clients.</p> <p>These items should be stored securely and not disclosed or transmitted to any third party.</p> <p>The nature of the CCTV processing is to collect,</p>

	<p>record, and store images of persons entering/exiting and within Housing Executive's properties. These images/recordings may be required by the Police Service if an incident occurs.</p> <p>Contact details information will be passed via email from the Housing Executive to the Contractor and will include an encrypted password. This password will be provided by another form of communication. The Contractor will delete all emailed and stored data on completion of the Contract.</p>
Type of Personal Data	<p>The personal data supplied is work contact details (phone number, email address, job title) and names of contacts in various buildings.</p> <p>CCTV and BWV imaging</p>
Categories of Data Subject	<p>CCTV and BWV - Housing Executive's staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, students / pupils, members of the public.</p> <p>Plans of Premises layout.</p> <p>Names of staff contacts at the Premises and work telephone contact numbers.</p>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>CCTV footage will remain the Housing Executive's property.</p> <p>All data must be returned within one month of the end of the Contract Period. Any information stored electronically should be deleted / destroyed and a certificate stating this to be the case supplied to the Client confirming this to be the case.</p>

SCHEDULE 7 – Not Used