



# **Armagh City, Banbridge and Craigavon Borough Council**

## **TERMS AND CONDITIONS**

### **Services**

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## TERMS & CONDITIONS – SERVICES

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions “the Contract” means the Contract concluded between the Council and the Contractor, including all specifications, plans, drawings, instructions to tender, tender documents and all other documents that are relevant to the Contract and are listed in the schedule and also such of these conditions as are included in the terms and provisions of the Contract.
- 1.2 For the purpose of this Contract except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria	means any acceptance criteria for the purpose of Clause 10 herein;
Affected Party	means the party seeking to claim relief in respect of Force Majeure Event;
Authorised Officer	means the person duly authorised by Council to act within the purposes of this provision;
Commercially Sensitive Information	means the information listed by the Contractor as being Commercially Sensitive in accordance with the Freedom of Information Statement and Clause 24;
Confidential Information	means the information provided by either party to the other in any manner or form that requires the protections as set out in Clause 23, provided that each item of information would appear to a reasonable person to be confidential or is specifically stated by the disclosing party to be confidential;
Contract	means the documents as set out in Clause 3.1;
Contract Documents	means the Contract and any Order placed thereunder; Contract Period means the period from this Contract taking effect until its expiry in accordance with Clause 2 or its earlier termination;
Contract Price	means the price exclusive of VAT, payable to the Contractor by the Council under the Contract for the full and proper performance by the Contractor of his part of

	the Contract as determined under the provisions of the Contract;
Contractor	means the person who undertakes to supply the Goods or render such other services for the Council as is provided by the Contract;
Council	means Armagh City, Banbridge and Craigavon Borough Council;
Equipment	means the Contractor's equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Contract;
Environmental Information Regulations	Means the Environmental Information Regulations 2004;
Force Majeure	means an act of God, disease, strike, lockout, fire or other accident or incident of any nature beyond the control of the relevant party;
Freedom of Information	means the Freedom of Information Act 2000;
Goods	means all goods which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service;
Invitation to Tender	means the Invitation to tender issued by the Council for the supply of Goods and/or Services;
Key Personnel	means those persons named in the Specification as being key personnel;
Order	means an Order placed by the Council for the supply and delivery of Goods and/or Services at the Contract Price. The Council shall allocate an official number for each Order;
Premises	means the location where the Services are to be performed, as specified in the Specification;
Samples	means any samples submitted to the Council as part of the procurement procedure leading to the award of the contract;
Schedule	means a schedule attached to the Contract;

Services	means any Services supplied or to be supplied by the Contractor in accordance with this Contract;
Specification	means the description of the service to be performed under the Contract;
Sub-Contractor	means the third party with whom the Contractor enters into a sub-contract or its servants or agents and any third party with whom that third party enters into a subcontract or its servants or agents;
Contractor Personnel	means all employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor or their agents, consultants and contractors.

1.3 Any decision, act or thing that the Council is required or authorised to take or do under the Contract may be taken or done by any person authorised either generally or specifically, by the Council to take or do that decision, act or thing, and that person shall be the “Authorised Officer” and shall be the person named in the schedule or his appointed representative.

1.4 The Council shall deem that any communication sent to the Contractor by name at the last known place of abode or business of the Contractor to have been received, unless it is returned by the Post Office undelivered, to have been given or made at the time when the letter would in the ordinary course of post be delivered.

## **2 COMMENCEMENT AND DURATION**

2.1 The commencement date of the Contract and the Contract Period shall be on the date or dates specified in the Invitation to Tender or Schedule.

## **3 SCOPE**

3.1 The Contract shall comprise of the following: -

- the Terms and Conditions of Contract
- the Special Conditions; if any
- the Specification
- the Tender submitted by the Contractor in response to the Invitation to Tender including any Method Statement
- Contract Price

3.2 In the event of any conflict or inconsistency between these documents the following order of precedence shall be deemed to apply:

- the Terms and Conditions
- the Special Conditions; if any
- the Specification
- the Tender submitted by the Contractor in response to the Invitation to Tender
- the Order

3.3 This Contract together with any Order issued hereunder constitutes the entire understanding between the parties relating to the subject matter of this Contract and supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

#### **4 PROVISION OF SERVICES**

4.1 The Contractor shall provide the Services during the Contract Period in accordance with the Council's requirements as set out in the Specification and the terms of the Contract. The Council shall have the power to inspect and examine the performance of the Services at any reasonable time or, provided that the Council gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

4.2 The Contractor should apply and have regard to all relevant legislation and regulations all times during delivery of the Services.

4.3 If the Council informs the Contractor that the Council considers that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense reschedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

4.4 Subject to the Council providing approval, timely provision of the Services shall be of the essence of the Contract, including but not limited to commencing the provision of the Services within the time agreed or on a date to be specified by Council.

4.5 Without prejudice to any other rights and remedies the Council may have pursuant to the Contract, the Contractor shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Contractor's delay or failure in the performance of its obligations under the Contract and which delay the Contractor has failed to remedy following reasonable notice from the Council. For the avoidance of doubt, the Contractor's obligation to reimburse the Council under this clause does not arise to the extent that the delay was caused by a delay or failure by the Council to provide approval.

## **5 MANNER OF CARRYING OUT THE SERVICES**

- 5.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.
- 5.2 The Contractor shall make no delivery of Equipment nor commence any work on the Council's Premises without obtaining the Council's prior approval.
- 5.3 All Equipment brought onto the Council's premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Council's Premises will remain the property of the Contractor. The Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Council.
- 5.4 The Contractor shall ensure that the Council's premises are appropriate to contain and operate the Equipment and are suitably secure for the storage of the Equipment. Any improvements made to ensure equipment is suitably and securely stored will be at the Contractor's expense. The onus is on the Contractor to inspect such premises and acknowledge that the Council will not be liable for any difficulties or for it not proving to the case that they are suitably secure.
- 5.5 The Contractor shall maintain all their items of Equipment within the Council's Premises in a safe, serviceable and clean condition.
- 5.6 The Council shall have the power at any time during the performance of the Services to order in writing that the Contractor:
- (i) remove from the Council's premises any Equipment which in the opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
  - (ii) if the Council has ordered the Contractor to remove any item of Equipment in accordance with clause 5.7 below, to replace such item with a suitable substitute item of Equipment. Council opinion in this regard is deemed to be conclusive.
- 5.7 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the services in order to leave the Council's Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Council's Premises or any objects contained thereon, other than fair wear and tear, caused to the Council's Premises or any objects contained thereupon which is caused

by the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.

- 5.8 Access to the Council's Premises shall not be exclusive to the Contractor but shall be limited to the Contractor's personnel as are necessary to perform of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Council's Premises as the Council may reasonably require.

## **6 STANDARD OF WORK**

- 6.1 The Contractor shall at all times comply with the Quality Standards as set out in the Specification, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of Services with the Authorised Officer prior to execution, and shall execute the Contract with reasonable care and skill and in accordance with good industry practice.
- 6.2 The Contractor warrants and represents that all of the Contractor's personnel assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- 6.3 The introduction of new methods or systems that impinge on the provision of the Services shall be subject to prior approval.
- 6.4 The signing by the Authorised Officer (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

## **7 KEY PERSONNEL**

- 7.1 Key Personnel as defined in the Tender submitted by the Contractor shall not be released from providing the Services without the agreement of the Council, except by reason of long-term sickness, termination of employment or other extenuating circumstances.
- 7.2 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.3 The Council shall not unreasonably withhold or delay its agreement under clause 7.1 or clause 7.2. Such agreement shall be conditional on appropriate arrangements being

made by the Contractor to minimise any adverse impact on the Contract that could be caused by a change in Key Personnel.

## **8 CONTRACTOR'S PERSONNEL**

- 8.1 If and when directed by the Council, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.
- 8.2 The Contractor's Personnel, engaged within the boundaries of any of the Council's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 8.3 If the Contractor shall fail to comply with clauses 8.1 and 8.2 above the Council (whose decision shall be final and conclusive) may decide that such failure is prejudicial to the interests of the Council and if the Contractor does not comply with the provisions of clauses 8.1 and 8.2 within a reasonable time of receiving the written notice from the Council so to do then the Council may terminate the Contract provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 8.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council and as to whether the Contractor has failed to comply with this Clause 8 shall be final and conclusive.
- 8.5 The Contractor shall bear the cost of any notice, instruction or decision of the Council under this clause.

## **9 CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TUPE**

- 9.1 Where requested to do so the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE), as the Council may require, to the Council and/or to any other person authorised by the Council who is to be invited to submit a tender in relation to the provision of similar Services, within 10 days of the request.
- 9.2 During the 8 month period preceding the expiry of this Contract or within any period of notice of Termination or notice of Break, the Contractor shall not without the prior written agreement of the Council, which shall not be unreasonably withheld or delayed:-
- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or

(b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.

9.3 The Contractor shall not knowingly do or omit to do anything which may adversely affect an orderly transfer of responsibility for provision of the Services.

## **10 LOSS OR DAMAGE**

10.1 Clause 10 applies to any loss or damage which arises out of or is in any way connected with the performance of the Contract and shall include, for the avoidance of doubt and without prejudice to the generality of the foregoing, breaches of Clauses 9, 22.1 and 25.1.

10.2 The Contractor shall, without delay and at his own expense, replace or make good to the satisfaction of the Council, or, if the Council requires, compensate the Council for, any loss or damage.

10.3 If any loss or damage:-

- (i) was not caused or contributed to by the Contractor's neglect or default, whether by act, omission or otherwise (for the purposes of this clause 10.3, "Contractor" shall include his servants, agents or sub-contractors) , he shall be under no liability under this clause 10;
- (ii) was in part caused or contributed to by the Contractor's neglect or default, whether by act, omission or otherwise, and in part by:-

(a) the act, neglect or default of any other person; and/or

(b) circumstances outside both the Contractor's control and his reasonable contemplation the Contractor's liability under this clause 10 shall, except in relation to any loss or damage arising out of the Contractor's fraud or breach of clause 32 or 27 (to which this clause 10.3(ii) shall not apply), be limited to the proportion of the loss or damage which it is just and equitable for the Contractor to pay.

10.4 In this clause 10 loss or damage includes:-

- (a) loss or damage to property;
- (b) personal injury and death;
- (c) loss of profit or loss of use;
- (d) any other loss.

## **11 INSPECTION OF PREMISES**

- 11.1 Where applicable the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract.
- 11.2 The Council shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 11.1.

## **12 GOODS**

- 12.1 Where applicable to the Contract, the Contractor shall at its own cost ensure that all Goods supplied to the Council under the Contract shall be compliant with:
- the Specification
  - any requirement of any legislation
  - any European Union specification or Code of Practice for British Standard specification or British Standard Code of Practice or European Union equivalent and that all Goods supplied are fit for purpose.
- 12.2 The Contractor shall ensure that any Goods supplied hereunder will correspond in all respects with any Samples.
- 12.3 The Council shall have the right where in its sole opinion the Goods do not correspond in all respects with any Samples to reject those Goods.
- 12.4 Where under the terms of the Contract any Acceptance Criteria have been specified, the Council shall not be obliged to accept the Goods unless and until the Contractor has demonstrated that all Acceptance Criteria for the Goods have been met and the Council has issued an acceptance letter.
- 12.5 The Council may reject any Goods that in its sole opinion believes are not of satisfactory quality or are not in accordance with the requirements of the Contract or which fail to satisfy the Acceptance Criteria.
- 12.6 In all cases of rejection, the Contractor shall, at his own expense, remove the rejected Goods and replace them as the Council directs with Goods that comply with the Specification.
- 12.7 Unless otherwise required, the Contractor shall guarantee Goods for a period of not less than 12 months from them being put into service or 18 months from delivery. If within this period the Council notifies the Contractor of any defect in Goods supplied, the Contractor shall as quickly as possibly remedy the defect without cost to the Council.

12.8 If the Council shall within the guarantee period whether as set out in Clause 12.7 or in any other guarantee or manufacturer's guarantee or other guarantee howsoever provided, or within thirty days thereafter give notice in writing to the Contractor of any defect in any of the Goods which may have arisen during the guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights or remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council may elect) without cost to the Council.

### **13 MISTAKES IN INFORMATION**

13.1 The Contractor shall be responsible for the accuracy of all drawings; documentation and information supplied to the Council by the Contractor in connection with the provision of the Goods and shall pay the Council any extra costs associated with discrepancies, errors and omissions included but not limited to any loss or damage suffered by the Council.

### **14 CONTRACT PRICE**

14.1 In consideration of the performance of the Contractor's obligations under the Contract by the Contractor, the Council shall pay the Contract Price in accordance with Clause 15.

14.2 The Contract Price shall remain fixed (not subject to variation), unless the Council agrees that there has been a Change in Legislation that could not be foreseen as per Clause 35, for the Contract Period or for 12 months from the commencement date of the Contract Period if the Contract Period is more than 12 months.

14.3 Thereafter, if by reason of any rise or fall on the costs (ruling at the date of tender) of the materials, labour, transport or the carrying out by the Contractor of statutory obligations the cost of the Contractor performing his/its obligations under the Contract shall be increased or reduced, the amount of such increase or reduction be added to or deducted from the price quoted in the Contract documents, as the case may be, provided that no account shall be taken of any amount by which any costs incurred by the Contractor has been increased by the default, act or omission of the Contractor.

14.4 Unless otherwise specified, the Contractor shall only be entitled to one price increase for each year of the remainder of the Contract Period and any subsequent period arising from the Council having exercised its option to renew the Contract and any price increase shall be in line with the All Items Retail Price Index.

14.5 All requests for price increases must be made in writing by the Contractor and sent to the Authorised Officer not less than two months prior to the expiry of the first year of the Contract Period and thereafter not less than two months before each anniversary

of the commencement date of the Contract Period (and any subsequent period, if applicable).

- 14.6 Any price increase under this clause shall not be admissible unless the aforementioned provision is adhered to and unless the Contractor shall within 28 days of it being requested to do so, furnish such evidence as that the Council may reasonably require to substantiate the claim.

## **15 INVOICES AND PAYMENT**

- 15.1 The charges payable by the Council in respect of the provision of Services shall be determined by reference to the Contract Price Schedule and the Services comprised in the Order and delivered to the Council in accordance with the terms of this Contract.
- 15.2 The charges are exclusive of Value Added Tax. The Council shall pay the Value Added Tax on the charges at the applicable rate.
- 15.3 The Council may reduce payment in respect of the Services that the Contractor, in the sole opinion of Council, has failed to provide or has provided inadequately.
- 15.4 The Council shall pay any undisputed sums within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed and Services provided to the satisfaction of the Council.
- 15.5 Payment will be by BACS.
- 15.6 In accordance with Clause 35 and in the event that the Council agrees that a Change in Legislation could not have been foreseen and the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a Change of Legislation the provisions of Clause 14 shall apply.

## **16 VARIATIONS**

- 16.1 The Contractor shall not alter any of the Services except as directed by the Council, but the Council shall have the right from time to time during the Contract, by written notice to the Contractor change the specification and add to or omit, or otherwise vary, the Services including the order in which the Services are to be delivered. Such a change is herein after called 'a Variation'. The Contractor shall carry out variations as though they were contained within the Contract.
- 16.2 In the event that the Contractor is unable to carry out the Variation within a reasonable timescale in accordance with Clause 16.1 above, the Council may terminate the Contract and recover from the Contractor the amount of any loss or damage suffered by the Council resulting from the termination.

- 16.3 In the event of any Variation of the Specification requiring an amendment to the Contract Price, such amendment shall be calculated by the Council and agreed in writing with the Contractor. The amount should fairly reflect the nature and extent of the Variation. The Variation shall not take effect until the revised price has been agreed. Failing agreement the matter shall be determined by negotiation or mediation as per Clause 40.
- 16.4 If in the opinion of the Contractor, any such Variation is likely to prevent the Contractor from fulfilling any of their obligations under the Contract, the Contractor shall notify the Council immediately whereupon the Council shall inform the Contractor within ten working days whether or not the said Variations shall be carried out. Until the Council confirms such instructions in writing they shall be deemed not to have been given.

## **17 USE OF DOCUMENTS, INFORMATION etc.**

- 17.1 The Council reserves the general right to disclose information about this Contract, unless otherwise agreed in writing.
- 17.2 Except with the consent in writing of the Council, the Contractor shall not disclose or make use of any of the information issued by or on behalf of the Council in connection with the contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any Sub-Contractor, Contractor or other person concerned with same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract.
- 17.3 Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Council for the purposes of the Contract remain the property of the Council.
- 17.4 The Contractor shall retain, produce when required (and explain as necessary) such accounts, documents (including working documents) and records as the Council, or the Contract Manager, may request, in connection with the Contract, at any time during the Contract and for a period of 2 years from the date of expiry or termination or such longer period as may be agreed between the Council and the Contractor in writing at or before the commencement of the Contract; and afford such facilities as the Council may reasonably require for his representatives to visit the Contractor's premises and examine the records under this Condition.

## **18 MEETINGS AND REPORTS**

- 18.1 When requested the Contractor shall be available to attend meetings at his own expense.
- 18.2 Where progress/performance reports are required to be submitted under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or otherwise agreed between the parties.

## **19 HEALTH AND SAFETY**

- 19.1 The Contractor's attention is drawn to the provision of the Health and Safety at Work (Northern Ireland) Order 1978 and in particular to Article 4 "General Duties of Employers to their Employees".
- 19.2 The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practicable, the Health and Safety of all persons who may be affected by the services provided under the Contract. Before commencing work on the Contract, the Contractor shall prepare a written policy of the health and safety of staff employed in connection with the Contract together with written organisational arrangements for carrying out the policy.
- 19.3 The Contractor shall make all necessary tests and examinations prior to the delivery of Goods to ensure that they are designed, constructed and tested without risk to the Health and Safety of persons using the Goods and also ensure that adequate information has been supplied about the use of the Goods. The Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer and incur as a result of or in connection with any breach of this condition.
- 19.4 The Contractor shall notify the Council of any Health and Safety hazards of which it is aware or which may arise in connection with the performance of this Contract.

## **20 INDEMNITY AND INSURANCE**

- 20.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and remedies under the Contract) the Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council or any Third Party may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person or in respect of any consequential loss which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Contractor.

- 20.2 The Contractor shall be insured with a reputable insurance company and be in possession of a policy or policies providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 20.3 The Contractor shall hold and maintain all necessary insurances that are required for the performance of the contract including but not limited to, Professional Indemnity, Public Liability, and Employer's Liability insurance cover and shall ensure that all professional consultants and Sub-Contractors involved in the provision of the Goods hold and maintain appropriate cover.
- 20.4 In the event of Council requiring Professional Indemnity Insurance to be held by the Contractor in relation to their provision of Services, the Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause 20, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than the amount specified in the Schedule or Invitation to Tender for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of (six) years following the expiration or earlier termination of the Contract.
- 20.5 The Contractor shall indemnify the Council to a limit specified in the Schedule or Invitation to Tender in respect of any one incident or series of incidents arising out of his performance of the Contract against all claims, proceedings, actions, damages, legal expenses and any other liabilities in respect of any loss of or damage to property which is caused directly or indirectly by any act or omission of the Contractor save indemnity in respect of death of personal injury, or loss, or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his Staff or Sub-Contractors, or by any circumstances within his or their control.
- 20.6 The Contractor shall at the request of the Council produce policy documentation.

## **21 WARRANTIES AND REPRESENTATIONS**

- 21.1 The Contractor warrants and represents that;
- 21.1.1 The Contractor has full capacity and authority and all necessary consents to enter into and perform this Contract;
- 21.1.2 The Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence.

## **22 INTELLECTUAL PROPERTY**

- 22.1 All patents, copyright and other intellectual property rights in all documents (including but not limited to drawings, working notes and books), transparencies, prints, photographs, negatives, tapes, discs, software information or other items created or supplied by the Council to the Contractor in connection to this Contract shall remain the property of the Council. All originals and copies thereof shall be delivered to the Council upon completion of the Contract or earlier upon receipt of the Council's written notice to the Contractor.
- 22.2 All patents, copyright and other intellectual property rights relating to the Services, shall vest in the Council and the Contractor waives in favour of the Council all moral rights therein.
- 22.3 The ownership of and sole right to the copyright in any document prepared by the Contractor in connection with the Contract shall be vested in the Council from the commencement of the preparation of the Contract
- 22.4 The Contractor shall not have the right to use any data, reports, drawings, specifications, designs, invention, plans, programs or other material referred to in Clause 22.1 and under Clause 22.3 for its own commercial purposes unless there has been prior written consent by Council and then only in compliance with such terms as may be imposed.
- 22.5 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Council, the Services will not infringe any patent, trademark, registered design, copyright or other right in the nature of intellectual property of any Third Party. The Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Clause.
- 22.6 All intellectual property rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material;
- 22.6.1 furnished to or made available to the Contractor by the Council shall remain the property of the Council;
- 22.6.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to the Council and the Contractor shall not without prior written consent from the Council use or disclose any such intellectual property and intellectual property rights or any other information (whether relevant to this Contract or not) which the Contractor may obtain in performing the Contract except information which is in the public domain.

22.6.3 The Contractor must ensure that any servants, agents, suppliers and Sub-Contractors engaged by them in relation to the provision of this Contract also adhere to these Conditions, by way of international and authorised release under this Contract.

22.7 The provisions of this Clause shall apply during the Contract period and continue indefinitely after its expiry or termination.

## **23 TRANSFER AND SUB-CONTRACTING**

23.1 The Contractor shall not assign, transfer, novate, sub-contract or otherwise dispose of this contract or any part thereof without the previous consent in writing of the Council.

23.2 Subject to permission being obtained to sub-contract the Contractor shall remain responsible for any acts and omissions of its Sub-Contractors as though they were its own.

23.3 The Contractor shall forthwith inform the Council in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Contractor (being a company as defined in the Companies (NI) Order 1986-1990) shall inform the Council of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Council for information arising from this Condition.

## **24 NATIONAL FRAUD INITIATIVE**

24.1 As a Local Government organisation, we may sometimes need to process or share your data to pursue our legitimate business interests, for example:-

- to prevent fraud;
- National Fraud Initiative (NFI) (further information can be found at <https://www.gov.uk/government/collections/national-fraud-initiative>;
- administrative purposes including compliance with external funding bodies requirements or reporting potential crimes.

The nature of our legitimate interests are to ensure the organisation meets external or internal governance obligations. We will never process your data where these interests are overridden by your own interests.

## 25 CONFIDENTIALITY

25.1 The Contractor acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents remains the property of the Council.

25.1.1 Each Party: -

- (i) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (ii) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

25.1.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract: -

- (i) is given only to such of the staff and professional advisers or consultants engaged to advise it in connection with the Contract as is strictly necessary;
- (ii) for the performance of the Contract; is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisers or consultants otherwise than for the purposes of the Contract.

25.1.3 Where it is considered necessary in the opinion of the Council, the Contractor shall ensure that staff or such professional advisers or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.

25.2 The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Contract.

25.3 The provisions of Clause 25.1 shall not apply to any Confidential Information received by one Party from the other: -

- (i) which is or becomes public knowledge (otherwise than by breach of this Clause);
- (ii) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- (iii) which is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iv) is independently developed without access to the Confidential information; or
- (v) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under Freedom of Information pursuant to Clause 26.

25.4 Nothing in this Condition shall prevent the Council: - disclosing any Confidential Information for the purpose of: -

- (i) the examination and certification of the Council's accounts;
- or
- (ii) any examination pursuant to Section 7 Local Government N.I. Order 2005 or disclosing any Confidential Information obtained from the Contractor:-
- (i) to any other department, office or agency of the Government; or
  - (ii) to any person engaged in providing any Goods or Services to the Council for any purpose relating to or ancillary to the Contract. Provided that in disclosing information, the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

25.5 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of intellectual property rights.

25.6 In the event that the Contractor fails to comply with Clause 25 the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

## **26 FREEDOM OF INFORMATION**

26.1 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act and Environmental Information Regulations and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with information disclosure requirements.

26.2 The Contractor in signing the tender document acknowledges the possibility of disclosure under the provisions of the Freedom of Information Act and the Environmental Information Regulations.

- 26.3 The Council shall be responsible for determining at its absolute discretion whether Commercially Sensitive Information or any other information:
- (i) is exempt from disclosure in accordance with the provisions of the Freedom of Information Act
  - (ii) is to be disclosed in response to a Request for Information; and in no event should the Contractor respond directly to a Request for Information unless expressly requested to do so by the Council.
- 26.4 All information provided by the Contractor will be considered as confidential up to and including the evaluation process. Beyond this stage the provisions of the Freedom of Information Act and the Environmental Information Regulations will govern what the Council is obliged to disclose. The evaluation process will be deemed to have been completed when the Council has made its decision or Authorised Officer has decided that the particular procurement exercise is not viable.
- 26.5 Information provided in completed tender documents could be disclosed in response to a Freedom of Information request. The Council will proceed on the basis of disclosure unless an appropriate exemption applies. Decisions with regard to disclosure will be taken by appropriate Officers within the Council having due regard to the exemptions available and the Public Interest in maintaining the exemption.
- 26.6 Contractors are required to highlight information that they include in completed Tender documents, which they consider to be commercially sensitive or confidential in nature and should state the precise reasons why that view is taken, in particular issues concerning trade secrets and commercial sensitivity should be highlighted. Contractors are advised against recording unnecessary information.
- 26.7 In accordance with the Lord Chancellors Code of Practice on the discharge of public functions, the Council will not accept any contractual term that purports to restrict disclosure of information held by the Council in respect of the contract or procurement exercise save as permitted by the Freedom of Information Act or the Environmental Information Regulations. The decision whether to disclose information rests solely with the Council in their absolute discretion.

## **27 EQUALITY OF OPPORTUNITY**

- 27.1 The Supplier shall comply with all applicable fair employment and treatment and anti-discrimination legislation, including, in particular but not exclusively, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Orders 1976 and 1988, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and the Employment Rights (Northern Ireland) Order 1996 and shall use their best endeavours to ensure that in their employment policies and

practices and in the delivery of the services required of the Supplier under this agreement that there shall be no unjustifiable inequality of treatment of, persons of different religions beliefs or political opinions;

- a) man or woman or married or unmarried persons;
- b) persons with or without dependents (including women who are pregnant or on maternity leave and men on paternity leave);
- c) persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- d) persons with or without a disability (within the meaning of the Disability Discrimination Act 1995);
- e) persons of different ages; or
- f) persons of different sexual orientation.

27.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of the above clause 27.1 by all servants, agents, employees, consultants and Sub-Contractors of the Contractor.

## **28 HUMAN RIGHTS**

28.1 The Supplier shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

## **29 FORCE MAJEURE**

29.1 Subject to the remaining provisions of this Clause either party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

29.2 A party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

29.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

29.4 The Affected Party shall immediately give the other party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

- 29.5 As soon as practicable following the Affected Party's notification, the Affected Party shall use all reasonable endeavours to continue to perform, or resume and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 29.6 The Affected Party shall notify the other party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

### **30 WAIVER**

- 30.1 The failure of either party to insist upon strict performance of any provisions of the Contract, or the failure of either party to exercise any right or remedy which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 30.2 Waiver of any default shall not constitute a waiver of any subsequent default.
- 30.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

### **31 UNSATISFACTORY PERFORMANCE**

- 31.1 Where, in the opinion of Council, the Contractor has failed to perform all or part of the Contract, with the standard of skill, care and diligence which a competent and suitably qualified Contractor could reasonably be expected to achieve, or in accordance with this Contract, the Council may give the Contractor a Notice specifying in which way his performance falls below the contract requirements, or is otherwise unsatisfactory.
- 31.2 Any notice required to be given or served under this Contract by the Council shall be in writing and shall be served by either:-
- (i) delivery to the Contractor's Representative, or
  - (ii) sending it by first-class post to the Contractor's last known place of business or registered office, when it shall be deemed to be served on the day when in the ordinary course of the post it would have been delivered. Any notice required to be given by the Contractor to the Council shall be sent to the Chief Executive of the Council.

- 31.3 In circumstances where such a Notice has been issued the Council may request:
- (i) that the Contractor, at his own expense, rectify and perform the Contract to the Council's satisfaction within a period of time specified by the Council including where necessary the repair or re-supply of and Goods or Services already supplied
  - (ii) withhold or reduce payments to the Contractor, in such amount as the Council deems appropriate in each individual case.
- 31.4 The waiver of any right or remedy arising from a Breach of Contract shall not constitute a waiver of any right or remedy arising from any other Breach of Contract.

## **32 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 32.1 The Contractor shall neither:
- 32.1.1 offer, give or agree to give any person employed by the Council or acting on its behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Contract or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Contract; nor
  - 32.1.2 enter into this Contract if in connection with it commission has been paid or agreed to be paid to any person employed by the Council or acting on its behalf by the Contractor or on the Contractor's behalf or to the Contractor's knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.
- 32.2 In the event of any breach of this Clause by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916 or under Section 46 and 47 of the Local Government Act (N.I.) 1972, the Council may summarily terminate this Contract or the relevant Order by notice in writing to the Contractor in accordance with Clause 37, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Contractor all costs to the Council of terminating and re-letting.
- 32.3 Any dispute, difference or question arising in respect of either the effect or the interpretation of this Clause or the amount recoverable hereunder by the Council from the Contractor or the right of the Council to determine the Contract, or the amount or

value of any such gift, consideration or commission shall be decided by the Council whose decision shall be final and conclusive.

### **33 STATUTORY AND OTHER REGULATIONS**

33.1 The Contractor shall be deemed to have acquainted himself with any and all Acts of Parliament, Statutory Regulations and other such laws, recommendations, guidance or practices as may affect the provision of Goods and/or Service(s) specified under the Contract.

33.2 The Contractor shall be deemed to have acquainted himself with such British/European Standards, Code of Practice as may be relevant to this Contract.

### **34 LAW AND JURISDICTION**

34.1 The Contract shall be governed by and construed in accordance with the Laws of Northern Ireland and the Contractor and the Council irrevocably submit to the jurisdiction of the Northern Ireland courts.

### **35 CHANGE OF LEGISLATION**

35.1 The Contractor shall neither be relieved of its obligations to supply the Goods in accordance with the terms of the Contract nor be entitled to an increase in the Price as a result of:

- i. a General Change in Legislation; or
- ii. a Specific Change in Legislation where the effect of that Specific Change in Legislation on the Goods is known at the Commencement Date whether by publication of a Bill, as part of a Government Department Consultation, a draft Statutory Instrument or a proposal via European Law or otherwise.

35.2 If a Specific Change in Legislation occurs after the commencement date or will occur during the Contract period, the Contractor shall notify the Council of the likely effects of that change, including:

- i. whether a Variation is required to the Goods, the Price of the Contract
- ii. whether any relief from compliance with the Contractor's obligations is required, including any obligations to achieve milestones to meet any service level requirements.

35.3 As soon as practicable after any notification in accordance with Clause 35.2 the Parties shall discuss and agree any way in which the Contractor can mitigate the effect of the Specific Change of Legislation including:

- i. producing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of costs of its sub-contractors;
- ii. demonstrating that a foreseeable Specific Change in Legislation had been taken into account by the Contractor before it had occurred;
- iii. giving evidence as to how the Specific Change of Legislation has affected the Price;

and

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

35.4 Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to Clause 35.1 shall be implemented in accordance with Clause 35.2.

### **36. INSOLVENCY OF THE CONTRACTOR**

36.1 The Contractor shall inform the Council:-

(a) if being an individual, or where the Contractor is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made under any bankruptcy Act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or

(b) if being a company, he passes a resolution, or the Court makes an order, that the company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court, otherwise than for the purposes of amalgamation or reconstruction, to make a winding-up order.

36.2 If any of the events in the conditions 36.1 (a) or 36.1 (b) occur (whether or not the Contractor has informed the Council) the Council may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the Council.

### **37 TERMINATION**

Without prejudice to any other power of termination, the Council may terminate the Contract without notice, for any of the following reasons: -

- i. The breach by the Contractor of any conditions under Clauses 17 (Use of Documents, Information etc), 22 (Intellectual Property) and 24 (Data Protection), Clause 27 (Equality of Opportunity), Clause 32 (Corrupt Gifts and Payments of Commission), of the Contract or any other material breaches of Contract;
- ii. The failure by the Contractor to comply with a notice given under Clause 31 (Unsatisfactory Performance), Clause 8 (Contractor's Staff) within thirty days from the date of that Notice;
- iii. The Contractor ceases or proposes to cease to carry on business;
- iv. There is a change of control of the type referred to in condition Clause 23 (Transfer and Sub-Contracting) in this event the Council shall give one month's notice in writing to the Contractor.
- v. A breach occurs that is not capable of remedy;
- vi. The Contractor commits a series of breaches of the Contract which when taken together amount to a material breach.

### **38 BREAK**

- 38.1 The Council shall have the right to terminate the Contract or to terminate the provision of any part of the Services, at any time by giving three months written notice to the Contractor. The Council may extend the period of notice at any time after service of such a notice before it expires, subject to agreement on the level of service to be provided by the Contractor during the period of extension.

### **39 CONSEQUENCES OF TERMINATION**

- 39.1 Where the Contract is terminated under Clause 37 the following shall apply:
- i. Any sums due or accruing from the Council to the Contractor may be withheld or reduced by such an amount as the Council, in its absolute discretion considers reasonable and appropriate in the circumstances;
  - ii. The Council may make alternative arrangements to procure Goods, including the letting of another Contract;
  - iii. Where the total cost reasonably and properly incurred by the Council by reason of such arrangements exceed the amount that would have been payable to the Contractor for the completion of the services, the excess shall, be recoverable from the Contractor.

- 39.2 Except where the Council has terminated the Contract by reason of the Contractor's default, the Contractor shall have the right to claim from the Council reimbursement of all reasonable costs properly incurred in relation to the orderly cessation of the supply of Goods, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. In such an instant the Council will not indemnify the Contractor against loss of profit.
- 39.3 Where the Contract is terminated under Clause 37 the Council may during the notice period;
- i. Direct the Contractor, where the supply of Goods or Services has not yet commenced; to refrain from commencing such supply or where the supply has been commenced to cease same immediately;
  - ii. Direct the Contractor to complete in accordance with the Contract the Supply of all or any Goods or Services or any part or component thereof, which shall be paid at the agreed Contract Price.

#### **40 DISPUTE RESOLUTION**

- 40.1 All disputes, differences or questions between parties to the Contract with respect to any matter arising out of or relating to the Contract, other than a matter of things as to which the decision of the Council is under the Contract to be final and conclusive, shall after written notice by either party to the Contract to the other be referred to a single arbitrator agreed for that purpose or in default of such agreement within twenty-one days, appointed at the request of either party by the Chairman of the Royal Institution of Chartered Surveyors Northern Ireland Branch. The decision of such arbiter shall be final and binding on the parties of the Contract.
- 40.2 The provision of the Arbitration Act 1996 shall apply to any arbitration under this contract and such arbitration shall be conducted solely in Northern Ireland.

#### **41 RIGHTS OF THIRD PARTIES**

- 41.1 Nothing in this contract confers or purports to confer on any third party any right to enforce any term of the Contract.

#### **42 SEVERABILITY**

- 42.1 If any provision of these conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such 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 illegal, invalid, wrong 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 Council and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

## **ANNEX A - GENERAL DATA PROTECTION REGULATION (GDPR)**

### **Part 1: Generic Standard GDPR Clauses**

#### **GDPR CLAUSE DEFINITIONS:**

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [ subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

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

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

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

## 1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 7 by the Client and may not be determined by the Contractor.
- 1.2 The Contractor shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.
- 1.3 The Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - (a) process that Personal Data only in accordance with Schedule 7, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Client as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 7);

(ii) it takes 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 Client or as otherwise permitted by this Agreement; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

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

1.5 Subject to clause 1.6, the Contractor shall notify the Client immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

- (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.
- 1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Client in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:
- (a) the Client with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Client following any Data Loss Event;
  - (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Client determines that the processing is not occasional;
  - (b) the Client determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Client in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Client;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
  - (d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
- 1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Client may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## ANNEX B

### SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Note this Schedule is a template, please supplement with additional fields/information as required.

If you would like to know more about the upcoming changes, the Information Commissioner's Office is a good source of information on the new regulations ([ICO Information on GDPR](#)).

**CONTRACT TITLE:**

**REF:**

### ADDENDIUM TO SPECIFICATION

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

DESCRIPTION DETAILS	SUBJECT MATTER
<b>Subject matter of the processing</b>	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
<b>Duration of the processing</b>	<i>[Clearly set out the duration of the processing including dates]</i>
<b>Nature and purposes of the processing</b>	<i>[Please be as specific as possible, but make sure that you cover all intended purposes.  The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.  The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
<b>Type of Personal Data</b>	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
<b>Categories of Data Subject</b>	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>

<p><b>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</b></p>	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>
<p><b>Roles and responsibilities of the Controller and the Processor and any sub-processors.</b></p>	<p><i>Describe respective roles and responsibility in data handling, data processing</i></p>