



Northern Ireland
Assembly

STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES

Contract for [insert tender title]

Project Code: BR-[insert]

eTendersNI Ref: ID [insert]

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THIS CONTRACT is made this [insert day] day of [insert month] 20[insert year]

BETWEEN

The Contracting Authority

(1) The Northern Ireland Assembly Commission

AND

The Contractor

(2) [Insert Contractor Name] whose [registered] office address is at [insert address]

Who have agreed as follows—

PART 1: CONTRACT INFORMATION

1. Definitions

1.1. In this Contract—

‘Account Manager’ has the meaning given by Clause 16.6;

‘Commencement Date’ means the date on which the Contract shall take effect as notified to the Contractor by the Commission in the Contract Award Notice;

‘Commission’ means the Northern Ireland Assembly Commission;

‘Commission employee’ means any member of the staff of the Commission and includes an individual who was an employee of the Commission when any relevant Personal Injury or Loss of Property occurred, even if that individual has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made; and where such an individual has ceased to be a Commission employee by reason of death, includes that individual’s personal representative;

‘Commission Representative’ in any provision of the Contract means any person duly authorised by the Commission for the purposes of the provision;

‘Conditions’ means the entire contents of the headed paragraphs in these terms and conditions and includes the Schedules;

‘Contract’ means the agreement concluded between the Contractor and the Commission for the provision of the Services/Goods including these Conditions, the Specification, Specification Schedule, invitation to tender, the tender document, plans, drawings and other documents which are relevant to the Contract (including any other documentation referred to in the Contract Award Notice as forming part of the Contract). In the case of any discrepancy among these documents these Conditions shall prevail;

‘Contract Award Notice’ means the notice so titled from the Commission to the Contractor which accepts the Contractor’s quote or tender submission and forms and concludes the Contract;

‘Contract Period’ means the period of duration of the Contract determined in accordance with Condition 4.

‘Contract Price’ means the price exclusive of VAT, payable by the Commission to the Contractor in accordance with any schedule of prices or rates or lump sums under the Contract for the full and proper performance of the Contractor’s obligations under the Contract;

‘Contractor’ means the person, partnership, company or other body who undertakes to provide the Commission with goods or services in accordance with the Contract;

‘Contractor’s Staff’ means any person commissioned and paid by the Contractor to either perform any part of this Contract or to provide services or goods to the Contractor to facilitate performance of the Contract, including employees, agents, consultants, suppliers and Sub-contractors, whether paid or unpaid;

‘Controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; where the purposes and means of such processing are determined by UK law. Where not set out in the Contract the identity of the Controller or the specific criteria for its nomination will be as provided for by UK law;

‘Court’ means, in Northern Ireland, the High Court; in England and Wales, the High Court; in Scotland, the Court of Session;

‘Data Loss Event’ means any event that results, or may result in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

‘Data 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 UK GDPR, (ii) the DPA (to the extent that it relates to processing of personal data and privacy); (iii) any other applicable Law governing the processing of personal data and privacy.

‘Data Protection Officer’ has the meaning given by Article 37 of the UK GDPR;

‘Data Subject’ means any identified or identifiable natural person who can be identified, directly or indirectly, by reference to Personal Data;

‘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.

‘Day’ means a calendar day.

‘Default’ means any breach of the obligations under this Contract (including but not limited to material breach or breach of a fundamental term) and any, act, omission, negligence or mis-statement by the Contractor or the Contractor’s Staff in relation to the subject matter of the Contract in respect of which the Contractor is liable to the Commission;

‘DPA’ means the Data Protection Act 2018;

‘EIR’ means the Environmental Information Regulations 2004;

‘Equipment’, except in [Schedule 1](#), means all materials, plant, vehicles, equipment, and consumables, other than property of the Commission, which the Contractor uses or intends to use for the provision of the Services/Goods;

‘FOIA’ means the Freedom of Information Act 2000;

‘UK GDPR’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of Northern Ireland by virtue of section 3 of the European (Withdrawal) Act 2018;

‘Grounds for Exclusion’ means the grounds for mandatory and discretionary exclusion set out in regulation 57 of the 2015 Regulations.

‘Initial Contract Period Expiry Date’: means the expiry of the period of months from the Commencement Date set out in [Condition 4](#).

‘Key Personnel’ means those individuals identified by the Contractor as filling the roles defined in the Specification as key roles;

‘Law’ means any applicable Statutory Provision, any exercise of the Royal Prerogative, any regulatory policy, guidance or industry code with which the Contractor is bound to comply, and any judgment of a court of law with which the Contractor is bound to comply;

‘Loss’ includes destruction;

‘Material’ includes both physical and electronic materials except in [Schedule 1](#) Condition 5.5

‘Month’ means calendar month unless otherwise stated;

‘Parties’ means the Commission and the Contractor;

‘Person’ includes natural and legal persons and bodies or associations, corporate or incorporate;

‘Personal Data’ means any information relating to an identified or identifiable natural person: such a person is one who can be identified, directly or indirectly, by reference to the Personal Data, and in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

‘Personal Data Breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

‘Personal Injury’ includes sickness and death;

‘Premises’ means Parliament Buildings, Belfast, BT4 3XX and any other land or buildings occupied by the Commission or by the Northern Ireland Assembly where the Contract is performed;

‘Processor’ means the natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Controller;

‘Protection of Employment Regulations’ means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006;

‘Protective Measures’ means appropriate technical and organisational measure 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 the such measures adopted by it.

‘Quality Standards’ means the quality standards, as they apply in Northern Ireland, published by the British Standards Institute, the European Committee for Standardization, the European Committee for Electrotechnical Standardization, the European Telecommunications Standards Institute, the International Organisation for Standardization and other reputable or equivalent bodies (and successor bodies) which 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 any other such standards which may be detailed in the Specification, and in respect of goods that they further conform with UK standards (product marked UKCA or UKNI) and/or European Union standards (product marked EC) so far as they are applicable to goods available in Northern Ireland;

‘Relevant function or activity’ has the same meaning as in the Bribery Act 2010;

‘Relevant conviction’ means a conviction that is relevant to the nature of the Services/Goods provided and includes offences involving dishonesty, serious offences against the person, offences against property, and any other offences which the Commission may by notice to the Contractor prescribe;

‘Request for Information’ has the same meaning as in the Freedom of Information Act 2000 or as the case may be the Environmental Information Regulations 2004;

‘Replacement Contractor’ means any third party provider of Services or Goods appointed by the Commission to supply Services/Goods which are substantially similar to any of the Services/Goods which the Commission receives under this Contract, following the expiry, termination or partial termination of this Contract;

‘Sickness or Injury Provision’ means any Statutory Provision or contractual condition applicable to Commission employees providing for continuance of pay or any allowance to or for the benefit of Commission employees (including sick pay), or their families or dependants, during or in respect of any sickness, injury or disablement suffered by Commission employees;

‘Specification’ means the description of the Services/Goods to be supplied under the Contract as set out in the Specification Schedule;

‘Specification Schedule’ means the Schedule containing details of the Specification;

‘Staff Vetting Procedures’ means the procedures which the Commission have advised to the Contractor for use in vetting any person providing the Services/Goods;

‘Statutory Provision’ has the meaning given by section 1 of the Interpretation Act (Northern Ireland) 1954;

‘Sub-contractor’ means any person (other than a person employed by the Contractor), who enters into an agreement with the Contractor (or with a sub-contractor of the Contractor) to perform work or provide professional services and/or supply goods in connection with the Contract and includes any other individual or individuals taken as a partner or director by such person during the currency of the Contract and the surviving member or members of any such firm or company;

‘Sub-processor’ means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

‘the 2015 Regulations’ means the Public Contracts Regulations 2015;

‘the Services/Goods’ means the goods and/ or services to be supplied to the Commission by the Contractor as set out in the Contract;

‘UK’ means the United Kingdom

‘VAT’ means Value Added Tax;

‘Working day’ means a day which is not a Saturday, Sunday or Bank Holiday.

1.2. The masculine includes the feminine and vice versa;

1.3. The singular includes the plural and vice versa;

1.4. Reference to a Condition is a reference to the whole of that Condition unless stated otherwise;

1.5. Reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise;

- 1.6. The headings of these Conditions shall not affect the interpretation thereof;
- 1.7. A reference in this Contract to any Statutory Provision shall be construed as a reference to that provision as for the time being amended by or under any Statutory Provision.
- 1.8. All communication between the Parties, letters, documentation, specifications, reports etc. shall be in the English language.

2. Entire Agreement

- 2.1. The Contract constitutes the entire agreement between the Commission and the Contractor relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral. 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.
- 2.2. This Condition shall not exclude liability in respect of any fraudulent misrepresentation.

3. Basis of Contract

- 3.1. Issue by the Commission of the Contract Award Notice sent by secure message through the e-procurement portal, or by electronic mail will constitute acceptance by the Commission of the offer contained in the Contractor's tender, subject to these conditions of contract.
- 3.2. The Contractor must immediately confirm to the Commission receipt of the Contract Award Notice using the e-procurement portal or electronic mail.

4. Duration of the Contract

- 4.1. The Contractor must provide the Services/Goods for [insert duration of contract in months] from the Commencement Date subject to the Commission's rights of earlier termination under these Conditions and any extension which may be provided for by way of variation under [Condition 10](#).

5. Governing Law

- 5.1. This Contract shall be governed by and interpreted in accordance with the laws of Northern Ireland and shall be subject to the exclusive jurisdiction of the courts of Northern Ireland.
- 5.2. The Contractor will keep abreast of all legal issues and changes to Law that may affect the performance of the Contract and will take necessary steps to ensure that all Laws are adhered to and any new Laws coming into force during the Contract will be recognised and their Staff will have the appropriate training to comply.

6. Severability

- 6.1. If the courts of Northern Ireland hold any provision of the Contract to be invalid, illegal or unenforceable for any reason, that provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties may, to the extent permitted by Law, commence negotiations in good faith to remedy the invalidity.
- 6.2. If the Parties cannot agree on what amendments are required within 5 Working days, the matter will be dealt with via mediation as set out in Clause 46.3 and, if there is no resolution within 60 days of the matter being referred, the Contract will terminate automatically and immediately with costs lying where they fall.

7. Improving the Performance of the Contract

- 7.1. The Contractor shall (at its own cost), on an ongoing basis throughout the Contract Period, explore and identify opportunities to improve the Services/Goods and reduce costs and expenses incurred pursuant to this Contract. The Contractor shall on a regular basis, and at least every 12 (twelve) months, advise the Commission of potential savings opportunities to improve the Services/Goods and in each instance will provide an estimate of the potential savings or description of the nature of the improvement to the Services/Goods, together with all relevant information required by the Commission. The implementation of any such improvements pursuant to this Condition 7 shall be made in accordance with the change control procedure detailed in [Schedule 2](#) to these Conditions.

8. Rights and Protection

- 8.1. The Contractor warrants and represents that:
 - 8.1.1. it has full capacity and authority to enter into and to perform its obligations under the Contract;
 - 8.1.2. the Contract is executed by its authorised representative;
 - 8.1.3. it is a legally valid and existing organisation incorporated in the place it was formed;
 - 8.1.4. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it that might affect its ability to perform its obligations under the Contract;
 - 8.1.5. all necessary rights, authorisations, licences and consents (including in relation to Intellectual Property Rights) are in place to enable the Contractor to perform its obligations under the Contract and for the Commission to receive the Services/Goods;
 - 8.1.6. it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - 8.1.7. that all statements made and documents submitted as part of the tender of Services/Goods are and remain true and accurate;
 - 8.1.8. it is not impacted by a bankruptcy or insolvency events; and
 - 8.1.9. neither it nor, to the best of its knowledge the Contractor' Staff, have been involved in any of the activities listed in Clause 44.1, prior to the Commencement Date or been subject to an investigation relating to the activities listed in Clause 44.1.
- 8.2. The warranties and representations in Clause 8.1 are repeated each time the Contractor provides Services/Goods under the Contract.
- 8.3. If the Contractor becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Commission.
- 8.4. All third-party warranties and indemnities covering the Services/ Goods must be assigned for the Commission's benefit by the Contractor.

9. Contract Price and Payments

- 9.1. Subject to [Condition 10](#) and Clause 9.2 the Contract Price shall not be subject to any variation during the Contract Period.
- 9.2. In the event that the Contract Price is increased or decreased as a result of any new Law being made after the commencement of the contract, the amount of any such increase or decrease shall be treated as a variation to the Contract and will be governed by Condition 10. Variations will not be permitted where that Statutory Provision is enacted after the commencement of the Contract, but was made public prior to the commencement of the Contract, and any such variations will be deemed to have been included in the Contract Price.
- 9.3. Where the Contract contains provision for extension, a price review shall take place at each point at which the Contract is extended and any increase or decrease in the Contract Price shall be determined in accordance with the change control procedure detailed in [Schedule 2](#) to these Conditions.
- 9.4. The Contract Price shall be strictly net of VAT. VAT, where applicable, shall be shown separately on all invoices as a net extra charge. The Commission will pay to the Contractor, in addition to the Contract Price, a sum equal to the VAT chargeable on the value of the supply of Services/Goods provided under the Contract.
- 9.5. Unless otherwise stated in the Contract, the Contractor must submit to the Commission an invoice monthly in arrears.
- 9.6. The Commission will pay the Contractor within 30 days of receipt and agreement of a valid invoice. Any decision by the Commission's Representative as to whether an invoice is valid shall be final and conclusive. Payment will normally be paid by electronic bank transfer - BACS and the date of payment by electronic transmission shall be the date the transmission is effected.
- 9.7. A properly prepared invoice shall—
 - (a) be a true and accurate reflection of the Contract Price for the service undertaken;
 - (b) where provided in hard copy form, be in duplicate;
 - (c) be referred with all appropriate Contract references and titles; and
 - (d) include a detailed breakdown of Services/Goods provided, taking account of any due deductions, with such supporting invoices and documentation to substantiate the claim as the Commission may require.
- 9.8. If an invoice is not submitted in accordance with the Contract, the Commission may withhold payment against that invoice. If the Commission intends to withhold payment under this Clause the Commission will give notice to the Contractor. The Contractor

shall not suspend the provision of the Services/Goods unless the Contractor is entitled to terminate the Contract in accordance with [Condition 25](#).

- 9.9. If there is a dispute between the Parties as to the amount invoiced, the Commission will give the Contractor notice that it intends to withhold payment in regard to a disputed amount and pay the undisputed amount (if any). The Contractor shall not suspend the provision of the Services/Goods unless the Contractor is entitled to terminate the Contract in accordance with [Condition 25](#). Any disputed amounts shall be resolved through the dispute resolution procedure in [Condition 46](#).
- 9.10. Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, that sum may be deducted by the Commission from any sum then due, or which at any time thereafter may become due to the Contractor under the Contract, or due to the Contractor under any other contract between the Parties.
- 9.11. The Contractor shall make any payments due to the Commission 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 Commission to the Contractor.

[10. Variations](#)

- 10.1. Subject to Clause 10.4, the Commission may request variation of the Contract where in the opinion of the Commission, one or more of the conditions specified at [Schedule 3 Part 1\(a\)](#) is satisfied.
- 10.2. The variations which the Commission may request under this Condition are specified at [Schedule 3 Part 2](#).
- 10.3. The Contractor must not unreasonably withhold agreement to such variations as the Commission requests.
- 10.4. The provisions of the Contract which may be amended in accordance with Clauses 10.1, 10.2 and 10.3 are: the Contract Price, the Specification, this Condition, Conditions, 12, 15, 16, 17, 18, 19, 20.4, 21, 33, 35, 36, 37, 40, 41, 45 and [Schedule 1](#).
- 10.5. Subject to Clause 10.7, the Contractor may request variation of the Contract where in the opinion of the Contractor the Condition specified at [Schedule 3 Part 1\(b\)](#) is satisfied.
- 10.6. The variations which the Contractor may request under this Condition are specified at [Schedule 3 Part 2](#).

- 10.7. The provisions of the contract which may be amended in accordance with Clauses 10.5 and 10.6 are: the Specification, Conditions 12, 15, 16, 17, 18, 19, 20.4, 21, 33, 35, 36, 37, 40, 41, 45 and [Schedule 1](#).

11. Minor or Incidental Changes

- 11.1. The Contractor must comply with any request by the Commission for minor or incidental changes to the provision of the Services/Goods. Such changes will be effective immediately in accordance with the terms of any notification, including oral notification, provided by the Commission to the Contractor, and will not be subject to the change control procedure set out in this Condition and in [Schedule 2](#).
- 11.2. It will be for the Commission to determine whether a variation is minor or incidental. Any dispute as to whether a change is minor or incidental must be dealt with in accordance with the dispute resolution procedure set out at Condition 46.
- 11.3. Any variation to the Contract and Contract Price which is not minor or incidental must be executed in accordance with the change control procedure detailed in [Schedule 2](#) to these Conditions.

PART 2: CONTRACT OPERATION

12. Assignment & Sub-Contracting

- 12.1. The Contractor will not assign or sub-contract any portion of the Contract without seeking and being notified of the prior consent of the Commission.
- 12.2. In considering whether or not to consent to the appointment of a sub-contractor, the Contractor shall provide the Commission with any information about the Sub-contractor as it reasonably requests.
- 12.3. Sub-contracting any part of the Contract will not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract or these Conditions. The Contractor will be responsible for the acts and omissions of any Sub-contractors used by the Contractor as though the acts and omissions were the Contractor's own.
- 12.4. Where the Commission consents to the placing of sub-contracts the Contractor must—
- (a) provide the Commission with the name, contact details and legal representatives of the Sub-contractors;

(b) provide the Commission with the name, contact details and legal representatives of any Sub-contractors who subsequently become involved in the provision of the Services/Goods during the Contract Period; and

(c) [Insert Option A

if requested, provide the Commission with copies of the sub-contract, or where there is no written sub-contract, copies of all documents evidencing the sub-contract.]

Or

[Option B

enter into a written Contract with the Sub-contractor and if requested, provide the Commission with copies of the sub-contract.]

12.5. If during the Contract Period there are any changes to any of the information provided under Clause 12.4 the Contractor must notify the Commission of those changes.

12.6. The Contractor must replace any Sub-contractor where notified by the Commission that:

- (i) there are Grounds for Exclusion of that Sub-contractor; and/or
- (ii) the Sub-contractor has brought into disrepute or diminished the public trust in or the reputation of the Commission.

12.7. Where the Contractor enters into a contract with any Sub-contractor for the purpose of performing the Contract, or part of the Contract, that contract—

- (a) shall include a term which requires payment to be made to the Sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice, as defined by the provisions of that contract;
- (b) shall require any sub-contract which is in turn awarded by that sub-contractor to include a term which requires payment under that sub-contract within a specified period not exceeding 30 days from receipt of a valid invoice, as defined by the provisions of that contract; [and]
- (c) shall include a term which requires the sub-contractor to undertake to fully comply with all sub-contracted obligations[delete following terms in (d) and (e) if not applicable;
- (d) shall include terms on the Sub-contractor equivalent to those imposed on the Contractor under the Contract in respect of:

- (i) the Data protection requirements set out in Condition 36;
 - (ii) the FOIA requirements set out in Condition 35;
 - (iii) the obligation not to bring in to disrepute or diminish public trust or the reputation of the Commission;
 - (iv) the keeping of records in respect of the Services and/or Goods being provided under the sub-contract; and
 - (v) the conduct of audits set out in Condition 32; and
- (e) shall include terms enabling the Contractor to terminate the sub-contract on notice on terms equivalent to those imposed on the Commission under Condition 29 and 30 of this Contract.]

13. Status of the Contractor

- 13.1. The Contract does not create a partnership, joint venture, employment relationship or a relationship of principal and agent. The Contractor must represent itself accordingly and ensure others do so.

14. Supply of Goods

- 14.1. Without prejudice to the generality of the Conditions, where the Contract is wholly or mainly for the provision of goods, the Conditions set out in [Schedule 1](#) will also apply to the Contract.

15. Standards

- 15.1. The Contractor agrees that the quality and timely provision of the Services/Goods is a fundamental Condition of the Contract.
- 15.2. The Contractor will at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the appropriate Quality Standards authorisation body.
- 15.3. Where the standard of Services/Goods is not specified in the Contract, the Contractor will agree the relevant standard of the Services/Goods with the Commission prior to the supply of the Services/Goods and the Contractor will in every case provide the Services/Goods under the Contract in accordance with Law and good industry practice.

- 15.4. At the request of the Commission Representative, the Contractor must prove to the satisfaction of the Commission that the materials and processes used or proposed to be used by the Contractor in the delivery of the Services/Goods conform to the Quality Standards.
- 15.5. The Contractor must seek prior approval from the Commission where the Contractor intends to introduce new methods or systems which will affect or may affect the provision of the Services/Goods.

16. The Contractor's Staff

- 16.1. The Contractor warrants that the Contractor's Staff will provide the Services/Goods efficiently, with all due skill, care and diligence, including but not limited to compliance with the Quality Standards and good industry practice.
- 16.2. The Contractor and any of the Contractor's Staff engaged in the performance of the Contract must have appropriate qualifications and competence and be in all respects acceptable to the Commission. Where so required, full particulars of the Contractor and the Contractor's Staff must be provided to the Commission in advance for confirmation of acceptability.
- 16.3. The Commission may from time to time instruct the Contractor to provide such information about any of the Contractor's Staff who are or may at any time be concerned with provision of the Services/Goods or any part of them, and the Contractor must provide all such information as the Commission may reasonably require.
- 16.4. The Contractor must make the Key Personnel available for the provision of the Services/Goods. The Contractor must not make changes to the Key Personnel except when such changes are unavoidable or of a temporary nature caused by sickness, maternity or paternity leave etc.
- 16.5. The Contractor must give us at least one month's notice of proposals to change Key Personnel and Clauses 16.1 and 16.2 shall apply to any replacement member of the Contractor's staff. Any such replacement must be of equivalent experience and skills to the Key Personnel replaced.
- 16.6. The Contractor must appoint a representative, to be known as the 'Account Manager', to supervise the provision of the Services/Goods. The Contractor must also notify the Commission of the identity of the person appointed. Until notice of a subsequent appointment shall be given, the Commission shall be entitled to treat as Account Manager the person last notified to the Commission as being the Account Manager.

The Account Manager must be empowered to act on behalf of the Contractor for all purposes connected with the Contract.

- 16.7. Any instruction, notice, information or any other communication which is given or made by the Commission to the Account Manager shall be deemed to have been given or made to the Contractor and the Contractor's Staff.
- 16.8. The Contractor must maintain a large enough pool of Contractor's Staff who have undergone Security Vetting Procedures in accordance with Condition 18 to carry out/ deliver the Services/Goods required under the Contract.
- 16.9. The Commission may in its absolute discretion refuse to admit to the Premises any member of the Contractor's Staff and may in its absolute discretion direct that any member of the Contractor's Staff be removed from the Premises.
- 16.10. Where the Commission requires any member of the Contractor's Staff to be removed from the Premises, the Contractor must recover any security accreditation held by the relevant member of the Contractor's Staff and return it to the Commission.
- 16.11. The Contractor must replace any member of the Contractor's Staff excluded under this Condition with persons who can provide the Services/Goods to the Quality Standard required under the Contract and must continue to provide the Services/Goods on time and as specified in the Contract. The Commission will not be liable for any costs or additional costs which arise because of any requirements it may impose under this Condition.
- 16.12. The Contractor must comply with any requirements which the Commission may from time to time notify to the Contractor to prevent unauthorised persons being admitted to the Premises.
- 16.13. The Contractor must ensure that while on the Premises the Contractor's Staff behave at all times in an appropriate manner and, in particular, must ensure that they are generally presentable and (if appropriate) dressed in uniforms, which are clean and in good repair.
- 16.14. The Contractor shall engage, employ and pay all monies due to the Contractor's Staff required to carry out the Contract and shall be entirely responsible for setting the pay and conditions of service for the Contractor's Staff and for any compensation payments due to them howsoever arising including, without any restriction of the generality of this Clause, any liability for sickness, maternity, paternity or redundancy costs.
- 16.15. The Contractor shall comply with the National Minimum Wage Act 1998.
- 16.16. The Commission's decision as to whether any person is to be admitted to or is to be removed from involvement in the provision of the Services/Goods, and as to the

approval of changes to the Key Personnel, and as to whether the Contractor has furnished the information or taken the steps required by us under this Condition, shall be final and conclusive.

- 16.17. The Contractor must notify the Commission of any impending disputes with its Staff which could affect the performance of the Contract.
- 16.18. The Contractor must bear the cost of any notice, instruction or decision by the Commission under this Condition.

17. Duty to Co-Operate

- 17.1. The Contractor must co-ordinate any activities necessary for the provision of the Services/Goods with the activities of the Commission, and the activities of any other persons engaged by the Commission to provide Services/Goods.
- 17.2. The Contractor must ensure that any of the Contractor's Staff working at the Premises access only those parts of the Premises which it is necessary to access to provide the Services/Goods and then only at times when actually engaged in the provision of the Services/Goods.
- 17.3. The Contractor and the Contractor's Staff must at all times—
- (a) comply with the Commission's policies and procedures (including but not limited to those on conduct and health and safety) copies of which will be made available on request; and
 - (b) co-operate with the Commission in dealing with any employment matters affecting Commission Employees arising in relation to the Contract and assist in any investigations by the Commission into possible breaches of Law or the Commission's policies and procedures (including by way of giving statements and attending meetings, hearings and tribunals).
- 17.4. Where the Contractor becomes aware of any matter involving any of the Contractor's Staff arising as a result of an action by the Commission or a Commission Employee, the Contractor must give details of the matter to the Commission's Representative. The Commission may conduct an investigation into the matter and produce a report with recommended actions as to how the matter is to be resolved. If the Contractor does not accept the recommended actions then any dispute may be dealt with in accordance with Condition 46.

18. Security

- 18.1. The Contractor and the Contractor's Staff will comply with the Staff Vetting Procedures. The Contractor must confirm that the Contractor's Staff are vetted in accordance with the Staff Vetting Procedures or, with the permission of the Commission, confirm that the Contractor's Staff are vetted on a basis that is equivalent to and no less strict than the Staff Vetting Procedures. The Contractor must meet such costs incurred under this condition.
- 18.2. The Commission may require the Contractor to ensure that any member of the Contractor's Staff employed in the provision of the Services/Goods has been subject to a criminal record disclosure check, to a level which the Commission may specify, carried out by AccessNI or any equivalent or successor body.
- 18.3. The Contractor must ensure that no person who discloses that he/she has a Relevant Conviction, or is found to have a Relevant Conviction (whether by disclosure by AccessNI or otherwise) is employed in the delivery of the Contract.
- 18.4. While on the Premises, the Contractor must comply with all security measures put in place by the Commission. The Commission will provide copies of applicable security procedures on request. The Contractor must not reproduce, publish or supply any such material to any person without the prior approval of the Commission.
- 18.5. The Commission has the right to search the Contractor and the Contractor's Staff and any vehicles used by the Contractor and the Contractor's Staff at or near the Premises.
- 18.6. The Contractor and the Contractor's Staff must co-operate with any security investigation which is carried out by or on behalf of the Commission.
- 18.7. If required, the Contractor will use its best endeavours to make any of the Contractor's Staff available to be interviewed for the purposes of any investigation under this Condition. The Contractor's Staff will have the right to be accompanied by a representative nominated by the Contractor, and to be advised or represented by any other person whose attendance at the interview is acceptable to both of the Parties.
- 18.8. The Contractor must, subject to any legal restriction on their disclosure, provide to the Commission all documents, records or other material of any kind which may reasonably be required for the purposes of any investigation under this Condition. The Commission will have the right to retain any such material for use in connection with the investigation and, so far as possible, will provide the Contractor with details of any material retained.

- 18.9. Where access by a member of the Contractor's Staff is no longer required, the Commission must be informed within 5 Working days and any pass returned.

19. Provision of Equipment

- 19.1. Unless expressly provided for in the Contract the Contractor must provide all the Equipment necessary for the provision of the Services/Goods and must maintain all the Equipment necessary for the provision of the Services/Goods in good and serviceable condition.
- 19.2. The Commission will not be liable for any loss of or damage to any of the Equipment except to the extent that the Contractor is able to demonstrate that such loss or damage was directly caused by the negligence or default of the Commission.
- 19.3. The Contractor must provide for the carriage of the Equipment to the Premises and its removal when no longer required.
- 19.4. The Contractor shall, at the Commission's written request, own expense and as reasonably practicable:
- (a) remove from the premises any of its own Equipment which in the reasonable opinion of the Commission is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 19.5. The Commission may purchase any Equipment from the Contractor where the Commission reasonably considers that Equipment is likely to be required in the provision of the Services/Goods following the expiry or termination of the Contract. The Commission will pay the Contractor a fair market value for any Equipment purchased under this Clause.
- 19.6. Any equipment provided by the Commission to the Contractor for the purpose of the Contract shall remain the property of the Commission and shall only be used for the purpose of carrying out the Contract. The Contractor must return such equipment promptly to the Commission on expiry or termination of the Contract. The Contractor will reimburse the Commission for any loss or damage to this equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or the Contractor's Staff. Any equipment which is supplied by the Commission to the Contractor is deemed to be in good condition when received by the Contractor, unless the Contractor notifies the Commission to the contrary within seven days of receipt.

- 19.7. The Commission may make temporary accommodation on the Premises available to the Contractor to facilitate delivery of the Contract. This temporary accommodation is made available to the Contractor on a non-exclusive licence basis. The Contractor must use this temporary accommodation solely for the purpose of performing obligations under the Contract and must vacate it on expiry, termination or abandonment of the Contract.
- 19.8. Should the Contractor require modification to the Premises, such modifications will require the prior written approval of the Commission and will be carried out by the Commission at the expense of the Contractor. The Commission will carry out such modifications in a reasonable time and will own any such modifications.
- 19.9. The Contractor must ensure the security of the Equipment (including in particular all Equipment upon or in which confidential information is stored), processes and the Premises (whether on or off the Premises and including any temporary accommodation on the Premises) to the extent that it is within the power of the Contractor to do so. The Contractor must ensure the security of any of equipment provided by the Commission or generated under the Contract and must take all measures necessary to comply with applicable Law relating to security in providing the Services/Goods.
- 19.10. Upon termination or expiry of the Contract, the Contractor shall remove its own the Equipment together with any of its own materials used to provide the Services/Goods and shall leave the premises in a clean, safe and tidy condition.

PART 3: LIABILITY, INDEMNITY AND INSURANCE

20. Liability and Indemnity

- 20.1. The Contractor will exercise all reasonable precautions to protect the Premises, the assets of the Commission and all persons on the Premises from any harm that may arise from the presence of the Contractor and the Contractor's Staff on the Premises.
- 20.2. Nothing in this Contract shall exclude or limit the liability of either of the Parties for—
- (a) death or personal injury resulting from its negligence or that of its directors, employees or agents; or
 - (b) any other liability that cannot be limited or excluded at law including fraud, fraudulent misrepresentation and breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 20.3. The Contractor must indemnify the Commission against all claims, proceedings, actions, damages, costs, expenses and any other liabilities (including any damages,

compensation or sum which the Commission may pay to compromise or settle any claim and associated legal costs) which may arise out of, or in consequence of any or all of—

- (a) the supply, or the late or purported supply, of the Services/Goods:
- (b) the performance or non-performance of obligations under the Contract by the Contractor or the Contractor's Staff; and
- (c) the presence of the Contractor or the Contractor's Staff on the Premises

including without limitation any death, Personal Injury or Loss (including financial loss arising from any advice the Contractor gives or omits to give) and any other Loss which is caused directly or indirectly by the act or omission of the Contractor or the Contractor's Staff.

20.4. The limit of the indemnity which the Contractor must provide under Clause 20.3 is—

- a) unlimited in respect of those matters set out at clause 20.2; and
- b) otherwise a maximum of [insert indemnity amount] in respect of any one said incident or series of incidents.

20.5. The Contractor will not be responsible for indemnifying the Commission under Clause 20.3 to the extent that the Contractor demonstrates that the Loss or Personal Injury was not caused or contributed to by the negligence or default of the Contractor or the Contractor's Staff.

20.6. Without prejudice to the generality of this Condition, the Contractor's obligation under this Condition includes indemnifying the Commission for any payment made under any Sickness or Injury Provision in connection with any Personal Injury suffered by Commission Employees.

21. Insurance

Insert [Option A]

21.1. The Contractor must effect and maintain with a reputable insurance company a policy or policies of insurance to an insured value of not less than £[insert indemnity in numbers £(insert indemnity in words)] in respect of all risks which the Contractor may incur in the performance of the Contract including those liabilities outlined in Condition 20. Such policy or policies shall include cover in respect of any financial loss arising from any advice which the Contractor has given or omitted to give.

Or [Option B]

- 21.1 The Contractor must, at its own cost, effect and maintain with a reputable insurance company a policy or policies of insurance in respect of all risks which the Contractor may incur in the performance of the Contract, including those liabilities outlined in [Condition 20](#) and cover in respect of any financial loss arising from any advice which the Contractor has given or omitted to give, such a policy or policies should also include:
- (a) public liability insurance with a limit of indemnity of not less than £[insert indemnity in numbers (£insert indemnity in words)] in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £[insert indemnity in numbers (£insert indemnity in words)] in relation to any one claim or series of claims;
 - (c) product liability insurance with a limit of indemnity of not less than £[insert indemnity in numbers (£insert indemnity in words)] in relation to any one claim of a series of claims;
 - (d) professional indemnity insurance with a limit of indemnity of not less than £[insert indemnity in numbers (£insert indemnity in words)] in relation to any one claim of a series of claims;
 - (e) cyber liability insurance with a limit of indemnity of not less than £[insert indemnity in numbers (£insert indemnity in words)] in relation to any one claim of a series of claims; and
 - (f) [Other relevant insurances to be inserted here – e.g. suitable for a listed building, environmental].
- 21.2. The Contractor must ensure that any Sub-contractor, agent or consultant associated with the Contractor in the delivery of the Contract effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by those persons arising out of their involvement in the provision by the Contractor of the Services/Goods.
- 21.3. Where in the opinion of the Commission the risks arising from the Contract have increased, the Commission may seek to amend the minimum level of insurance cover which the Contractor must effect and maintain under this Condition by a formal variation in accordance with [Condition 10](#).
- 21.4. Possession of a policy or policies of insurances for the purposes of this Condition does not relieve the Contractor of any liabilities under the Contract.

- 21.5. [Where appropriate, the Contractor must effect and maintain professional indemnity insurance cover to an insured value of not less than £[insert indemnity] during the Contract Period.]
- 21.6. The Contractor will on request produce to the Commission Representative copies of all insurance policies relevant to this Condition, or other evidence (for example a broker's verification of insurance) confirming the existence and extent of the cover given by those policies, together with such receipts or other evidence of payment of the latest premiums due under those policies which the Commission may reasonably require.
- 21.7. If, for whatever reason, the Contractor fails to give effect to and maintain the insurance required by the provisions of the Contract the Commission may make alternative arrangements to protect the interests of the Commission, or as the case may be the Northern Ireland Assembly, and may recover from the Contractor the costs of such arrangements.
- 21.8. Insurance under this Condition shall be maintained in respect of such liabilities which the Contractor may have incurred in performance of the Contract for a minimum of six years following the expiration or any earlier termination of the Contract.

22. Handling of Claims

- 22.1. The Commission will notify the Contractor as soon as reasonably practicable of any claim or proceedings for which the Contractor may be liable under Condition 20.
- 22.2. Where the Contractor is or may be liable to indemnify the Commission in respect of any claim or proceedings the Contractor or the Contractor's insurers will, subject to the rest of this Condition, be responsible for dealing with or settling that claim or proceeding.
- 22.3. Where any claim or proceeding to which Condition 20 applies is settled otherwise than by the Contractor or the Contractor's insurers, the Contractor shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might reasonably be recoverable at law.
- 22.4. If, when the Contractor or the Contractor's insurers are dealing with any claim or proceeding to which Condition 20 applies, and any matter or issue arises which involves or may involve any privilege or special right accorded to the Commission or to the Northern Ireland Assembly, the Contractor or the Contractor's insurers shall consult the Commission before taking any further action on the matter, and must act in relation thereto as may be required by the Commission; and if either the Contractor or the

Contractor's insurers fail to comply with this Condition, Clause 22.2 shall cease to apply.

23. Force Majeure

- 23.1. The Contractor will not be in breach of the Contract and will not be liable to the Commission by reason of any delay or any other failure on the part of the Contractor in performing any of the obligations under this Contract where the delay or failure is in the reasonable opinion of the Commission attributable to any cause beyond the reasonable control of the Contractor and which is not attributable to any act or failure on the Contractor's part to take preventive action.
- 23.2. Any failure or delay by the Contractor in performing the obligations under the Contract which results from any failure or delay by any of the Contractor's Staff shall be regarded as attributable to a cause beyond the reasonable control of the Contractor only if that the Contractor's Staff are impeded in complying with any obligation to the Contractor by a cause beyond their reasonable control.
- 23.3. Causes beyond the reasonable control of the Contractor or the reasonable control of the Contractor's Staff include but are not limited to natural disasters, national emergencies, and civil wars but do not include any industrial action by the Contractor or the Contractor's Staff.
- 23.4. In the event of the circumstances set out in 23.1 arising, the Contractor shall:
- (a) give notice in writing of such delay or failure to perform obligations to the Commission as soon as reasonably possible, stating the commencement date and extent of such delay or failure to perform obligations, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or failure to perform obligations; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or failure to perform obligations.
- 23.5. In the event that the circumstance set out in 23.1 continue for a period of [insert number of Working days] Working days, the Commission may terminate the Contract by notice in writing giving [insert number of Working days] Working days' notice. Where this Agreement is terminated pursuant to this Clause 23.5 the Commission shall not be liable to the Contractor for any Losses arising out of the termination.

PART 4: REMEDIES

24. Remedies in the Event of Unsatisfactory Performance

24.1. If the Commission is of the opinion that the Contractor or the Contractor's Staff are in Default, then, if the Default or other failure is capable of remedy, the Commission may send to the Contractor a notice specifying the Default and stating the time within which the Contractor must remedy the Default and put right any damage resulting from it.

24.2. In the event that—

- (a) the Contractor fails to comply with a notice sent under Clause 24.1;
- (b) the Commission are of the opinion that the Default is not capable of remedy; or
- (c) the Commission are of the opinion that the Contractor has materially breached the Contract then the Commission may take some or all of the actions set out in Clause 24.3.

24.3. Those actions are—

- (a) in respect of such of the Services/Goods as the Contractor has failed to provide, the Commission may deduct from any payment due to the Contractor an amount which in the reasonable opinion of the Commission reflects the loss arising to the Commission or the Northern Ireland Assembly from the non-provision of those Services/Goods;
- (b) The Commission may, without terminating the Contract, procure such part of the Services/Goods as the Contractor has failed to provide, until such time as the Contractor demonstrates to the reasonable satisfaction of the Commission an ability once more to provide that part of Services/Goods, and in the meantime the Commission will be entitled to exclude the Contractor and the Contractor's Staff from the Premises;
- (c) The Commission may, without terminating the whole of the Contract, terminate the Contract in respect of that part of the Services/Goods which in the reasonable opinion of the Commission the Contractor has failed to provide (whereupon the Commission will make a corresponding deduction in the amount payable under the Contract) and thereafter the Commission may provide, or procure a third party to provide, such part of the Services/Goods as the Contractor has failed to provide;
- (d) The Commission may terminate the whole of the Contract in accordance with [Condition 29](#).

24.4. Where the Commission provides, or procures a third party to provide, such part of the Services/Goods as the Contractor has failed to provide, the Commission may charge to

the Contractor any costs reasonably incurred including reasonable administration costs in respect of that part of the Services/Goods, to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for the delivery of those Services/Goods.

24.5. In the event that through any Default by the Contractor or the Contractor's Staff, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be in the reasonable opinion of the Commission unusable, the Commission may—

- (a) require the Contractor at his own expense to restore or procure the restoration of the data (and the Contractor must do so promptly); or
- (b) the Commission may restore or procure the restoration of data, and charge to the Contractor any costs reasonably incurred in doing so.

24.6. The remedies available to the Commission under this Condition may be exercised successively in respect of any one or more Defaults by the Contractor or the Contractor's Staff and will survive the expiry or termination of the Contract.

25. The Contractor's Remedies for Non-Payment

25.1. If the Commission fails to pay to the Contractor the whole or part of the Contract Price when it falls due, the Contractor must give notice specifying the breach and requiring its remedy. In the event that the Commission fails to remedy the breach within 90 days, the Contractor may terminate the Contract.

25.2. The Contractor's right of termination under this Clause does not apply to non-payment where such non-payment is due to the exercise of the rights of the Commission under Clauses 9.8, 9.9 and 9.10.

26. Remedies Cumulative

26.1. All remedies available to the Contractor or to the Commission for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not exclude the exercise of other remedies.

27. Waiver

- 27.1. The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy, nor constitute a waiver of any right or remedy arising from any other breach of the Contract. No waiver shall be effective unless notice of the waiver is communicated to the other Party.

PART 5: CONTRACT EXPIRATION OR TERMINATION

28. Termination on Notice

- 28.1. At any time, the Commission has the right to terminate the Contract, or to terminate any part of the Contract, by giving the Contractor not less than 30 days' notice. The Commission may in its absolute discretion extend the period of notice at any time before it expires.
- 28.2. Subject to Clause 16.14 (costs relating to the employment of Contractor's Staff) where the Commission terminates the Contract under this Condition, the Commission will indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Contractor by reason of the termination of the Contract.
- 28.3. If the Contractor seeks to rely on an indemnity under this Condition—
- (a) the Contractor must submit a fully itemised and costed list, with such supporting evidence as the Commission may require, of all such losses the Contractor alleges to have been reasonably and actually incurred as a result of termination under this Condition;
 - (b) the Contractor must prove that it has taken all reasonable steps to mitigate any loss arising from termination under this Condition, including, without prejudice to the generality of this duty, proof that the Contractor has terminated all contracts with Sub-contractors, agents, consultants and suppliers on the best available terms, cancelled all capital and recurring cost commitments, and reduced equipment and labour costs as appropriate; and
 - (c) Where the Contractor holds a relevant policy or policies of insurance, the Contractor must prove that it has reduced its losses by any insured sums available.
- 28.4. The Commission shall not be liable under this Condition to pay any sum which—
- (a) represents a loss of profit, indirect or consequential loss;

- (b) was claimable under the Contractor's insurance, where the Contractor failed to make a claim on that insurance, or failed to make a claim in accordance with the procedural requirements of that insurance; or
- (c) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable if the Contract had not been terminated prior to the expiry of the initial Contract Period.

29. Termination for Cause

29.1. The Commission may terminate the Contract for Default.

29.2. The Contractor must notify the Commission in writing immediately upon the occurrence of any of the following events and the Commission, without prejudice to any right or remedy it may have against the Contractor for breach or non-performance, may by notice in writing to the Contractor, terminate the Contract upon any such occurrence—

(a) where the Contractor is an individual or a firm, if—

- (i) a petition is presented for the bankruptcy of the Contractor or a criminal bankruptcy order is made against the Contractor or any person connected (within the meaning of section 256 of the Companies Act 2006) with the Contractor;
- (ii) the firm, any partner in the firm, or any person connected (within the meaning of section 256 of the Companies Act 2006) with the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors; or
- (iii) an administrator is appointed to manage the affairs of the Contractor;

(b) where the Contractor is a company, if—

- (i) the company undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- (ii) the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the Court makes an administration order or a winding-up order;
- (iii) the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a

- creditor or by the Court, or possession is taken of any of the company's property under the terms of a fixed or floating charge; or
- (iv) the company is unable to pay its debts within the meaning of Article 103 of the Insolvency (Northern Ireland) Order 1989, or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

(c) where the Contractor is an individual, firm or company, if

- (v) the Contractor brings into disrepute or diminishes public trust or the reputation of the Commission.

29.3. The Commission will only exercise the right under Clause 29.2(b)(i) within six months from the date of a change of control and the Commission will not do so where it has been advised of and agreed in advance to the particular change of control that occurs.

29.4. The Commission may terminate the Contract where the Commission becomes aware that the Contract has been subject to a substantial modification, within the meaning of regulation 72(8) of the 2015 Regulations, which would have required a new procurement procedure in accordance with regulation 72(9) of the 2015 Regulations;

29.5. The Commission may terminate the Contract in accordance with Clause 23.5.

29.6. At the time of contract award the Contractor, or any person who has in respect of the Contractor, administrative, management or supervisory powers or powers of representation, decision or control, had been convicted of an offence specified in Regulation 57(1) of the 2015 Regulations. Where the Commission terminates the Contract under this Condition, the Commission will give the Contractor a minimum of 30 days' written notice.

29.7. Where the Commission terminates the Contract under this Condition, and makes other arrangements for the provision of the Services/Goods, including the use of any new procurement procedure, the Commission shall be entitled to recover from the Contractor the reasonable costs of making those other arrangements and any additional expenditure necessarily incurred throughout the remainder of the Contract Period. In these circumstances, the Commission will make no payments to the Contractor until the final cost of making those other arrangements has been established.

30. Recovery Upon Termination & Transition of Services

30.1. Termination or expiry of the Contract shall be without prejudice to any other rights or remedies the Commission or the Contractor may be entitled to under the Contract or at

Law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination or expiry; and in particular the following Conditions and Clauses shall continue in full force and effect: 5, 9.10, 16.14, 18.6, 18.7, 18.8, 20, 21, 22, 24, 28.2, 28.4, 33, 35, 36, 37.4, 43, 46.

30.2. The Contractor shall, within three months after the Commencement Date, produce an Exit Plan for the orderly transition of the Services/Goods from the Contractor to the Commission or the Replacement Contractor in the event of the termination or expiry of this Contract. Within 10 Working days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan. If the Parties are unable to agree the contents of the Exit Plan with 20 Working days either Party may refer for resolution in accordance with the dispute resolution procedure set out at Condition 46.

30.3. The Exit Plan shall:

30.3.1. facilitate the transition of the Services/Goods from the Contractor to the Replacement Contractor and/or the Commission and shall ensure that there is no disruption in the supply of the Services/Goods and no deterioration in the quality of delivery of the Services/Goods; and

30.3.2. detail how the Services/Goods will transfer to the Replacement Contractor and/or the Commission including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Commission's technology components from any technology components run by the Contractor or any of the Contractor Staff (where applicable).

30.4. The Contractor shall keep the Exit Plan under review. Following any update, the Contractor shall submit the revised Exit Plan to the Commission for review and approval.

30.5. In the event of the termination or expiry of this Contract for any reason, the provisions of the Exit Plan shall come into effect and the Contractor shall free of charge co-operate with the Commission and/or the Replacement Contractor to facilitate the smooth migration of the Services from the Contractor to the Commission or the Replacement Contractor.

30.6. On reasonable notice, the Contractor shall provide to the Commission and/or to its Replacement Contractor (subject to the Replacement Contractor entering into reasonable written confidentiality undertakings with the Contractor), such material and

information as the Commission shall reasonably require in order to facilitate the preparation by the Commission of any invitation to tender.

- 30.7. On termination of this Contract (howsoever arising) and on satisfactory completion of the Exit Plan (or where reasonably so required by the Commission prior to such completion) the Contractor shall transfer, free of charge, to the Commission all files, records, documents, information, other material relating to the Contract, howsoever generated, in the possession or under the control of the Contractor and in the possession or under the control of any of the Contractor's Staff and all relevant data held by the Contractor in respect of the Contract which the Commission may reasonably need for future reference or to maintain performance of the Contract internally or through a Replacement Contractor. Such data shall be supplied electronically in the relevant Microsoft product (which is the Commission's standard software currently) or in such other electronic product as may be Commission's standard at the time.
- 30.8. In the event that the Contractor fails to comply with Clauses 30.7, the Commission may recover possession of any materials covered by this Condition and the Contractor grants to the Commission or the Commission's Representative a licence to execute recovery from the premises of the Contractor or the premises of the Contractor's Staff where any such materials may be held.
- 30.9. The Contractor may at the absolute discretion of the Commission be reimbursed for any reasonable costs incurred during the transition in the provision of the Services/Goods.

PART 6: COMPLIANCE

31. Notices

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

32. Right of Audit

- 32.1. The Contractor must keep and maintain, in a form which is capable of audit, until six years after the Contract has been completed, or such longer period as may be agreed between the Parties, full and accurate records of the Contract, all payments made by the

Commission, and all expenditure incurred by the Contractor and reimbursed by the Commission.

- 32.2. During the Contract Period and in the six years after the Contract has been completed, or such longer period as may be agreed between the Parties, the Contractor, on reasonable notice of a request, must on request afford to the Commission or the Commission's Representative such access to those records as may be required.
- 32.3. The Commission shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay provision of the Services/Goods by the Contractor or adversely affect the performance by the Contractor of its obligations under the Contract.
- 32.4. The Contractor shall provide the Commission and its Representatives with all reasonable co-operation, access and assistance in relation to each audit.
- 32.5. The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Condition.
- 32.6. The records referred to in this Clause include but are not limited to all invoices from the Contractor and the Contractor's Staff, order notes, delivery notes and work schedules.

33. Confidentiality

- 33.1. Except where it has the prior written approval of the Commission the Contractor must not disclose details of the Contract or any provision thereof to any persons other than the Contractor's Staff. Such disclosure must be made in confidence and must extend only so far as is necessary for the purposes of the Contract.
- 33.2. The Contractor must treat any information derived from or obtained in the course of the Contract or received from the Commission prior to the Commencement Date, as confidential and take all necessary precautions to ensure that the Contractor's Staff treat any such information as confidential and in doing so not disclose information obtained by them by reason of performing the Contract.
- 33.3. The Contractor shall keep confidential information in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the confidential information contained in those materials).
- 33.4. The Contractor shall notify the Commission of any loss or accidental disclosure of information derived or obtained in the course of the Contract, or received from the Commission prior to the Commencement Date as soon as such loss or disclosure becomes known to the Contractor.

- 33.5. The Contractor and the Contractor's Staff must refrain from making any public statement, including any public or press announcement, relating to the existence or performance of the Contract unless that statement is approved by the Commission.
- 33.6. Where in the opinion of the Commission it is considered necessary, the Contractor will ensure that their Staff or any person the Contractor has engaged in connection with the Contract will sign a confidentiality undertaking in a form specified by the Commission before commencing work in connection with the Contract.
- 33.7. The Commission has the right to disclose details of contractual documentation, processes, prices, performances and outcomes to meet legal, regulatory and public policy requirements, and pursuant to any other duty the Commission may have to provide information to the Northern Ireland Assembly.

34. Information Assurance

- 34.1. When handling information belonging to or supplied by the Commission, the Contractor will ensure the security of the data is maintained in line with the protective marking given to that data by the Commission, and by adopting such elements of the Commission Information Assurance Policy as may be agreed with the Commission or set out in the Specification.
- 34.2. The Commission reserves the right to inspect the physical location of the information store or processing and back-up arrangements, and to review at appropriate intervals to be agreed with the Contractor any information assurance processes and procedures in place.

35. Freedom of Information

- 35.1. The Contractor recognises that the Commission is a public authority within the meaning of the FOIA and EIR and that the Contractor is aware that certain information received by the Commission will be published under the Commission's publication scheme (available on request) and that all information received by the Commission may be subject to a future Request for Information under the FOIA or EIR and will be dealt with accordingly.
- 35.2. The Contractor must at its own expense assist and co-operate with the Commission to enable compliance with these legal requirements and must in particular ensure that where the Commission request information in relation to a Request for Information, the Contractor and the Contractor's Staff will —

- (a) provide the Commission with a copy of all relevant information in the possession or power of the Contractor in a form specified by the Commission within 7 days (or such other period as the Commission may specify) of that Request for Information; and
 - (b) provide all necessary assistance requested by the Commission to enable a response to the Request for Information to be made promptly and in any case within 20 Working days.
- 35.3. When considering a Request for Information, the Commission will carefully consider the release of any information the Commission holds, giving due regard to confidential information and any other relevant exemptions and exceptions. The Contractor may designate information provided to the Commission as ‘in confidence’ or ‘commercially sensitive’.
- 35.4. Where the Contractor sends to the Commission information regarded by the Contractor as confidential the Contractor must clearly identify the confidential element(s) and explain why each element is considered to be confidential. Routine marking of the documents as confidential will not be accepted.
- 35.5. The Contractor is aware that receipt by the Commission of information marked as confidential, or marked in any other way, does not imply that the Commission accepts any duty of confidence implied by virtue of that marking nor any obligation not to disclose that information if required by the FOIA or EIR.
- 35.6. The Contractor accepts that the Commission may be obliged to disclose any information provided by the Contractor in accordance with this Condition where directed to do so by the Information Commissioner, the Information Tribunal or the Court.
- 35.7. If the Contractor receives a Request for Information directly, which relates to information it holds on behalf of the Commission, the Contractor should not in any case disclose it and advise the requester that the Request for Information should be submitted to the Commission.

36. Data Protection Legislation

- 36.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Commission is the Controller and the Contractor is the Processor.
- 36.2. This Condition applies to any to any Personal Data processed by the Contractor in connection with its obligations under this Contract.

- 36.3. [Schedule 4](#) lists the processing which the Contractor is authorised by the Commission to undertake and the Contractor agrees that Personal Data will be processed only in accordance with the Commission's instructions.
- 36.4. The Contractor must ensure that Contractor Personnel do not process Personal Data except in accordance with this Contract and in particular [Schedule 4](#).
- 36.5. The Contractor may process Personal Data otherwise than in accordance with [Schedule 4](#) only if required to do so by Law; and if so required, the Contractor must notify the Commission before processing the Personal Data (unless such notification is itself prohibited by Law).
- 36.6. The Contractor must notify the Commission immediately if it considers that any of the Commission's instructions infringe the Data Protection Legislation.
- 36.7. The Contractor must take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel 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 Commission or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 36.8. The Contractor must provide all reasonable assistance to the Commission in the preparation of any Data Protection Impact Assessment which may be required prior to commencing any processing. Such assistance may include provision of:
- (a) a systematic description of the processing operations envisaged by the Contractor and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services/Goods;
 - (c) an assessment of any risks to the rights and freedoms of Data Subjects; and
 - (d) an explanation of the measures envisaged to address any risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

36.9. The Contractor must ensure that it has in place Protective Measures, which have where necessary been reviewed and approved by the Commission, to protect against Data Loss Events, taking account of:

- (a) the nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures.

36.10. The Contractor must not transfer Personal Data outside the UK unless the prior written consent of the Commission has been obtained and the following conditions are fulfilled:

- (a) the Commission or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with UK GDPR Article 46) as determined by the Commission;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) 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 Commission in meeting its obligations); and
- (d) the Contractor complies with any reasonable instructions notified to it in advance by the Commission with respect to the processing of the Personal Data.

36.11. The Contractor shall notify the Commission 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.

36.12. The Contractor's obligation to notify under Clause 36.11 shall include an obligation periodically to provide such further information to the Commission as becomes available to the Contractor.

- 36.13. Taking into account the nature of the processing, the Contractor must provide the Commission with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under Clause 36.11 (and within such timescales as may be reasonably required by the Commission) including by providing:
- (a) the Commission with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Commission to enable the Commission to comply with a data Subject Access Request within the relevant timescales set out in the Data Protection Legislation.
 - (c) the Commission, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Commission following any Data Loss Event;
 - (e) assistance as requested by the Commission with respect to any request from the Information Commissioner's Office, or any consultation by the Commission with the Information Commissioner's Office.
- 36.14. A Contractor to which Article 30 of the UK GDPR applies must maintain a complete and accurate record of all categories of processing activities carried out on behalf of the Commission.
- 36.15. The Contractor must allow for audits of its Data Processing activity by the Commission or the Commission's designated auditor.
- 36.16. The Contractor must designate a Data Protection Officer if the UK GDPR so requires.
- 36.17. Before allowing any Sub- processor to process any Personal Data related to this Contract, the Contractor must:
- (a) Notify the Commission in writing of the intended Sub- processor and processing;
 - (b) Obtain the written consent of the Commission;
 - (c) Enter into a written agreement with the Sub-processor under which the terms of this Condition are applied to the processor; and
 - (d) Provide the Commission with such information regarding the Sub-processor as the Commission may reasonably require.
- 36.18. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 36.19. The Contractor must, at the written direction of the Commission, delete or return all Personal Data (and any copies of it) to the Commission on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

- 36.20. The Commission may, in accordance with Condition 10, revise this Condition by replacing it with any applicable controller-to-processor standard clauses or similar terms forming part of an applicable certification scheme (which may be incorporated by attachment to this Contract).
- 36.21. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Commission, may in accordance with Condition 10, amend this Contract to ensure that it complies with such guidance.

37. Conflict of Interest

- 37.1. The Contractor will ensure that neither the Contractor nor the Contractor's Staff undertake or agree to undertake any activity which, taking account of the Services/Goods provided by the Contractor to the Commission, would create or might reasonably be thought to create a conflict of interest.
- 37.2. The Contractor must promptly notify and provide details to the Commission if an actual, potential or perceived conflict of interest happens or is expected to happen. The Commission may consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential conflict of interest.
- 37.3. Save as provided by this Condition the Contractor is at liberty to contract with other public and private sector organisations for the provision of goods and services.
- 37.4. Failure to comply with this Condition may constitute a material breach of the Contract and the Commission may exercise the rights conferred by Condition 29.1.

38. Protection of Employment

- 38.1. The Parties will comply with their obligations under the Protection of Employment Regulations (if any).
- 38.2. Not later than 12 months prior to the end of the Contract Period, the Contractor must fully and accurately disclose to the Commission all information that the Commission may reasonably request in relation to the Contractor's staff, including the total number of Contractor's Staff assigned to providing the Services/Goods, and as regards each of those Contractor's Staff:
- (a) their salary or other remuneration, future pay settlements and redundancy and pensions entitlements;
 - (b) their conditions of contract of employment/engagement and their job titles;

- (c) details of any disciplinary or grievance proceedings, current or likely to arise, and details of any claims current or threatened; and
 - (d) details of all collective agreements affecting them with a brief summary of the current state of negotiations with trade unions and of any current industrial disputes and claims for recognition by any trade union.
- 38.3. If the Contractor becomes aware that the information it provided pursuant to Clause 38.2 has become inaccurate or misleading, it must notify the Commission and provide the Commission with up to date information.
- 38.4. At intervals to be stipulated by the Commission (which shall not be more frequent than every thirty days), and immediately prior to the end of the Contract Period, the Contractor must deliver to the Commission a complete update of all such information which must be disclosed under Clause 38.2
- 38.5. At the time of providing the information disclosed pursuant to Clauses 38.2 and 38.4, the Contractor must warrant the completeness and accuracy of all such information and the Commission may assign the benefit of this warranty to any Replacement Contractor.
- 38.6. The Commission may use the information it receives from the Contractor pursuant to Clauses 38.2 and 38.4 for the purposes of the Protection of Employment Regulations, and any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period.
- 38.7. The Contractor shall provide the Replacement Contractor with such assistance as it may reasonably request.
- 38.8. The Contractor must indemnify and keep indemnified the Commission and any Replacement Contractor against any liabilities which the Commission or any Replacement Contractor may suffer or incur as a result of or in connection with—
- (a) the provision of information pursuant to Clauses 38.2 and 38.4; and
 - (b) any claim or demand by any of the Contractor's Staff or a trade union arising directly or indirectly from any act, fault or omission of the Contractor or the Contractor's Staff on or before the end of the Contract Period.
- 38.9. During the 12 months prior to the end of the Contract Period the Contractor must not (and must procure that any Sub-contractor will not) without the prior consent of the Commission (such consent not to be unreasonably withheld or delayed) —
- (a) amend or vary (or promise to amend or vary) the conditions of contract of employment or engagement of any of the Contractor's Staff assigned to providing the Services/Goods (other than where such amendment or variation has

- previously been agreed between the Contactor and the Contractor's Staff in the normal course of business);
- (b) terminate or give notice to terminate the employment or engagement of any of the Contractor's Staff assigned to providing the Services/Goods (other than for reasons of misconduct, qualification or capability); or
- (c) remove or vary the involvement of any of the Contractor's Staff assigned to providing the Services/Goods other than in the normal course of business.

39. Equalities and Human Rights

- 39.1. The Contractor must be an equal opportunities employer and service provider and must comply fully with equal opportunities requirements imposed by Law.
- 39.2. The Contractor must have due regard to the need to promote equality of opportunity between persons of different religious beliefs, political opinions, racial groups, ages, marital states, sexual orientations, genders, between those with a disability and those without, and between those with dependants and those without.
- 39.3. The Contractor must have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinions and racial groups.
- 39.4. The Contractor must not discriminate against anyone unlawfully, or treat anyone unfairly, on the grounds of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, trade union membership/non-membership/activities or part-time status.
- 39.5. The Contractor must comply with—
 - (a) the Equal Pay Act (Northern Ireland) 1970;
 - (b) the Sex Discrimination (Northern Ireland) Order 1976;
 - (c) the Disability Discrimination Act 1995;
 - (d) the Employment Rights (Northern Ireland) Order 1996;
 - (e) the Race Relations (Northern Ireland) Order 1997;
 - (f) the Fair Employment and Treatment (Northern Ireland) Order 1998;
 - (g) the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003;
 - (h) the Employment Equality (Age) Regulations (Northern Ireland) 2006;
 - (i) the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006; and
 - (j) any other Statutory Provision, now in force or subsequently brought into force, relating to discrimination in employment or in the provision of services and goods.

- 39.6. The Contractor must take all reasonable steps to secure compliance with this Condition by the Contractor's Staff.
- 39.7. The Contractor must provide the Contractor's Staff with appropriate training on equal opportunities, statutory requirements, and associated good practice.
- 39.8. The Contractor must carry out appropriate monitoring of the equal opportunities policies and employment practices it has in place and on request provide the Commission with details of these.
- 39.9. The Contractor is encouraged to fill any vacancies on the Contractor's Staff through a recruitment process which accords with best equal opportunities practice.
- 39.10. The Contractor recognises the obligations imposed on the Commission by the Human Rights Act 1998 and must not do anything, when performing the Contract, which may cause the Commission to contravene that Act.
- 39.11. Failure to comply with any part of this Condition may constitute a material breach of the Contract and the Commission exercise the rights conferred by Condition 29.1.

40. Environmental Requirements

- 40.1. The Contractor must perform the Contract in accordance with an environmental policy that aims to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone-depleting substances, and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and on request provide the Commission with details of this.
- 40.2. The Contractor must ensure that the materials used to provide the Services/Goods are so far as reasonably practicable re-used, re-cycled or incinerated for energy recovery.
- 40.3. If during the Contract Period the Contractor is of the reasonable opinion that a change to the Contract would reduce the overall environmental impact of the Contract then the Contractor must recommend such a change in accordance with the Change Control Procedure set out at [Schedule 2](#).

41. Health & Safety

- 41.1. The Contractor must promptly notify the Commission of any health and safety hazards that may arise in connection with the performance of provision of the Services/Goods.

- 41.2. While on the Premises the Contractor must supply the Services/Goods in a safe manner and in a way which will not cause any risk to the health or safety of any Commission Employees or any other persons.
- 41.3. The Contractor must comply with all relevant health & safety Law and any relevant health and safety policies operated by the Commission (available on request). The Contractor must ensure that the Contractor's Staff follow any instructions on health and safety which the Commission may from time to time issue.
- 41.4. The Contractor must immediately bring to the attention of the Commission details of any health and safety hazard or any incident occurring in the performance of the obligations under the Contract at the Premises where that incident causes any Personal Injury or damage to property, or damage to property which could give rise to Personal Injury.
- 41.5. The Contractor must ensure that all materials, plant or equipment used in the delivery of the Services/Goods are suitable, maintained in efficient working order and in good repair and are safe.
- 41.6. The Contractor must ensure that any materials used in the Contract are suitable and safe and are stored, handled, used and disposed of in a safe manner and in accordance with any relevant Law.
- 41.7. The Contractor must ensure that it does not by its acts or omissions cause the Commission to be in breach of any Law concerned with health and safety.
- 41.8. The Commission will promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the performance of the Contract.

42. Intellectual Property Rights

- 42.1. All intellectual property rights in any specifications, instructions or other material furnished or made available to the Contractor by the Commission will remain the property of the Commission.
- 42.2. All intellectual property rights in any specifications, instructions or other material prepared by or for the Contractor for use, or intended use, in relation to Contract will be the property of the Commission. The Contractor agrees to waive all moral rights relating to such material and that the Contractor will not reproduce, publish or supply any such material to any other person without prior approval of the Commission.

- 42.3. In providing the Services/Goods the Contractor must obtain the approval of the Commission before utilising any material which is or may be subject to any intellectual property rights other than those referred to in Clause 42.1.
- 42.4. Subject to Clause 42.5, the Contractor must indemnify the Commission against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from the use in the provision of the Services/Goods, or the use after delivery, of any material which involves any infringement or alleged infringement of the intellectual property rights of any third party.
- 42.5. Clause 42.4 shall not apply in respect of any material which the Commission has supplied to the Contractor or which the Commission has specified for use by the Contractor.
- 42.6. The Commission will indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use of material supplied by the Commission or which is specified for use by the Commission which involves any infringement or alleged infringement of the intellectual property rights of any third party.
- 42.7. Where any claim is made by a third party in respect of any material referred to in Condition 42.4 or 42.6, whichever of the Parties is required to provide an indemnity under those provisions shall have the right to conduct, or take over the conduct of, the defence of the claim and to any proceedings of action brought by the third party.
- 42.8. At the termination of the Contract the Contractor must immediately return to the Commission all materials, work or records held by the Contractor and related to or developed for the Contract, including any back-up media.

43. Patents

- 43.1. All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Contract Price.
- 43.2. The Contractor must indemnify the Commission in respect of all demands, actions, claims and proceedings which may be made or brought against the Commission, and any damages, cost and expenses incurred by the Commission in respect of any such supply or use.

44. Prevention of Corruption

- 44.1. The Contractor must not, and must ensure that it is a term of any contract or agreement with the Contractor's Staff that they do not—
- a) directly or indirectly offer, promise or give any person working for or engaged by us a financial or other advantage which would induce that person to perform improperly a relevant function or activity, or which would reward that person for improper performance of a relevant function or activity, or where it is known that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity;
 - b) directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
 - c) contravene any provision of the Bribery Act 2010;
 - d) contravene any Law in force in the United Kingdom creating offences concerning fraudulent acts;
 - e) commit or attempt to commit any common law offence concerning fraudulent acts;
 - f) defraud, attempt to defraud or conspire to defraud the Commission; or
 - g) offer to any Commission Employees any kind of corporate hospitality.
- 44.2. The Contractor must have an anti-corruption policy to prevent the Contractor's Staff from committing an act to which Clause 44.1 applies and the Contractor must enforce that policy where appropriate.
- 44.3. The Contractor must have an anti-corruption policy which must be disclosed to the Commission on request.
- 44.4. The Contractor must within 14 days of the Commencement Date, and annually thereafter, certify to the satisfaction of the Commission compliance with this Condition by the Contractor and the Contractor's Staff.
- 44.5. The Contractor must, if requested, provide the Commission with any reasonable assistance to enable the Commission to perform any activity required for the purpose of compliance with the Bribery Act 2010. The Commission will meet such reasonable costs as the Contractor may incur in respect of the provision of such assistance.
- 44.6. The Contractor will indemnify the Commission in respect of all claims, proceedings, costs, charges, demands, penalties, fines, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis) and damages (including damages or compensation paid by us on the advice of our legal advisers to compromise or settle any claim) which arise out of any breach of the above Clause 44.1 or any failure by the Contractor or the Contractor's Staff to comply with any bribery law.

44.7. Where the Contractor or the Contractor's Staff act in a manner which constitutes a breach of Clause 44.1 in relation to this or any other contract held by the Contractor with the Commission, the Commission may exercise any or all of the following options—

- (a) terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (b) recover from the Contractor the amount of value of any such gift, consideration or commission;
- (c) recover from the Contractor any other costs sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.

44.8. In exercising the rights and remedies conferred by this Condition, the Commission will—

- (a) act in a reasonable and proportionate manner, having regard to such matters as the gravity of the breach and the identity of the person who committed the breach; and
- (b) give all due consideration, where appropriate, to action other than termination of the Contract.

45. Performance Management

45.1. Key Performance Indicators ('KPIs') relating to the quality or standard of work delivered under the Contract will be agreed between the Parties prior to contract award.

45.2. KPIs will be periodically reviewed by the Parties to ensure their continued appropriateness.

45.3. The Contractor must effectively monitor its performance to ensure that the Commission's requirements under the Contract are being fully met, except for any matter in respect of which it has been agreed that the Commission will undertake the monitoring role.

45.4. The Commission may require performance review meetings to take place and the frequency of such meetings will be determined by the Commission's Representative.

45.5. If the Contractor is required to collate performance data, then this must be in user-friendly management information reports. The format, content and frequency of these reports must be agreed with the Commission and a report submitted to the Commission at least 5 Working days prior to each performance review meeting.

45.6. The Contractor will supply the Commission with such management information as it may from time to time request, and must do so within 5 Working days of any such request and at no cost to the Commission.

46. Dispute Resolution

46.1. Should there be any dispute between the Parties concerning any matter arising from or in connection with the Contract (except in relation to any right the Commission may have to terminate this Contract in accordance with Conditions 28 and 29 the dispute resolution procedure set out in this Condition shall be used.

46.2. Either of the Parties may issue a notification of dispute setting out the details of any disagreement arising out of or in connection with the Contract. Within 14 days of the issue of the notification of dispute, the matter will be referred to the Clerk/Chief Executive of the Commission and to the equivalent officer of the Contractor. The Parties agree to negotiate in good faith and to use all reasonable endeavours to reach a settlement within 30 days of the issue of the notification of dispute.

46.3. If the dispute cannot be resolved by the Parties within 30 days of the issue of the notification of dispute, it will be referred to mediation in accordance with Clause 46.5 unless—

- (a) the Commission considers that the dispute is not suitable for resolution by mediation; or
- (b) the Contractor does not agree to mediation.

46.4. The reference of a dispute to mediation shall not cause performance of the Contract to be suspended, ceased or delayed, and the Contractor and the Contractor's Staff will at all times continue to comply fully with the obligations imposed by the Contract.

46.5. The procedure for mediation will be as follows—

- (a) A mediator will be chosen by agreement between the Parties. If within 14 days after a request for mediation, the Parties have not agreed on a mediator or if the mediator agreed upon has not confirmed his willingness to act, the party which notified the dispute in accordance with Clause 46.2 must apply to the Law Society of Northern Ireland to appoint a mediator;
- (b) Within 14 days of the appointment of a mediator the Parties must meet with him or her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for the mediation;
- (c) Unless otherwise agreed between the Parties, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in

confidence and without prejudice to the rights of the Parties in any future proceedings;

- (d) If the Parties reach agreement on the resolution of the dispute, the terms of that agreement shall be reduced to writing and shall be binding when signed by the Parties;
- (e) In the absence of agreement, either of the Parties may invite the mediator to provide, on a without prejudice basis, a non-binding written opinion which shall not be used in evidence in any proceedings without the prior written consent of both Parties; and
- (f) With the exception the circumstances set out in [Condition 6](#), if the Parties fail to reach agreement within 60 days of the appointment of a mediator, the dispute may be referred to arbitration in accordance with Clause 46.7.

46.6. Subject to Clause 46.8, the Parties shall not commence court proceedings until the procedures set out in Clauses 46.2 and 46.5 have been completed, save that:

- (a) The Commission may at any time before court proceedings are commenced serve a notice on the Contractor requiring the dispute to be resolved in accordance with Clause 46.7 (arbitration);
- (b) If at any time the Contractor intends to commence court proceedings, the Contractor must serve notice of these intentions and the Commission shall have 21 days following receipt of such notice to serve a notice on the Contractor requiring the dispute to be resolved in accordance with Clause 46.7;
- (c) The Contractor may request that any dispute be resolved in accordance with Clause 46.7 and the Commission will not unreasonably withhold consent to such a request.

46.7. This Clause applies where the dispute is referred to arbitration—

- (a) The Parties must agree a written notice of arbitration ('the Arbitration Notice') which states the dispute referred to arbitration and sets out details of the issues to be resolved;
- (b) The arbitration shall be governed by the provisions of the Arbitration Act 1996, the London Court of International Arbitration procedural rules in force at the date that the dispute was referred to arbitration and otherwise in accordance with Northern Ireland law;
- (c) The tribunal shall consist of a sole arbitrator to be agreed by the Parties.
- (d) If the Parties fail to agree the appointment of the arbitrator within 10 days of agreeing the Arbitration Notice or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the Law Society of Northern Ireland; and

- (e) The arbitration proceedings shall take place in Northern Ireland and in the English language.

46.8. Nothing in this Condition shall prevent the Commission from obtaining injunctive relief against any anticipated or existing breach of the Contract or compelling the Contractor to perform the obligations imposed by the Contract.

47. Legal Compliance

47.1. The Contractor must be aware of and must comply with Law and industry best practice relevant to the performance of the Contract.

47.2. Failure to comply with Law relevant to the performance of the Contract may constitute a material breach of the Contract and the Commission may exercise the rights conferred by Condition 29.

SCHEDULE 1: Additional Provisions Applicable to the Supply of Goods

1. Status of this Schedule

- 1.1. This Schedule sets out additional Conditions applicable where the Contract requires the Contractor to provide the Commission with Goods. These conditions supplement and do not replace Conditions 1-47 with which the Contractor must also comply.

2. Provision of Goods

- 2.1. The Contractor will supply the Commission with the Goods in accordance with the requirements and Specification set out in the Contract.
- 2.2. The Goods must conform in full with the Specification set out in the Contract.
- 2.3. The Goods must be of sound quality, manufacture and design.
- 2.4. If requested to do so by the Commission, the Contractor must provide a sample of the Goods for evaluation and approval at the Contractor's cost and expense. The Goods supplied must be in accordance with this sample.
- 2.5. The Contractor must ensure that the Goods comply with all relevant Law and Quality Standards in force when the Goods are delivered.
- 2.6. The Goods must be suitable for the purpose to which they would normally be put and for any particular purpose mentioned in the Contract.
- 2.7. To the extent that it is a requirement of the Contract, the Contractor must ensure that the Goods are fully compatible with any equipment operated by the Commission.

3. Delivery of Goods

- 3.1. The Contractor will deliver the Goods to the Commission on a delivery date and at a location specified by the Commission and must comply with any instruction the Commission may give as to how and at what time deliveries may be made.
- 3.2. The Contractor must inform the Commission if access to the Premises to deliver the Goods is required. If access to the Premises is granted by the Commission, the Contractor must comply with any instruction the Commission may give relating to the Premises, including instructions relating to security, access, and health and safety.

- 3.3. If a delivery note for the Goods is signed, this is not an acknowledgement of the condition or quantity of the Goods and does not mean that the Goods have been accepted by the Commission.
- 3.4. If for any reason the Commission notifies the Contractor that the Commission cannot take delivery of the Goods on the agreed date of delivery (and cannot give reasonable notice to change to the delivery date) the Contractor will keep the Goods safely until the Commission again requests delivery. The Commission will be responsible for the reasonable costs of storage incurred by the Contractor.

4. Ownership and Risk

- 4.1. Without prejudice to any other rights or remedies the Commission may have under the Contract, ownership of the Goods and the risk of their damage or destruction will transfer from the Contractor to the Commission at the time when the Goods are delivered to premises controlled by the Commission.

5. Inspection, Rejection and Guarantee

- 5.1. Before delivery of the Goods the Contractor must at the request of the Commission allow the Commission to examine and carry out tests on the Goods (either complete or in process of manufacture. The Contractor will permit the Commission access to the Contractor's premises on reasonable notice during normal working hours. The Contractor will provide all reasonable assistance in relation to any such examination and tests free of charge. Neither a failure to make a complaint, nor any approval given by the Commission at the time of examining or testing the Goods will mean that the Commission has approved or accepted the Goods as suitable or that the Commission has waived any right or remedy in respect of the Goods.
- 5.2. The Commission may decline to accept the Goods after an examination or test if the Commission considers that the Goods do not meet the requirements of the Contract or because they are (or some of them are) defective. If the Commission declines to accept the Goods, the Contractor must replace the Goods with other goods which comply fully with the requirements of the Contract.
- 5.3. After the Contractor has delivered the Goods, the Commission may reject the Goods within a reasonable time after delivery if the Goods do not meet the requirements set out in the Contract or fail to conform to the approved sample or they are (or some of them are) defective or have been damaged in transit. The Commission may also choose to accept some of the Goods and reject the rest. If the Commission decides to reject the

Goods, then, without prejudice to any other remedies available under this Contract, the Commission may direct the Contractor to—

- (a) repair the Goods; or
- (b) replace the Goods with other goods which comply fully with the requirements of the Contract; or
- (c) refund any sum paid under the Contract in respect of the Goods.

5.4. The Contractor must carry out the direction given by the Commission under Clause 5.3 as quickly as practicable, and in any event within 5 Working days of such direction. If the Commission directs repair or replacement of the Goods, and the Commission is not satisfied with the repair or replacement, the Commission may reject the replacement Goods (or some of them) and the Contractor must refund any sum paid in respect of such goods as quickly as possible.

5.5. The Contractor will guarantee the Goods against defects in materials or workmanship for a period of 12 months (in this Schedule called ‘the Guarantee Period’).

5.6. If during the Guarantee Period the Commission notifies the Contractor of a defect in the Goods the Commission may, without prejudice to any other rights and remedies under this Contract, direct the Contractor to—

- (a) fix the defect; or
- (b) replace the defective Goods.

and the Contractor will do so as quickly as practicable and free of charge to the Commission.

5.7. The Contractor will bear the costs for the return of any Goods rejected by the Commission under this Condition and will not be responsible if the Goods are damaged or destroyed in transit.

6. Labelling and Packaging

6.1. The Contractor will pack and mark the Goods in a suitable manner in accordance with any instructions which the Commission may give and any relevant statutory requirements or industry practices which deal with the packaging and the transportation of goods.

6.2. Immediately after delivery, the Contractor will take away all packaging relating to the Goods which the Commission indicates that it does not require.

- 6.3. Where the Commission does not give an indication under paragraph 6.2, the Commission may re-cycle, re-use or dispose of any packaging materials or may subsequently require them to be uplifted by the Contractor free of charge.

SCHEDULE 2 - Change Control Following the Award of Contract

1. Variation

- 1.1. The Commission or the Contractor may at any time request a change to the Contract (in this Schedule called a change request).
- 1.2. A change request may consist of or may include a request for a change to the Contract Price.
- 1.3. A change request must be made in accordance with the change control procedure set out at paragraph 2 of this Schedule.
- 1.4. Unless otherwise agreed in writing, until such time as any change to the Contract is made, the Contractor must continue to provide the Services/Goods as if the change request had not been made.
- 1.5. Any discussions which may take place between the Parties in connection with a change request shall be without prejudice to the rights of either party.
- 1.6. Any work undertaken by the Contractor or the Contractor's Staff outside the Contract which has not been authorised in advance by a change to the Contract under this Schedule or been otherwise agreed by the Parties shall be undertaken entirely at the expense and liability of the Contractor.

2. Procedure

- 2.1. Where the Contractor receives a change request from the Commission, the Contractor must within three weeks of the date of the request submit to the Commission a Contract Variation Form
- 2.2. If the Contractor believes that the preparation of a Contract Variation Form requested by the Commission would necessitate significant additional allocation of resources, the Contractor may with the agreement of the Commission propose a paid study of the cost and implications of producing the requested change.
- 2.3. Where the Contractor has proposed a study under paragraph 2.2, the Commission will not require the Contractor to produce the Contract Variation Form while the Commission is considering the proposal.
- 2.4. The Contractor may make a change request to the Commission by submitting to the Commission a Contract Variation Form.
- 2.5. The Contract Variation Form may include, but not be limited to the following:

- (a) Provision for a contract variation number;
- (b) The title of the change;
- (c) The originator and date of the request for the change;
- (d) The reason for the change;
- (e) Full details of the change including any specifications;
- (f) The price, if any, of the change;
- (g) A timetable for implementation;
- (h) A schedule of payments if appropriate;
- (i) Details of the likely impact, if any, of the change on other aspects of the existing contract, including but not limited to:
 - (j) The term of this contract;
 - (k) The personnel to be provided;
 - (l) The charges;
 - (m) The payment profile;
 - (n) The documentation to be provided;
 - (o) The training to be provided;
 - (p) Service Levels;
 - (q) Working arrangements;
 - (r) Other contractual issues;
- (s) The date of expiry of the validity of the contract variation, which shall usually be at least 10 Working days from the date of submission.

2.6. For each Contract Variation Form submitted the Commission will allocate a sequential number to the Contract Variation Form, evaluate the Contract Variation Form, requesting further information if necessary, and before the expiry of the Contract Variation Form shall either—

- (a) Approve the Contract Variation Form return it to the Contractor; or
- (b) Notify the Contractor of the rejection of the Contract Variation Form by the Commission.

2.7. A Contract Variation Form signed by the Parties shall constitute an amendment to the Contract.

SCHEDULE 3: VARIATION

1. Grounds for Variation.

a.

- 1.1. The over-riding needs of the Northern Ireland Assembly;
- 1.2. A significant and unforeseen change to the services provided by the Commission to members of the Northern Ireland Assembly;
- 1.3. Amendments to the Northern Ireland Act 1998 which alter the functions of the Commission.
- 1.4. Where in the opinion of the Commission the risks arising from the Contract have increased, the Commission may seek to amend the minimum level of insurance cover which the Contractor must affect and maintain as detailed in [Condition 21](#).
- 1.5. Alterations to the needs of the Commission by reason of changes to internal policies and/or any relevant legislation affecting the Services/Goods required under this contract. These changes will not constitute substantial changes or alter the overall nature and scope of the Contract.
- 1.6. *Use 1.6-1.12 if extension of contract is an option* [Subject to the Contractor's satisfactory performance, a decision by the Commission may be made to extend the Contract beyond the initial [insert the duration of contract in months] months provided for in Clause 4.1. After the Initial Contract Period of [insert the duration of contract in months] months from the Commencement Date, there will be [insert number of periods] optional extension periods, each with a maximum duration of [insert number of months] months. This will be at the discretion of the Commission and dependent on the need identified at the relevant time, and the Contractor's performance in the preceding period.
- 1.7. The Commission may, no later than [insert the number of months (minimum 3 months)] months prior to the Initial Contract Period Expiry Date, give notice in writing to the Contractor for any period up to and including 12 months, commencing from the Initial Contract Period Expiry Date. This will be the First Extension Period.
- 1.8. Thereafter, both Parties may agree in writing to extend the Contract for [insert number of periods] further periods of up to a maximum period of 12 months beyond the end of the preceding extension period, provided the Commission gives notice in writing no later than [insert the number of months (minimum 3 months)] prior to the expiry of any

current extension period, to invite the Contractor to agree to accept the proposed extension.

- 1.9. The Contractor shall notify the Commission in writing within a reasonable timescale, as specified by the Commission, of its decision as to whether it agrees to accept any proposed extension of the Contract.
- 1.10. On agreement by both Parties, the costs for any Contract Extension Period may be reviewed. Any increase in proposed costs will be limited to a maximum of the CPI rate for the relevant period of time.
- 1.11. If it is agreed by both Parties that the contract is to be extended, the provisions of the contract will apply for the duration of any such extended period.
- 1.12. If the Contractor does not agree in writing to accept any proposed extension of the Contract within the timescale as specified by the Commission, 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 Expiry Date).]

b.

- 1.1 Alterations to the Contractor's performance of the Contract by reason of changes to the Law affecting the Services/Goods provided under the Contract. These changes will not constitute substantial changes or alter the overall nature and scope of the Contract.

2. Nature and Scope of Variation

- 2.1. Changes to the design of the Services/Goods.
- 2.2. Changes to the quantities of the Services/Goods required by the Commission.
- 2.3. Changes to the delivery of the Services/Goods.
- 2.4. Changes to the applicable quality standards the Commission requires the Contractor to meet.
- 2.5. Changes to the working conditions of the Contractor's Staff.

3. Contract Variation Form Template



Northern Ireland
Assembly

VARIATION TO CONTRACT FORM

CONTRACT: [Insert details]

CONTRACT REF:

VARIATION NO:

DATE:

BETWEEN: The Northern Ireland Assembly Commission and [Contractor name]

1. The Contract is varied as follows:
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: **The Northern Ireland Assembly Commission**

Full Name:

Position:

Date:

For: [Contractor name]

Signed:

Full Name:

Title:

Date:

SCHEDULE 4 - Schedule of Processing, Personal Data and Data Subjects

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

Description	Details
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under UK law to preserve that type of data	

SCHEDULE 5 - Specification

[Insert Business Area Specification]

SCHEDULE 6 - Tender Bid

[Insert Tenderer's received bid]

SCHEDULE 7 - Pricing

[Insert Pricing Schedule]

SCHEDULE 8 - Clarifications

[Insert Tender and Post-Tender Clarification Logs]