

GENERAL TERMS FOR CONTRACTING WITH NORTHERN IRELAND WATER

ICT CONTRACTS

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1.0 DEFINITIONS AND INTERPRETATION

“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.
“Affiliates”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
“Approval” or “Approved”	means the written consent of the Contract Manager.
“Assigned Employees”	shall have the meaning ascribed in clause 33.1.
“Authority”	means the Northern Ireland Executive Committee and Northern Ireland Departments, including, but not limited to, government ministers, government departments, government offices, government agencies and those bodies to which NI Public Procurement Policy applies.
“Award Letter”	means the letter issued by the Client awarding the Contract to the Contractor.
“Business Continuity and Disaster Recovery Plan”	means the business continuity and disaster recovery plan agreed between the Parties in accordance with clause 26.0.
“Buy Social”	means the Northern Ireland Executive’s policy to deliver enhanced social value via procurement and on which more information can be found at: https://buysocialni.org/ (as may be replaced from time to time).
“Charges”	means the charges for the provision of the Deliverables, which shall be set out in the Purchase Order or calculated in accordance with the pricing mechanism set out in the Specification.
“Clarifications”	means clarifications issued by the Client to the Contractor or any other bidder or potential bidder in response to any relevant query raised following publication of the Procurement Documentation.
“Client’s Background Intellectual Property Rights” or “Client’s Background IPRs”	means the Intellectual Property Rights that the Client owned or developed prior to the Commencement Date.
“Client”	means the body to be provided with the Deliverables by the Contractor under this Contract, as specified in the Commercial Terms.
“Client Data”	means:- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

	<p>(i) supplied to the Contractor by or on behalf of the Client; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; and</p> <p>(b) any Personal Data for which the Client is the Controller.</p>
"Client Furnished Items"	any items provided by the Client to the Contractor, including (without limitation) Property.
"Commencement Date"	means the date specified in the Award Letter from which the Contractor shall provide the Deliverables in accordance with any Purchase Order constituted in accordance with this Contract.
"Commercial Terms"	means the terms provided in the Specification which are tailored for this Contract.
"Commercially Sensitive Information"	<p>means information:</p> <p>(a) which is provided by the Contractor to the Client in confidence and which has been identified by the Contractor as being commercially sensitive; and/or</p> <p>(b) that constitutes a trade secret.</p>
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.
"Contract"	means this contract between the Parties for the provision of the Deliverables, and which is constituted by these General Terms, the appendices noted within the Specification as forming part of the contract, all documents noted within the Specification and any Purchase Orders.
"Contract Manager"	means the person for the time being appointed by the Client in the Commercial Terms as being authorised to administer the Contract on behalf of the Client, or such other person as may be nominated from time to time by the Client.
"Contract Period"	<p>means the period from the Commencement Date to:</p> <p>i. the end of the Initial Contract Period; or</p> <p>ii. if later, the end of any contract extension if the Client elects to extend the Initial Contract Period; or</p> <p>iii. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.</p>
"Contract Price"	means the contract price (exclusive of any applicable VAT), payable to the Contractor by the Client, in pounds sterling, under the Contract, as set out in the Contractor's schedule of contract prices and rates included in the Contractor's Tender (" Pricing Schedule "), for the full and proper performance by the Contractor of its obligations under the Contract but before taking

	into account the effect of any adjustment of contract price in accordance with the terms of the Contract.
“Contracting Authority”	means any Contracting Authority as defined (as “Contracting Authorities”) in the Utilities Contracts Regulations 2016 which, for the avoidance of doubt, does not include the Client.
“Contractor”	means the persons, firms or companies that enters into this Contract with the Client.
“Contractor System”	means the information and communications technology system used by the Contractor in implementing and performing the Services including the Software, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client’s System).
“Contractor’s Background IPRs”	means: (a) Intellectual Property Rights owned by the Contractor before the Commencement Date, for example those subsisting in the Contractor’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor’s know-how or generic business methodologies; and/or (b) Intellectual Property Rights created by the Contractor independently of this Contract, excluding Intellectual Property Rights owned by the Contractor subsisting in the Contractor Software.
“Contractor’s Property Liability Limit”	shall be the amount described as such in the Commercial Terms.
“Contractor’s Representative”	means the person for the time being appointed by the Contractor as being authorised to bind the Contractor and administer the Contract on behalf of the other Contractor, as named in the Contractor’s Tender, or such person as may be nominated from time to time by the Contractor’s Representative to act on their behalf.
“Contractor’s Residual Liability Limit”	shall be the amount described as such in the Commercial Terms.
“Control”	means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the relevant Party (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.
“Data Protection Legislation”	means: (a) the GDPR, the LED and any applicable national implementing Laws amended from time to time; (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (c) all applicable Law about processing of personal data and privacy.

"Date Compliant"	means no previous or future date change has had or will have any adverse impact on the performance or functionality of the Contractor's system and assets used in the performance of the Services or delivery or use of the Deliverables.
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its employees, workers, consultants, directors, contractors and sub-contractors in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other.
"Deliverable" "Deliverables"	or means the Goods and/or Services described in the Specification which the Contractor is required to supply in accordance with this Contract from the Commencement Date in accordance with the Specification and/or Purchase Orders.
"Dispute Resolution Procedure"	means the procedure for dealing with disputes under this Contract as set out in clause 34.0.
"Direct Costs"	means costs incurred by the Contractor to fulfil its obligations under this Contract for: (a) the purchase of raw materials; (b) transportation of the Goods; and/or (c) utilities.
"Documentation"	means the descriptions of the Services and Service Levels (as defined in appendix 1), details of the Contractor system (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: (a) is required to be supplied by the Contractor to the Client under this Contract; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Client to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Contractor in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals

	and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s. 132A Social Security Administration Act 1992.
"DPA 2018"	means the Data Protection Act 2018.
"Effective Date"	means the date of the Award Letter.
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the UK Information Commissioner or relevant government department in relation to such regulations.
"Equipment"	means the Contractor's equipment and other items supplied and used by the Contractor in the performance of its obligations under this Contract.
"EU GDPR"	means the General Data Protection Regulation ((EU) 2016/679).
"FOIA"	means the Freedom of Information Act 2000.
"Force Majeure"	<p>means any event or occurrence which prevents a Party from performing its obligations under the Contract and which is not attributable to any act or failure to take preventative action by that Party including acts of God; epidemic or pandemic; riots; war; armed conflict; acts of terrorism; acts of government; local government or Regulatory Bodies; fire; earthquake; disaster; pestilence; explosion; nuclear, biological or chemical warfare; or any other disaster (whether natural or man-made).</p> <p>For the avoidance of doubt, strike or other industrial action carried out by Staff or staff of the Contractor's sub-contractors or agents shall not be deemed to constitute Force Majeure, and shall be dealt with in accordance with clause 10.0.</p>
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common Law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Client.
"GDPR"	means the EU GDPR and the UK GDPR.
"General Anti-Abuse Rule"	<p>means:</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.</p>
"General Change in Law"	means a change in Law which comes into effect after the Effective Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to comparable services of the same or a similar nature to the supply of the Deliverables.

“General Terms”	means the conditions of contract contained in this document.
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Goods”	means any such goods as are to be supplied by the Contractor under the Contract as described in the Specification (if any) in accordance with the Specification and/or Purchase Orders.
“Halifax Abuse Principle”	means the principle explained in the CJE Case C-255/02 Halifax and others.
“ICT” (Information communications technology) and	is an extended term for information technology (IT) which stresses the role of unified communications and the integration of telecommunications (telephone lines and wireless signals), computers as well as necessary enterprise software, middleware, storage, and audio-visual systems, which enable users to access, store, transmit, and manipulate Information.
“Information”	means all data and information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-Rom, magnetic and digital form).
“Information Governance Legislation”	means: <ul style="list-style-type: none"> • Public Records Acts 1958 and 1967; • DPA 2018; • GDPR; • Freedom of Information Act 2000; • Human Rights Act 1998; • Computer Misuse Act 1990; • Copyright (Computer Programs) Regulations; • Civil Evidence Act 1968 and the Police and Criminal Evidence Act 1984; • Regulation of Investigatory Powers Act 2000 (RIPA); • The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000; • Investigatory Powers Act 2016; and • The Communications Act 2003.
“Information Technology Policies”	means those policies noted in the Specification which relate to ICT.
“Initial Contract Period”	means the period as detailed in the Specification not including any extension options.
“Initial Contract Period Expiry Date”	means the date on which the Initial Contract Period expires.
“Intellectual Property Rights” or “IPRs”	means all patents, rights to inventions, utility models, copyright and related rights, moral rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database

	right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
"Law" or "Laws"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any statutory provision as defined by the Interpretation Act (Northern Ireland) 1954, exercise of the royal prerogative, enforceable rights under the European Union (Withdrawal) Act 2018 and/or the European Union (Withdrawal Agreement) Act 2020 (and supplementary legislation and Ministerial decisions), regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Month"	means calendar month.
"MSA 2015"	means the Modern Slavery Act 2015.
"Occasion of Tax Non-Compliance"	<p>means:</p> <ul style="list-style-type: none"> (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found to be incorrect as a result of: <ul style="list-style-type: none"> i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for Fraud or evasion.
"Party"/"Parties"	means the Contractor and/or the Client (as appropriate).
"Payment Profile"	means the payment profile set out in the Commercial Terms.
"Personal Data"	means personal data (as defined in the GDPR) which is Processed by the Contractor, or any sub-contractor, on behalf of the Client pursuant to or in connection with this Contract.
"Premises"	means the Client's property, at the address where the Services are provided or the Goods are delivered.

“Process”	has the meaning given to it under the GDPR and “Processed” and “Processing” shall be construed accordingly.
“Procurement Documentation”	means the documentation published or made available by the Client (including any invitation to tender or negotiate and Clarifications) setting out the requirements and rules relating to the procurement of the Deliverables.
“Property”	means any property (including buildings, plant and equipment) issued or made available to the Contractor by the Client in connection with this Contract (which, for the avoidance of doubt, shall not include Intellectual Property Rights).
“Protocol”	means the Sourcing and Construction Toolkits Department of Finance as outlined at Annex 2
“Purchase Order”	means the Client's order for Deliverables which has a unique number and details the Deliverables to be supplied by the Contractor to the Client in accordance with the terms of this Contract.
“Quality Standards”	means the quality standards published by BSI British Standards, the national standards body of the United Kingdom, the International Organization for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
“Re-tendering Information”	shall have the meaning ascribed in clause 33.1.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.
“Relevant Tax Authority”	means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
“Replacement Contractor”	means any third party appointed by the Client to supply any goods or services which are substantially similar to any of the Deliverables and which the Client receives in substitution for any of the Deliverables following the expiry, termination or partial termination of this Contract.
“Request for Information”	will have the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” will apply).
“Security Policy”	means the Client's Information Technology Security Policy (as may be updated from time to time) which is set out in the Specification.
“Services”	means the services to be provided by the Contractor under this Contract as set out in the Specification (if any) in accordance with the Specification and/or Purchase Orders.

"Specific Change in Law"	means a change in Law which comes into effect after the Effective Date that relates specifically to the business of the Client, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Deliverables.
"Specifically Required IT Standards"	means the standards, regulations and/or laws described in the Commercial Terms under the heading "Specifically Required IT Standards".
"Specification"	means the specification made available by the Client along with the Procurement Documents.
"Staff"	means all persons employed by the Contractor to perform its obligations under this Contract together with the Contractor's servants, agents, contractors and sub-contractors used in the performance of its obligations under this Contract.
"Sustainable Development Strategy for Northern Ireland"	means the NI Executive's Sustainable Development Strategy found at: https://www.daera-ni.gov.uk/publications/ni-executive-sustainable-development-strategy-everyones-involved
"Tender"	means the document(s) submitted by the Contractor to the Client in response to the Procurement Documentation which is accepted by the Client as specified in the Award Letter.
"Transfer Assistance Period"	means: (i) the period of nine Months immediately preceding the expiry of the Contract Period; or (ii) the remainder of the Contract Period following notice of termination (or deemed notice of termination) being issued by the Client; or (iii) the remainder of the Contract Period following the Contractor carrying out (by act or omission) a repudiatory breach of Contract.
"Transfer Date"	means the date on which any cessation or partial cessation referred to in clause 33.4 takes effect so as to transfer the employment of the Transferring Employees by virtue of the TUPE Regulations.
"Transferring Employee"	means those employees who, immediately prior to the expiry of the Contract Period, or earlier termination of the Contract, are wholly or mainly engaged or employed in the Services.
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006.
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018 (and regulations thereunder).
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, and The Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, and (where relevant) Articles 257 and 258 of the Pensions Act 2004 and Articles 234 and 235 of the Pensions (Northern Ireland) Order 2005 and, in each case, any judicial decision interpreting the same.

"Utility"	means any Utility as defined (as "Utilities") in the Utilities Contracts Regulations 2016.
"Variation"	has the meaning given to it in clause 35.2.
"Variation to Contract Form"	means the form attached at Annex 1.
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in Northern Ireland and "Working Days" shall be construed accordingly.

1.1 Where a capitalised word is not defined in this Contract, it will have the meaning given to it in the Procurement Documentation.

1.2 In this Contract unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in these General Terms. References to sections throughout the Contract are references to the relevant sections in the appendix in or to which reference is made (unless otherwise specified);

1.2.2 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.2.3 the headings to the clauses of this Contract are for information only and do not affect the interpretation of this Contract;

1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

1.2.5 where the word "including" is used in this Contract, it will be understood as meaning "including without limitation";

1.2.6 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.7 words importing the masculine include the feminine and the neuter;

1.2.8 reference to a clause is a reference to the whole of that clause unless stated otherwise; and

1.2.9 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.

1.3 Client's Obligations

1.3.1 Save as otherwise expressly provided, the obligations of the Client under this Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Client to the Contractor.

2.0 CONTRACT PERIOD

- 2.1** The Contract shall take effect on the Commencement Date and shall continue until the end of the Contract Period.
- 2.2** The Client may extend the Contract Period for so long and on as many occasions as specified in the Commercial Terms (under "**Maximum Potential Extensions**") by providing the Contractor with at least 2 Months' written notice.
- 2.3** If the Contract Period is extended under clause 2.2, the provisions of the Contract will apply, subject to any variation or adjustment to the Contract Price pursuant to clause 6.0 of this Contract, for the duration of any such extended period.

3.0 DELIVERABLES

- 3.1** The Contractor shall provide the Deliverables to the Client in accordance with all requirements and obligations of this Contract.
- 3.2** Unless otherwise expressly noted in the Specification, nothing in this Contract shall commit the Client to exclusivity of supply of the Deliverables (or any goods or services similar to the Deliverables) by the Contractor.

4.0 REPRESENTATIONS AND WARRANTIES

- 4.1** The Contractor warrants and represents that:
- (a) in entering this Contract it has not committed any Fraud;
 - (b) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to the Effective Date;
 - (c) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets or its use of any IPR being used, developed or provided by (or on behalf of) the Contractor in connection with this Contract which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
 - (d) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (e) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
 - (f) it owns, has obtained or is able to obtain, valid permission or licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
 - (g) in the three 3 years prior to the Effective Date:
 - i. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - ii. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - iii. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

- (h) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (i) all personnel used to provide Deliverables have been vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards;
- (j) it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or trojan horse) onto the Deliverables and into systems, equipment (including the Equipment) data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Client;
- (k) it shall take all measures to avoid any and all data loss and data corruption during the provision of the Deliverables in accordance with Good Industry Practice; and
- (l) it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Deliverables.

4.2 The Contractor acknowledges that any breach of the warranties in clause **Error! Reference source not found.** shall be remedied as a matter of urgency at no cost to the Client and that failure to remedy (if capable of remedy) so as to comply with clause **Error! Reference source not found.** within twenty (20) Working Days of notification by the Client shall constitute a breach of this Contract entitling the Client to terminate in accordance with clause 29.0.

4.3 Both the Client and the Contractor warrants to the other that it has undertaken all requisite corporate and other action to approve the entering into and performance of this Contract.

5.0 MISTAKES IN INFORMATION

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

6.0 CONTRACT PRICE

6.1 In consideration of the performance of the Contractor's obligations under the Contract, the Client shall pay the Contract Price in accordance with this clause 6.0, clause 7.0 and the Payment Profile during the Contract Period.

6.2 For the avoidance of doubt, the Contract Price shall include all costs in connection with the Contract unless otherwise provided for in these General Terms. No extra charges will be effective unless agreed in writing by both Parties and signed by the Client.

6.3 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which will be charged in addition at the rate in force at the date as shown on the invoice.

6.4 Contract Price adjustment

6.4.1 *For increased Direct Costs:* The Supplier may request an adjustment to the Contract Price at any time after the first anniversary of the Commencement Date by giving notice in writing to the Client to reflect any actual increase in the Direct Costs which is beyond the Contractor's reasonable control and unforeseeable by the Supplier at the time of its submission of the Tender. Any adjustment granted by the Client under this clause shall:

6.4.1.1 be entirely at the Client's discretion. For avoidance of doubt, the Client may, at its discretion, refuse the Contractor's request entirely or may agree to an adjustment which is: (i) less than the adjustment requested by the Contractor; or (ii) less than the actual increase in the Direct Costs incurred by the Contractor;

6.4.1.2 not exceed the actual increase in Direct Costs incurred by the Contractor. The Contractor shall produce all evidence reasonably required by the Client to demonstrate the requested adjustment reflects the actual increase in Direct Costs incurred by the Contractor; and

6.4.1.3 not alter the overall nature of the Contract.

6.5 *For Contract Period extension:* Unless otherwise stated in the Specification, in the event that the Client exercises its option to extend the Contract Period, the Parties shall meet to discuss any variation to the Contract Price for the extended Contract Period, with such variation not to exceed the percentage change in the Consumer Price Index including owner-occupiers' housing costs (CPIH) as published by the UK Office for National Statistics in the 12 Months preceding the date on which the Client exercises the option to extend the Contract Period.

7.0 PAYMENT

7.1 The Client will pay the Contractor the Charges for the Deliverables no later than 30 days after the receipt of a valid invoice. Unless otherwise specified by the Client, all invoices shall be payable in arrears.

7.2 The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with this clause and the Specification. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.

7.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Deliverables supplied and that it is supported, in the event of Services being delivered by the Contractor, by timesheets specifying the hours worked by relevant members of Staff as well as any other documentation reasonably required by the Client to substantiate the invoice.

7.4 The Contractor shall add VAT to the Charges at the prevailing rate as applicable.

7.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 7.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.

7.6 The Contractor shall make any payments due to the Client (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

- 7.7** If for any reason the Contract comes to an end otherwise than on the last day of a Month the Client must pay the properly due amounts in respect of the partly completed Month, on a pro-rata basis for the number of days worked as a proportion of the number of working days in the partly completed Month.
- 7.8** The Contractor shall when permitted under this clause submit invoices directly to notifications@niwater.com or Accounts Payable, Finance and Regulation Building, 40 Old Westland Road, Belfast, BT14 6TE.
- 7.9** For an invoice to be considered valid it must be legible, from which a clear scanned image can be produced, and clearly show the following information:
- (a) a purchase order (**PO**) provided by the Client;
 - (b) the invoice number, or where a utility bill, the account number;
 - (c) payment terms of 30 days from receipt of a valid invoice;
 - (d) invoice date / tax point;
 - (e) name, address, postcode and VAT registration number of the Contractor and any sub-contractor for whom payment is included on the Contractor's invoice for settlement by the Client;
 - (f) remittance name and address where this is different to (e) above;
 - (g) details of Deliverables which match the PO details, including quantity billed, item description, unit of measure, unit price and total value; and
 - (h) the agreed charge, including any discounts, handling and freight charges and a breakdown clearly showing each VAT amount and the applicable VAT rate (and where not complete, a breakdown of the relevant work or services as they relate to this charge or an explanation of a difference in expected charge).
- 7.10** In the event of a disputed invoice, the Client shall make payment in respect of any undisputed amount in accordance with the provisions of this clause and return the invoice to the Contractor within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Contractor shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Contractor accepts the Client's proposed amendments. If it does, then the Contractor shall supply with the response a replacement valid invoice. If it does not, then the matter shall be dealt with in accordance with the provisions of clause 8.0.
- 7.11** The Payment Profile in respect of the Services provided under this Contract is as set out in the Commercial Terms.
- 8.0 RECOVERY OF SUMS DUE**
- 8.1** Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), that sum may be deducted unilaterally by the Client from any sum then due, or which at any later time may become due, to the Contractor under this Contract.
- 8.2** Any overpayment by either Party, whether of Charges, the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 8.3** All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account in the UK as the recipient Party may from time to time direct.

9.0 INTELLECTUAL PROPERTY RIGHTS

- 9.1** Save as granted under this Contract, the Client shall not acquire any right, title or interest in the Contractor's Background IPRs and the Contractor shall not acquire any right, title or interest in the Client's Background IPRs.
- 9.2** The Contractor grants to the Client a royalty-free, irrevocable, perpetual and non-exclusive licence (with a right to sub-licence) to use any of the Contractor's Background IPRs which the Client reasonably requires in order to exercise its rights and take the benefit of this Contract including the Deliverables provided.
- 9.3** The Contractor shall, to the extent permissible by law, waive or procure an irrevocable waiver of any moral rights (and equivalent) subsisting in copyright produced by or in the performance of this Contract. If a waiver of moral rights is not permissible by law, then the Contractor warrants that the author of any such copyright has agreed, in writing and on a perpetual basis, not to enforce their moral rights (or equivalent) in respect of the relevant works.
- 9.4** The Contractor shall not infringe any IPRs of any third party in connection with the Deliverables and performing its obligations under this Contract. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs, expenses, penalties, reasonable legal and other professional fees awarded against or incurred or paid by the Client and other liabilities which the Client may suffer or incur as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's IPRs arising out of or in connection with the Deliverables, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Client; or
 - (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of this Contract.
- 9.5** The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any IPRs in materials supplied or licensed by the Contractor.
- 9.6** The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of IPRs in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Client; and
 - (c) shall not settle or compromise any claim without the Client's prior written consent (not to be unreasonably withheld or delayed).
- 9.7** The Client shall, at the request of the Contractor, afford to the Contractor all reasonable assistance (other than financial assistance) for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under this Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Client in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 9.4(a) or (b).

- 9.8** The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any IPRs by the Client or the Contractor in connection with the performance of its obligations under this Contract.
- 9.9** If a claim, demand or action for infringement or alleged infringement of any IPRs is made in connection with this Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall promptly notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Deliverables without reducing the performance or functionality of the same, or substitute alternative Deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Deliverables or to the substitute Deliverables; or
 - (b) procure a licence to use and supply the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Client,
- and in the event that the Contractor is unable to comply with clauses 9.9(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate this Contract with immediate effect by notice in writing.
- 9.10** The Client may undertake, or invite a contractor or third party, outside the Contract, to undertake further work in connection with the Services, or any part of the Services ("**Further Services**"). In such circumstances, the Contractor shall:
- (a) co-operate with and use its reasonable endeavours to assist that third party to undertake the Further Services; and
 - (b) grant to that third party licences (including in respect of any and all IPRs owned by the Contractor) necessary to enable that third party to undertake the Further Services and such licences shall be perpetual, irrevocable, royalty-free and worldwide.
- 9.11** No IPRs in or derived from or arising out of any Further Services will vest in the Contractor.
- 9.12** The provisions of this clause 9.0 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.
- 10.0 DISRUPTION**
- 10.1** The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Client, its employees or any other Contractor employed by the Client.
- 10.2** The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.
- 10.3** In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under this Contract.
- 10.4** If the Contractor's proposals referred to in clause 10.3 are considered insufficient or unacceptable by the Client acting reasonably, then this Contract may be terminated with immediate effect by the Client by notice in writing.
- 10.5** If the Contractor is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

11.0 CONTRACTOR'S STAFF

- 11.1** The Client may at any time and for any reason refuse to admit any member of the Staff onto the Premises or may withdraw its permission for any member of the Staff to remain on the Premises.
- 11.2** The Contractor will comply with any decision of the Client under clause 11.1.
- 11.3** If requested, the Contractor will provide a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Premises in connection with this Contract.
- 11.4** If the Contractor fails to comply with clause 11.3 within one Month of the date of the request, and in the reasonable opinion of the Client such failure may be prejudicial to the interests of the Client, then the Client may terminate the Contract, provided always that such termination will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Client.
- 11.5** The decision of the Client in relation to clause 11.1 will be final and conclusive.
- 11.6** The Contractor and its Staff shall observe and comply with such rules, regulations and the Client's policies applicable to the conduct of personnel, including those relating to security arrangements, health and safety (including in relation to compliance with any risk assessments), anti-bribery and anti-corruption, and use of information technology, as may be in force from time to time as determined by the Client. The Contractor acknowledges that it is the Contractor's responsibility to make its Staff aware of such policies and of the requirement to comply with them.
- 11.7** The Contractor warrants and represents that all Staff assigned to the performance of the Services and/or delivery of the Goods shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services and delivery of the Goods.
- 11.8** The Contractor shall engage, employ and pay all monies due to Staff required to carry out this Contract and shall be entirely responsible for setting the pay and conditions of service for its Staff (and ensuring such pay and conditions comply with Law) and for any compensation payments due to them howsoever arising.
- 11.9** If, in the opinion of the Client, any Staff of the Contractor has behaved inappropriately or is incapable of efficiently performing its duties, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such a person from carrying out work in connection with this Contract without delay on being required to do so by the Client and cause the work to be performed by such other person as may be necessary, in default of which the Client may employ such other person as may be deemed necessary for the purposes of carrying out the work and recover from the Contractor the additional cost thereby incurred.
- 11.10** In the event that the Contractor is unable to provide replacement staff acceptable to the Client's representative, within a reasonable time, then the Client reserves the right to obtain replacement staff from other sources and pass any additional cost on to the Contractor. The Client reserves the right to terminate the Contract where the failure to provide a replacement has a detrimental effect to the timely provision of any of the Deliverables in accordance with clause 29.0 (Termination on Default).

12.0 OFFERS OF EMPLOYMENT

For the duration of the Contract and for a period of 12 Months thereafter, neither the Client nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Deliverables without that other Party's prior written consent. For the avoidance of doubt, a party shall not be prevented from employing or offering employment to any member of staff of the other party where it can demonstrate that the relevant individual was responding to a bona fide job advertisement.

13.0 LICENCE TO OCCUPY PREMISES

- 13.1** Any land or Premises made available from time to time to the Contractor by the Client in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis, free of charge, and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 13.2** The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.
- 13.3** Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.
- 13.4** The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 13.5** The Parties agree that there is no intention on the part of the Client to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Client retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

14.0 SECURITY OF PREMISES

The Client is responsible for maintaining the security of its Premises in accordance with its standard security requirements. While on the Premises, the Contractor will comply with all such security requirements as are mentioned in the Specification (as may be updated by notification from the Client from time to time) and will ensure that all Staff comply with such requirements.

15.0 PROPERTY

- 15.1** Where the Client issues Property free of charge to the Contractor, such Property shall be and remain the property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and

shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.

- 15.2** The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.
- 15.3** The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the performance of this Contract and for no other purpose without prior Approval.
- 15.4** The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Deliverables, in accordance with the Client's reasonable security requirements as required from time to time.
- 15.5** The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
- 15.6** The Contractor shall notify the Contract Manager of any surplus Property belonging to the Client remaining at the end of the Contract Period and shall dispose of it as the Client may direct. Without prejudice to any other rights of the Client, the Contractor shall deliver to the Client any of the Client's Property (whether processed or not) on demand by the Client.

16.0 TITLE & RISK

- 16.1** Equipment to be used in the provision of the Services may be provided by the Contractor, the Client, a lessor or a previous contractor.
- 16.2** The Contractor shall provide all the Equipment necessary for the supply of the Deliverables.
- 16.3** The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 16.4** All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed by both Parties in writing, Equipment brought onto the Premises will remain the property of the Contractor.
- 16.5** The Contractor shall maintain all their items of Equipment within the Premises in a safe, serviceable and clean condition.
- 16.6** The Client shall be entitled at any time during the Contract Period to order in writing, that the Contractor at its own expense and as soon as reasonably practicable:
 - (a) remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 16.7** If the Contractor provides Services from or at the Premises, on completion of the Services, or the termination or expiry of the Contract (whichever is the earliest date) the Contractor will vacate the Premises, remove its plant, Equipment and unused materials and will clear away from these Premises all rubbish arising out of the Services and leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to

the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

16.8 Where any Equipment is provided to the Client by the Contractor:

- (a) it shall remain the property of the Contractor and such Equipment (if required) shall be licensed to the Client or their authorised agents;
- (b) the Client undertakes the safe custody, and the due return, of that Equipment; and
- (c) the Client shall be responsible for any deterioration in that Equipment, fair wear and tear excepted.

16.9 Where any equipment is provided by a lessor, title to that equipment shall remain with the lessor and risk shall be determined in accordance with the relevant lease.

16.10 Where any equipment is provided by a previous contractor, it shall remain the property of the previous contractor and shall be licensed to the Client, their authorised agents, or the Contractor, as agreed between the parties concerned.

16.11 Where it is agreed between the Parties that ownership of any Equipment shall change during the Contract Period, the passing of title and risk in that Equipment shall be handled as follows:

- (a) where any Equipment is to be transferred to the Client, it shall remain the property of the Contractor until such time as any relevant acceptance tests have been successfully conducted and payment made. Thereafter, the Client shall have title and risk in such Equipment; and
- (b) where, at the Client's request, any Equipment is to be transferred to a lessor, it shall remain the property of the Contractor until such time as the relevant lease specifies the passage of title in such Equipment. At such time, the risk in such Equipment shall be determined in accordance with the relevant lease.

16.12 Title and risk in the Equipment after the Contract Period shall be determined as specified in the Service Transfer Plan (as defined in clause 32.6 below).

17.0 HEALTH AND SAFETY

17.1 The Contractor will promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client will promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises insofar as the Client is aware, and which may affect the Contractor in the performance of its obligations under the Contract.

17.2 While on the Premises, the Contractor will comply with all health and safety measures posted or otherwise notified by the Client.

17.3 The Contractor will notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.4 The Contractor shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

17.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Client on request.

- 17.6** The Contractor shall notify the Client immediately where it becomes aware of any breach of the health and safety legislation, codes of practice or guidance referenced at clause 17.4 by the Contractor or any of Staff. The Contractor shall promptly provide any information and data to the Client as may be requested from time to time by the Client relating to health and safety in respect of the provision of the Deliverables.

18.0 SECURITY REQUIREMENTS

- 18.1** The Contractor shall deliver a draft security plan to the Contract Manager within two Months of the Effective Date (or such other period notified by the Contract Manager) for Approval (which when Approved shall be the “**Security Plan**”).
- 18.2** The Contractor shall comply, and shall procure the compliance of its Staff, with the Security Policy and the Security Plan and the Contractor shall (subject to clause 18.3) ensure that the Security Plan fully complies with the Security Policy at all times.
- 18.3** The Client shall notify the Contractor of any changes or proposed changes to the Security Policy and the Contractor shall, without unreasonable delay, update the Security Plan to account for such changes and submit the updated version of the plan to the Contract Manager for Approval (which, upon such Approval, shall become the Security Plan).
- 18.4** If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Deliverables, it may submit a Variation. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Price shall then be agreed in accordance with clause 35.0 (Variation).
- 18.5** In addition to any standards specified elsewhere in this Contract, the Contractor shall at all times comply (and shall ensure all Staff comply) with Information Technology Policies (each as may be updated by the Client from time to time on written notice by the Client).
- 18.6** The Client may from time to time work in partnership with information assurance consultants (**IA Consultants**) to ensure that private sector contractors have a good understanding of current Government policies and standards surrounding information assurance and to put in place measures that reduce risks to official systems. The Contractor shall comply with all Client requirements resulting from the joint working with IA Consultants. Where risks are identified and suitable countermeasures determined, the Contractor shall be responsible for ensuring action is taken at the earliest opportunity to implement those countermeasures and the Contractor shall be responsible for the costs associated with implementing those countermeasures.
- 18.7** Staff visiting the Premises must hold a standard level security clearance. This clearance is obtained through formal application and payment of a fee to ‘Access NI’. The Contractor is responsible for obtaining clearance for all Staff and shall bear all costs associated with the clearance process.
- 18.8** The Contractor shall ensure that the Services enable the Client to fulfil its responsibilities for information governance, including but not limited to the Client’s responsibilities under the Information Governance Legislation (as may be updated, amended and supplemented by the Client from time to time).
- 18.9** The Contractor shall comply with all Client ICT policy and strategic requirements when using ICT systems to perform Client business and to handle Client Data, including those arising from legal obligations such as: the DPA 2018; GDPR; the Police and Criminal Evidence (Northern Ireland) Order 1989; the Civil Evidence (Northern Ireland) Order 1997; and health and safety regime legislation.

18.10 The Contractor shall be responsible for ensuring compliance with the standards, regulations and legislative requirements set out below together with any other standards, regulations and legislative requirements from time to time in force:

- (a) **Environment:** the Contractor shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2013 ("**WEEE Regulations**");
- (b) **Project Management:** the Contractor shall make use of PRINCE2 methodology or similar, supplemented where appropriate by the tools and methods of the Contractor's own project management methodologies;
- (c) **Service Management:** the Contractor shall follow the guidelines contained in the Office of Government Commerce's IT Infrastructure Library ("**ITIL Guidelines**") for delivering the services;
- (d) **Data Standards:** the Contractor shall develop and/or use, document, operate and maintain standards and procedures for ensuring the quality and integrity of all key data. These standards and procedures shall be agreed with the Client; and
- (e) **Version Control:** the Contractor shall develop and/or use procedures which ensure that only the correct release or version of a deliverable will be delivered to the Client. The Contractor shall provide a copy of the draft procedures to the Client for its approval. On receipt of such approval, the Contractor shall then operate those procedures.

18.11 Subject to any other requirement specified in the Specification:

- (a) the Contractor shall implement administrative, physical and technical safeguards to protect data and the Client's essential service in line with relevant accepted industry practices and the Specifically Required IT Standards as they relate to the scope of the Goods and/or Services;
- (b) the Contractor must ensure that all data relating to this Contract is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- (c) the Client requires, where the Contract involves the processing of sensitive data or personal information, the Contractor to be certified by the National Cyber Security Centre ("**NCSC**") - Cyber Essentials Scheme;
- (d) where the Goods and/or Services impact upon the network or information systems which support the delivery of the Client's business of providing water and sewerage services to business and residential customers in Northern Ireland, the Contractor must take appropriate and proportionate measures to prevent and minimise the impact of incidents affecting the security of those network and information systems and must comply with cyber security advice and guidance for the Critical National Infrastructure as published by the NCSC;
- (e) on becoming aware of any actual or suspected security incident by or to the Contractor or relating to this Contract or the data related to it or the Client, the Contractor must notify the Client in writing as soon as reasonably practicable, unless the cyber incident relates to the production or delivery of clean water in which case, as per The Network and Information Systems Regulations 2018, the incident must be reported immediately and the Contractor must provide any related information promptly on request by the Client (without charge);
- (f) the Contractor must take reasonable steps to immediately rectify any incident of the nature described in clause 18.11(e) and prevent any further incidents; and
- (g) the Contractor must not inform any third party of any actual or suspected incident or breach of the nature described in clause 18.11(e) without Approval.

19.0 CONFIDENTIALITY

- 19.1** Subject to clauses 20.0 and 21.0, each Party will keep confidential and not disclose, and will procure that its employees and the employees of its sub-contractor(s) keep confidential and do not disclose, any Confidential Information including, but not limited to, information of a confidential nature obtained by it (concerning the other Party) by reason of this Contract except information which the receiving party can show by reference to documentary or other evidence:
- (a) is in the public domain otherwise than by reason of a breach of this clause;
 - (b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (c) was in a Party's possession without restriction as to its disclosure prior to receiving such Information from the other Party;
 - (d) is required to be disclosed by Law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;
 - (e) is necessary for a Party to disclose for the purposes of the performing its obligations under this Contract (but only to the extent it is necessary to do so) provided that the receiving party is made aware of the Contractor's confidentiality obligations under the Contract and, where in the opinion of the Client it is considered necessary, the Contractor shall ensure that the receiving party signs a confidentiality undertaking on the terms equivalent to those contained in this contract;
 - (f) the other Party has given its specific express prior written consent can be disclosed;
 - (g) in the case of the Client, is disclosed to any other government department provided that such government department will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause; or
 - (h) is disclosed to a Party's professional advisor who has been engaged to advise in connection with the Contract as is strictly necessary for the performance of the Contract and the disclosing party shall ensure that the professional advisor is subject to obligations of confidentiality equivalent to those contained in this Contract.
- 19.2** The provisions of this clause will apply during the continuance of this Contract and after its expiry or termination howsoever arising.
- 19.3** The Contractor may only disclose the Client's Confidential Information to Staff who are directly involved in the provision of the Deliverables and who need to know the information, and shall ensure that such Staff is aware of and shall comply with these obligations as to confidentiality.
- 19.4** The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Contract.
- 19.5** At the written request of the Client, the Contractor shall procure that those members of the Staff who have access to the Client's Confidential Information signs confidentiality undertakings (in a form satisfactory to the Client) with the Contractor prior to commencing any (or carrying out any further) work in accordance with this Contract and the Contractor shall be responsible to the Client for such members of Staff's compliance with those undertakings.
- 19.6** Nothing in this Contract shall prevent the Client from disclosing the Contractor's Confidential Information:
- (a) to any Contracting Authority or Utility. All Contracting Authorities and Utilities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities or Utilities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority or Utility;

- (b) to any contractor or other person engaged by the Client or any person conducting a Cabinet Office Major Project Authority gateway review;
- (c) for the purpose of the examination and certification of the Client's accounts;
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources; or
- (e) for the purposes of assisting in the prevention and detection of Fraud pursuant to powers inserted in the Audit and Accountability (Northern Ireland) Order 2003 by the Serious Crime Act 2007.

20.0 FREEDOM OF INFORMATION

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

20.2 The Contractor shall, and shall ensure that any sub-contractors shall:

- (a) transfer to the Client each Request for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- (b) provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client's request; and
- (c) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

20.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

20.4 In no event shall the Contractor or its sub-contractors respond directly to a Request for Information unless Approved.

20.5 The Contractor acknowledges that (notwithstanding the provisions of clause 19.0 or any other clause of the Contract) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Deliverables in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where clause 20.5(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

20.6 The Contractor will ensure that all Information relevant to this Contract is retained for disclosure and if requested, permit the Client to inspect such records as requested for a period of ten years from the end of the Contract Period.

21.0 PUBLICITY, MEDIA & OFFICIAL ENQUIRIES

- 21.1** The Contractor will not make any press announcement or publicise this Contract or any part thereof in any way unless Approved.
- 21.2** The Contractor will take all reasonable steps to ensure that their servants, employees, agents, sub-contractors, professional advisors and consultants comply with clause 21.1.

22.0 CLIENT DATA

- 22.1** The Contractor acknowledges that the Client Data is the property of the Client and the Client hereby reserves all Intellectual Property Rights which may subsist in the Client Data. The Contractor shall not delete or remove any proprietary (including copyright) notices contained within or relating to the Client Data.
- 22.2** The Contractor shall not store, copy, disclose, or use the Client Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Client.
- 22.3** To the extent that Client Data is held and/or Processed by the Contractor, the Contractor shall supply that Client Data to the Client as requested by the Client in the format specified in the Specification and in accordance with clause 32.0.
- 22.4** The Contractor shall take responsibility for preserving the integrity of Client Data which is provided to it by the Client and preventing the corruption or loss of such Client Data.
- 22.5** In the event that the Contractor holds or hosts any Client Data, the Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored either remotely or off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at no less than 3 Monthly intervals or such other frequency as specified in the Specification.
- 22.6** The Contractor shall ensure that any system on which the Contractor holds any Client Data, including back-up data, is a secure system that complies with the Security Policy.
- 22.7** If the Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default, or the Default of anyone acting on the Contractor's behalf, so as to be unusable, the Client may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Client Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable; and/or
 - (b) itself restore or procure the restoration of Client Data, and shall be repaid by the Contractor any reasonable costs and expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan.
- 22.8** If at any time the Contractor suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Client immediately and inform the Client of the remedial action the Contractor proposes to take.
- 22.9** In the event that through any Default of the Contractor or anyone acting on the Contractor's behalf, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall indemnify the Client for all costs associated

with the reconstitution of that data and shall provide to the Client a full credit in respect of any charge levied for its transmission.

23.0 ENVIRONMENTAL REQUIREMENTS & SOCIAL REQUIREMENTS

- 23.1** The Contractor will provide the Deliverables in accordance with the Client's environmental policy, in accordance with the Sustainable Development Strategy for Northern Ireland and shall comply with any obligation in the Specification concerning energy efficiency or environmentally friendly materials and/or methods.
- 23.2** The Contractor shall comply with the obligations set out in the Specification in connection with social considerations including, without limitation, Buy Social obligations.

24.0 AUDIT & MONITORING

- 24.1** The Contractor will keep and maintain until seven years (or for a period as detailed within the Specification) after the end of the Contract Period, full and accurate records of the Contract and the goods and services provided under it, including all Staff records delivering those goods and services, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor will on request afford the Client or the Client's representatives such access to those records as may be reasonably requested by the Client in connection with the Contract.
- 24.2** The Client reserves the right to carry out audits no more than once annually and shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Deliverables.
- 24.3** Subject to the Client's obligations of confidentiality, the Contractor shall on demand provide the Client (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Client (and/or its agents or representatives) within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Contractor and to any Equipment used (whether exclusively or non-exclusively) in the provision of the Deliverables; and
 - (c) access to Staff.
- 24.4** The Client shall use reasonable endeavours to give at least 5 Working Days' notice of its intention to conduct an audit.
- 24.5** The Contractor will provide the Client with copies of all reports following any audits carried out by third parties relative to the matters specified in clause 24.3, within 20 Working Days of any such report being delivered to the Contractor.
- 24.6** The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a Default by the Contractor of its Staff in which case the Contractor shall reimburse the Client for all the Client's reasonable costs incurred in the course of the audit.
- 24.7** If an audit identifies that:
- (a) a Contractor Default has occurred, the Client shall serve a notice on the Contractor stating that such Default has occurred (a "**Notice**"). If the Contractor's Default relates to a failure to provide any information to the Client about the Contract Price, proposed Charges or the Contractor's costs, then the Notice shall include a requirement for the provision of all such information;

- (b) the Client has overpaid any Charges or element of the Contract Price, the Contractor shall pay to the Client the amount overpaid within 20 Working Days of receipt of a Notice. The Client may deduct the relevant amount from any Charges or other payment of the Contract Price if the Contractor fails to make this payment; and/or
- (c) the Client has underpaid any properly due element of the Charges or Contract Price, the Client shall pay to the Contractor the amount of the under-payment, less the cost of audit incurred by the Client if this was due to a Default by the Contractor in relation to invoicing, within 20 Working Days of receipt of a Notice.

24.8 The provisions of this clause 24.0 shall survive the expiry or termination of this Contract for a period of 24 Months, except to the extent of the provision to audit financial records which shall survive the expiry of this Contract in line with the Client's retention policy. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with this Contract.

24.9 Where the Contractor has sub-contracted part of the Contract, the Contractor shall procure that its sub-contractors, and any sub-contractors of sub-contractors, provide to the Client access, monitoring, data and information equivalent to that required of the Contractor under this clause 24.0.

24.10 Unless otherwise instructed in the Specification, the Contractor shall submit expenditure reports at least every six Months to the Contract Manager, detailing what Goods (if any) have been purchased (correlating to the item numbers in the Specification and/or Pricing Schedule), what department of the Client has purchased the Goods (if any), what quantities have been purchased and what the level of expenditure is on the Contract. This report shall also detail the time to deliver the Goods or the percentage of Goods delivered on time, the number of returns and details of damaged Goods.

24.11 Unless otherwise instructed in the Specification, the Contractor shall submit complete, accurate and timely information and data relating to the performance of the Contract at the request of the Contract Manager. The precise nature, format and frequency of such information shall be agreed by the Contract Manager, but shall include for example (and without limitation) Contract expenditure, resource levels, work activity and compliance levels.

24.12 The Client may request additional or more frequent expenditure information which shall be made available by the Contractor promptly following the Client's request, at no additional cost.

25.0 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

25.1 If the Contractor fails to comply with any of its contractual obligations, the Client may regard this as poor performance and, without prejudice to any other right or remedy of the Client, may manage the Contractor's poor performance using the Protocol. In managing the Contractor's poor performance in relation to this Contract, the Client may, in accordance with the Protocol, issue the following notifications to the Contractor:

- (a) First Written Warning of Unsatisfactory Performance;
- (b) Second Written Warning of Unsatisfactory Performance;
- (c) Notice of Written Warning; and/or
- (d) Notice of Unsatisfactory Performance.

25.2 Without prejudice to any other right or remedy available to the Client, where a complaint is received about the standard or the manner in which any Deliverables have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under this Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate

the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with this clause 25.0.

25.3 In the event that the Client is of the reasonable opinion that there has been a material breach of this Contract by the Contractor, then the Client may, without prejudice to its rights under clauses 27.0 and 29.0, do any of the following:

- (a) without terminating this Contract, itself supply or procure the supply of all or part of the Deliverables until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with this Contract;
- (b) without terminating the whole of this Contract, terminate this Contract in respect of part of the Deliverables only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Deliverables;
- (c) make such pro rata deduction from the Contract Price to be made to the Contractor as the Client shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Deliverables in accordance with the provisions of the Contract; and/or
- (d) terminate, in accordance with clause 29.0, the whole of this Contract.

25.4 Without prejudice to its right under clause 8.0 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Deliverables by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Deliverables and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Deliverables.

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

25.6 In the event that:

- (a) the Contractor fails to comply with clause 25.5 and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause 25.5,

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

26.0 BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

26.1 Within two Months after the Effective Date, the Contractor shall propose the contents and form of a business continuity and disaster recovery plan which will provide details and a plan of action to ensure that the Client will receive the benefit of the Deliverables following: (i) an unexpected interruption in the supply or receipt of the Services; or (ii) the damage to, or unavailability of, the Equipment. The Contractor and the Client will meet to agree the form of such a plan within one Month of the Client receiving the proposed plan (which shall, when Approved, be the “**Business Continuity and Disaster Recovery Plan**”).

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

26.3 The Contractor shall ensure that it is able to implement the provisions of the Business Continuity and Disaster Recovery Plan at any time in accordance with its terms.

26.4 The Contractor shall test the Business Continuity and Disaster Recovery Plan on a regular basis (and, in any event, not less than once in every 12-month period). The Client shall be entitled to participate in such tests as it may reasonably require.

27.0 INDEMNITY & LIABILITY

27.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) fraud; or
- (c) fraudulent misrepresentation; or
- (d) any breach of the Contractor's obligations under any provision of this Contract (or any law) relating to the Processing of Personal Data or clause 19.0 or any obligations under common law relating to confidentiality; or
- (e) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Supply of Goods Act 1979.

27.2 The Parties agree the following:

- (a) the Contractor's liability in respect of any indemnities provided under this Contract, shall be unlimited. The Contractor's aggregate liability in respect of all other direct losses incurred by the Client under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed the financial limits set out in clause 27.4; and
- (b) nothing in this Contract shall limit the Client's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under any indemnity in this Contract.

27.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

27.4 Subject always to clause 27.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the annual aggregate liability under this Contract of either Party for all Defaults resulting in direct loss of or damage to the property (including buildings, plant and equipment) of the other under or in connection with this Contract shall in no event exceed the Contractor's Property Liability Limit in the year the liability arises; and
- (b) the annual aggregate liability under this Contract of either Party for any breach of (or breach of this Contract which causes the other Party to breach) The Network and Information Systems Regulations 2018 shall not exceed £17million; and
- (c) the annual aggregate liability under this Contract of either Party for all Defaults (other than a Default governed by clause 27.4(a) or 27.4(b)) shall in no event exceed the Contractor's Residual Liability Limit.

27.5 Subject always to clause 27.1 and clause 27.6, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business or revenue; and/or
- (b) indirect or consequential loss or damage.

27.6 The provisions of clause 27.5 will not limit the Client's right to recover for:

- (a) additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;
- (b) wasted expenditure or charges rendered unnecessary and incurred by the Client arising from a Default by the Contractor;
- (c) additional cost of procuring replacement goods and/or services for the remainder of the term of the Contract Period;
- (d) additional costs to maintain the Deliverables arising from a Default by the Contractor;
- (e) any expenditure incurred as envisaged by clause 29.2;
- (f) anticipated savings; and
- (g) any costs and losses arising from delay in performance.

27.7 For the avoidance of doubt, unless expressly noted in these General Terms or the Specification, the Client does not provide any indemnification of the Contractor or any other person.

28.0 INSURANCES

28.1 The Contractor shall effect and maintain with a reputable company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss or corruption of personal data (including without limitation a personal data breach), loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period (and, if required by the Client at any time during the Contract Period, for a minimum of 6 (six) years following the expiration or earlier termination of the Contract). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

28.2 Without prejudice to clause 27.0, the Contractor shall hold insurance policies for the amounts stated as Contractor's Required Insurances in the Commercial Terms.

28.3 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Client may make alternative arrangements to protect its interests and recover the costs of such arrangements from the Contractor.

28.4 The provisions of any insurance policy or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate (in addition to the Contractor's Required Insurances) to enable the Contractor to satisfy any liability referred to in clause 27.0.

28.5 Where required within the Commercial Terms, the Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and, if required by the Client, by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount specified under the Contractor's Required Insurance in the Commercial Terms for each individual claim, or such higher limit as the Client may reasonably require (and as required by law) from time to time. Such insurance shall be

maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

29.0 TERMINATION OF CONTRACT

Termination on Default

29.1 Without prejudice to any other right or remedy it might have, the Client may terminate this Contract by written notice to the Contractor with immediate effect if:

- (a) the Contractor commits a Default and if:
 - i. the Contractor has not remedied the Default to the reasonable satisfaction of the Client within 30 days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied. For the avoidance of doubt, the Client may terminate the Contract in reliance on this clause, independently of following the Protocol, and if the Client follows the Protocol, this shall not limit, prejudice or impact upon its ability to terminate the Contract pursuant to any other right or provision of this Contract. The issue of the First Written Warning under the Protocol shall be sufficient written notice for the purpose of this clause 29.1; or
 - ii. the Default is not, in the opinion of the Client, capable of remedy; or
 - iii. the Default is a material breach of the Contract (for the avoidance of doubt, this includes, but is not limited to, any failure by the Contractor to comply with its obligations set out in clauses 18.2 and 18.7 to 18.11 (inclusive)); or
- (b) in accordance with the Protocol, if the Contractor has been issued with one or more of the following notifications:
 - i. Second Written Warning of Unsatisfactory Performance; or
 - ii. Notice of Written Warning; or
 - iii. Notice of Unsatisfactory Performance.

29.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

Termination on Insolvency

29.3 Without prejudice to any other right or remedy it might have, the Client may terminate this Contract by written notice to the Contractor with immediate effect if:

29.3.1 the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement under the Insolvency (Northern Ireland) Order 1989 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to chapter IV of the Insolvency (Northern Ireland) Order 1989; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or it is or becomes unable to pay its debts, within the meaning of article 103 of the Insolvency (Northern Ireland) Order 1989; or being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency (Northern Ireland) Order 1989; or
- (f) any event similar to those listed in clause 29.3.1(a)-(e) occurs under the law of any other jurisdiction; or

29.3.2 the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to articles 226-227 of the Insolvency (Northern Ireland) Order 1989 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of its assets; or
- (d) the Contractor is unable to pay its debts or has no reasonable prospect of doing so, in either case within the meaning of article 242 of the Insolvency (Northern Ireland) Order 1989; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) the Contractor dies or is adjudged incapable of managing its affairs within the meaning of Part VII of the Mental Health (Northern Ireland) Order 1986; or
- (g) the Contractor suspends, ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (h) any event similar to those listed in clause 29.3.2(a)-(g) occurs under the law of any other jurisdiction.

Termination on Change of Control

29.4 The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**Change of Control**”).

29.5 The Client may terminate the Contract by notice in writing with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Client becomes aware of the Change of Control,

but shall not be permitted to terminate the Contract where an Approval was granted prior to the Change of Control.

Termination on Occasion of Tax Non-Compliance

29.6 In the event that:

- (a) the warranty given by the Contractor pursuant to clause 46.1 is materially untrue; or
- (b) the Contractor commits a material breach of its obligations to notify the Client of any Occasion of Tax Non-Compliance as required by clause 46.2; or
- (c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Client, are acceptable;

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

Termination on failure to pay undisputed sums of money

29.7 If the Client fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clause 8.0 (Recovery of Sums Due).

29.8 The Contractor shall not suspend the supply of the Deliverables unless the Contractor is entitled to terminate the Contract under clause 29.7 for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

Termination in accordance with the Utilities Contracts Regulations 2016

29.9 The Client shall be entitled to terminate the Contract without liability in the event that any of the situations described in regulation 89(1) of the Utilities Contracts Regulation 2016 occurs.

Break

29.10 The Client shall have the right to terminate the Contract in whole or part at any time by providing the Contractor with written notice of at least three Months.

30.0 CONSEQUENCES OF TERMINATION/EXPIRY

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

- (a) give all reasonable assistance (other than financial assistance) to the incoming provider of the Deliverables;
- (b) immediately return all rightly requested documents, information and data including, but not limited to, all Confidential Information, Personal Data and IP Materials (as defined in the relevant appendix) in its possession or in the possession or under the control of its Staff which was obtained or produced in the course of providing the Deliverables;
- (c) immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Contractor under this Contract. Such property shall be handed back in good working order (however allowance shall be made for reasonable wear and tear at the Client's sole discretion);
- (d) promptly provide all information concerning the provision of the Deliverables which may reasonably be requested by the Client for the purposes of adequately understanding the

manner in which the Deliverables have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence; and

- (e) assist and co-operate with the Client to ensure an orderly transition of the provision of the Deliverables to the Client or a Replacement Contractor and/or the completion of any work in progress in accordance with clause 32.0.
- 30.2** If the Contractor fails to comply with clause 30.1(b), the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 30.3** Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clauses 30.1(b) and 30.1(d) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.
- 30.4** The Client may invoke any agreed Service Transfer Plan (as defined below) in a reasonable period of time prior to expiry of the Contract Period or any notice of termination of the Contract, or immediately in the case of immediate termination.
- 30.5** Where the Client terminates the Contract and then makes other arrangements for the supply of services the same as (or equivalent to) the Services and/or goods the same as (or equivalent to) the Goods, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated, no further payments shall be payable by the Client to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this clause.
- 30.6** Where the Client terminates the Contract under clause 29.10 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, subject to clause 30.7 and provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, it shall be required to provide evidence, to the Client's reasonable satisfaction, that it has, in good faith, attempted to recover such losses under its applicable insurance policies before attempting to rely on the indemnification specified in this clause and the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. If relying on this clause, the Contractor shall (in addition to the other evidence required by this clause) submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 29.10 (Break).
- 30.7** The Client shall not be liable to pay any sum under clause 30.6 which:
- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - (b) when added to any sums paid or due to the Contractor under this Contract, exceeds the total sum that would have been payable to the Contractor if this Contract had not been terminated prior to the expiry of the Contract Period; or
 - (c) is a claim by the Contractor for loss of profit, due to early termination of this Contract.
- 30.8** Save as otherwise expressly provided in this Contract:

- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination or expiry of this Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under the following clauses: 1.0, 5.0, 8.0, 9.0, 12.0, 14.0, 15.0, 17.0, 19.0, 20.0, 21.0, 22.0, 24.0, 27.0 to 34.0 (inclusive), 49.0, 50.0, 53.0 and 56.0 and any other provision of the Contract which, expressly or by implication, is intended to come into or continue in force on or after termination or expiry of the Contract.

31.0 INEFFECTIVENESS

In the event that the Contract is declared "ineffective" pursuant to Regulation 98(2)(a) of the Public Contracts Regulations 2015 or Regulation 114 of the Utilities Contracts Regulations 2016, the Client shall have no liability to the Contractor other than in respect of Deliverables provided prior to the date on which such "ineffectiveness" order takes effect, which cost shall be assessed in accordance with the Contract Price. Under no circumstances shall the Contractor be entitled to any payment or compensation for loss of profit for Deliverables not provided consequent on such declaration of ineffectiveness or for loss of opportunity or reputation or breach of statutory duty or otherwise or any other remedy whatsoever as a result or in respect of any such declaration of "ineffectiveness". The Client and the Contractor acknowledge and agree that it is intended that the provisions of this clause and clauses 12.0 and 52.0 shall apply as a binding agreement between them which shall, to the extent permissible by Law, survive and operate independently of the Contract notwithstanding any declaration of ineffectiveness of the Contract.

32.0 TRANSFER OF OPERATIONS TO SUCCESSOR CONTRACTOR

- 32.1** The Contractor shall, if and to the extent requested by the Client, provide to the Client from time to time during, and up to twelve Months after expiry of, the Contract Period, such assistance (other than financial assistance) data and information as the Client may reasonably require for the purpose of, or in relation to, the future provision of the Deliverables (or replacement goods and/or services) by the Client or any Replacement Contractor and in particular for the purpose of including or making reference to such information in any invitation to tender or ancillary documents in respect of the provision of the Deliverables (or replacement goods and/or services) and the migration of service provision.
- 32.2** The Contractor warrants that any information made available in compliance with clause 32.1 shall, to the best of its knowledge and belief, having made due and diligent enquiry, be materially true and accurate.
- 32.3** The Contractor shall take no action during or after the Contract Period which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult the transfer as a going concern of the Deliverables (or replacement goods and/or services) at the end of the Contract Period to the Replacement Contractor or to the Client, as the case may be.
- 32.4** The Contractor agrees to indemnify and keep the Client fully indemnified in respect of any claims, costs, demands, and liabilities arising from the provision of incorrect information provided to the Client by the Contractor under clause 32.1, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing goods and/or services similar to the Deliverables.
- 32.5** The Contractor shall not replace any parts or components of the Equipment with parts or components that are of lower quality or which are unsuitable for use in their designed purpose

either by the Client or a Replacement Contractor, prior to the expiry date of this Contract or any date of termination hereof.

32.6 No later than three (3) Months after the Commencement Date, and thereafter as specified in clause 32.8, the Contractor shall prepare a draft service transfer plan for review by the Client. The Client shall review the draft within twenty (20) Working Days of receipt from the Contractor and shall notify the Contractor of any suggested revisions. In this respect, the Client will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed plan shall be signed as approved by each Party (and thereafter be known as the “**Service Transfer Plan**”).

32.7 The Service Transfer Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including but not limited to the following details:

- (a) proposals for the identification and transfer of documentation providing details of the Services;
- (b) proposals for the identification and return of all Client Furnished Items in the possession of the Contractor;
- (c) proposals to enable the Client or the Replacement Contractor to recruit suitably skilled personnel;
- (d) proposals for the training of key members of the Replacement Contractor’s personnel in connection with the continuation of the provision of the Services following the expiry or termination of this Contract charged at rates agreed between the Parties at that time (both Parties acting reasonably);
- (e) proposals for the granting of licences to use all software necessary for the Client’s receipt of the Services and the provision of copies of all related documentation;
- (f) proposals for the transfer of all Client Data then in the Contractor’s possession to either the Client or a Replacement Contractor, including:
 - i. an inventory of all Client Data;
 - ii. details of the data structures in which the Client Data is stored, in the form of an agreed data model together with information on other data structures in which the Client Data could be stored;
 - iii. proposed transfer methods, both physical and electronic;
 - iv. proposed methods for ensuring the integrity of the Client Data on transfer;
 - v. proposals for providing the Client or a Replacement Contractor copies of all documentation used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Contractor; and
 - vi. proposals for the supply of any other information or assistance reasonably required by the Client or a replacement Contractor in order to effect an orderly hand over of the provision of the Services.

32.8 The Service Transfer Plan shall be reviewed and updated by the Contractor. In this regard, the Contractor shall provide a revised version of the Service Transfer Plan to the Client on or before 31st July and 31st January each year (or more frequently as may be agreed between the Parties). The revised Service Transfer Plan shall be reviewed and agreed in accordance with the original mechanism of the draft Service Transfer Plan as described in clause 32.6.

33.0 TUPE

33.1 The Contractor shall at any time during the Transfer Assistance Period:

- (a) on receiving a request from the Client promptly provide, subject to legal obligations regarding data protection and confidentiality, in respect of any person wholly or mainly engaged or employed by the Contractor in the provision of the Services (the “**Assigned Employees**”), full and accurate details regarding the number, job title, grade, salary and benefits relating or

payable to those Assigned Employees, together with such other information relating to the Assigned Employees which is in the possession of the Contractor or which can reasonably be obtained by the Contractor from any third party as may reasonably be required by the Client or any prospective Replacement Contractor (the “**Re-tendering Information**”); and

- (b) notify the Client in writing of any material changes to the Re-tendering Information promptly as and when such changes arise.

33.2 The Contractor undertakes that, during the Transfer Assistance Period, it shall not without the prior written consent of the Client:

- (a) materially vary, or commit to make a variation in the future, the terms and conditions of any of the Assigned Employees (including, without limitation, remuneration, benefits and other perquisites and collective agreements which relate to the employment of such employees); or
- (b) increase the number of Assigned Employees; or
- (c) replace any of the Assigned Employees, save where the Contractor replaces any such individuals with individuals of substantially equivalent employees in relation to grade and remuneration,

and shall indemnify the Client and/or any Replacement Contractor (as the case may be) against all liabilities which it incurs, and/or they incur in connection with or as a result of the Contractor's breach of this clause 33.2.

33.3 During the Contract Period, Contractor shall maintain personnel records in the format normally adopted by it regarding the service of each of the Assigned Employees including all personnel records required to be maintained by Law.

33.4 The Parties acknowledge that by virtue of the cessation or partial cessation of the provision of the Services by the Contractor the contracts of employment of each Transferring Employee may have effect after such cessation as if originally entered into between a Replacement Contractor or the Client and each Transferring Employee pursuant to the TUPE Regulations or the Acquired Rights Directive but the Parties agree that the provisions of clauses 33.5 to 33.8 (inclusive) shall apply irrespective of whether or not the TUPE Regulations or the Acquired Rights Directive do apply as anticipated in this clause 33.4.

33.5 All remuneration of any kind due to the Transferring Employees in respect of the period commencing on the Commencement Date and ending on the Transfer Date applicable to them shall be paid or settled in full by the Contractor in each case no later than the date such remuneration is due to be paid.

33.6 At least 21 days prior to any prospective Transfer Date the Contractor will supply to the Client or a Replacement Contractor information regarding the identity, age, sex, length of service, job title, holiday entitlement, workplace, and terms and conditions of employment affecting each of the Assigned Employees at that time and the Contractor will update the Client or a Replacement Contractor (as the case may be) in respect of any changes to the information supplied by it pursuant to this Condition in a timely fashion throughout the period between the information being provided and the applicable Transfer Date.

33.7 The Contractor shall indemnify the Client and/or any Replacement Contractor (as the case may be) against all Employment Liabilities which it incurs, and/or they incur, in connection with or as a result of:

- (a) any claim by any of the Transferring Employees (or any person who would have been a Transferring Employee but for their dismissal prior to the Transfer Date) arising out of their employment or the termination thereof providing that such liabilities arise from any act or omission prior to the Transfer Date and this shall not include any such liabilities which arise from any act or omission of the Client or any Replacement Contractor; or

- (b) any misrepresentation or mis-statement, whether negligent or otherwise, made by the Contractor to the Client and/or the Transferring Employees or their representatives before the Transfer Date and whether liability for any such claim arises before, on or after the Transfer Date.

33.8 For the purposes of the Contracts (Rights of Third Parties) Act 1999, any Replacement Contractor shall have the same rights to enforce the provisions of clause 33.7 which directly affect or which are intended to directly benefit the Replacement Contractor as it would were it a party to the Contract.

34.0 DISPUTE RESOLUTION

34.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 30 days of either Party notifying the other that the dispute should be settled in accordance with this clause 34.0. Such efforts shall initially involve the escalation of the dispute to a Senior Manager of the Client and a Company Director (or equivalent or higher) of the Contractor.

34.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.

34.3 If the dispute cannot be resolved by the Parties pursuant to clause 34.1, the dispute shall be referred to mediation pursuant to the procedure set out in clause 34.5 unless: (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

34.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to any dispute resolution procedure (unless required by the Client, which it shall at all times retain the right to do) and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.

34.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that it is unable or unwilling to act, apply to the President of the Law Society of Northern Ireland (“**LSNI**”) to appoint a Mediator;
- (b) the Parties shall within 14 days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from LSNI to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

- (f) if the Parties fail to reach agreement in the structured negotiations within 30 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 34.6.

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

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

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

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Client shall give a written notice of arbitration to the Contractor ("**the Arbitration Notice**"):
 - i. stating that the dispute is referred to arbitration; and
 - ii. providing details of the issues to be resolved;
- (c) the London Court of International Arbitration procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 34.7(b) shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by the Client under 34.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the Law Society of Northern Ireland;
- (f) the arbitration proceedings shall take place in Belfast and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpretations made in accordance with, Northern Ireland Law.

35.0 VARIATION

35.1 Unless specifically provided otherwise, the Contractor shall not be entitled to vary the Contract except as directed by the Client.

35.2 Subject at all times to the provisions of clause 36.0, the Client shall be entitled to request a variation to the Specification or the Contract (hereinafter called a "**Variation**"). A Variation to the General Terms may be made in writing by mutual agreement of the Parties. A Variation to the Specification shall be dealt with in accordance with the procedure described in the remainder of this clause.

35.3 The Client shall be entitled to request a Variation by notifying the Contractor in writing of the Variation by means of a Variation to Contract Form (Annex 1) and the Client shall provide the

Contractor with sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation.

35.4 In the event that a Variation does require an amendment to the Contract Price, such amendment to the Contract Price shall be calculated by the Client, being an amount which properly and fairly reflects the nature and extent of the Variation taking account of all relevant circumstances and shall be agreed in writing with the Contractor. In the event that the Parties fail to agree an amendment to the Contract Price for the Variation, the dispute shall be resolved under the Dispute Resolution Procedure under clause 34.0.

35.5 Following a request from either Party under clause 35.2 or 35.3, the Contractor shall, on request from the Client, provide the Client with reasonable assistance and information (without cost) to assist the Client in assessing the scope, cost and impact of the proposed Variation.

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

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

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Deliverables to be performed in a way that infringes any Law; and/or
- (c) be technically impossible to implement,

the Contractor shall notify the Client in writing immediately which of the above reasons for being unable to accept the Variation applies. Within 10 Working Days of receipt of such notification, the Client shall inform the Contractor that, at the Client's sole discretion, it shall:

- i. allow the Contractor to fulfil its obligations under the Contract without being required to implement the Variation; or
- ii. attempt to agree a resolution to the matter with the Contractor if the Contractor has already delivered all or part of the Deliverables or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; or
- iii. terminate the Contract with immediate effect unless the Parties agree an alternative to the proposed Variation within 10 Working Days of the Client notifying the Contractor of this intention (during which the Parties shall act reasonably).

35.8 Until and/or unless a change to the Contract Price is agreed by the Client pursuant to clause 35.0 (Variation) the Contractor shall continue to supply the Deliverables in accordance with its existing obligations.

36.0 CHANGE IN LAW

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

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Deliverables is known at the Commencement Date.

36.2 If a Specific Change in Law occurs during the Contract Period (other than those referred to in clause 36.1), the Contractor shall notify the Client of the likely effects of that change, including:

- (a) whether any modification is required to the Deliverables, the Contract Price or the Contract; and
 - (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 36.3** Any increase or decrease in the Contract Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause shall be implemented by way of a fair and reasonable adjustment to be agreed between the Parties.
- 36.4** As soon as practicable after any notification in accordance with clause 36.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change in Law, including:
- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
 - (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Deliverables; and
 - (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

37.0 AGENCY, PARTNERSHIP ETC.

This Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

38.0 ASSIGNMENT & SUB-CONTRACTING

- 38.1** The Contractor shall not without prior Approval assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of this Contract or any part thereof. The Client may, in the granting of Approval, provide conditions relating to such assignment, sub-contract, novation or disposal (including, without limitation, requiring that the proposed sub-contractor would have complied with any mandatory requirements for the Contractor as specified in the Procurement Documents) with which the Contractor shall be responsible for compliance. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 38.2** Where the Contractor enters into a sub-contract for the purpose of performing its obligations under this Contract, the Contractor shall:
- (a) ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice;
 - (b) ensure that equally favourable payment terms to those which the Client provides for the Contractor are passed on by the Contractor to sub-contractors and from those sub-contractors to their sub-contractors (where related to this Contract).
- 38.3** Where the Client Approved the placing of sub-contracts, copies of each sub-contract will, at the request of the Client, be sent by the Contractor to the Client as soon as is reasonably practicable.

- 38.4** The Client may assign, novate, or otherwise dispose of its rights and obligations under this Contract without the consent of the Contractor provided that such assignment, novation or disposal will not increase the burden of the Contractor's obligations under this Contract.
- 38.5** Any change in the legal status of the Client such that it ceases to be a body governed by public law shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Client.
- 38.6** If the rights and obligations of the Client under this Contract are assigned, novated or otherwise disposed of to a body which is not a Utility or if there is a change in the legal status of the Client such that it ceases to be a body governed by public law (in the remainder of this clause such a body being referred to as the "**Transferee**"):
- (a) the rights of termination of the Client in clause 29.0 (Termination of Contract) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Contractor.
- 38.7** The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under this Contract. In such circumstances, the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 38.8** Notwithstanding clause 38.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Charges or Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Client incurs under clause 29.8). Any assignment under this clause 38.8 shall be subject to:
- (a) total reduction of any sums in respect of which the Client may exercise its right of recovery under clause 8.0 (Recovery of Sums Due);and
 - (b) all related rights of the Client under the Contract in relation to the recovery of sums due but unpaid.
- 38.9** In the event that the Contractor assigns the right to receive the Charges or Contract Price under clause 38.1, the Contractor or the Assignee shall notify the Client in writing of the assignment and the date upon which the assignment becomes effective.
- 38.10** The Contractor shall ensure that the Assignee notifies the Client of the Assignee's contact information and bank account details to which the Client shall make payment.
- 38.11** The provisions of clause 7.0 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

39.0 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

40.0 DISCRIMINATION

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

- (a) persons of different religious beliefs or political opinions;
- (b) sex, gender, married and unmarried persons and civil partnerships;
- (c) persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave, shared parental or parental leave);
- (d) persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- (e) persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- (f) persons of different ages; and
- (g) persons of differing sexual orientation.

40.2 The Contractor will take all reasonable steps to secure the observance of clause 40.1 by all Staff.

41.0 THE HUMAN RIGHTS ACT 1998

The Contractor shall, and shall use reasonable endeavours to ensure that its Staff shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998. The Contractor agrees to indemnify and keep indemnified the Client against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this clause 41.0.

42.0 MODERN SLAVERY ACT 2015

42.1 The Contractor shall ensure that the Contractor and its Staff:

- (a) do not engage in any activity, practice or conduct which constitutes an offence under the MSA 2015; and
- (b) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the MSA 2015.

42.2 In performing its obligations under the Contract, the Contractor shall ensure it:

- (a) has and maintains throughout the Contract Period its own policies and procedures to ensure its compliance with the MSA 2015 in accordance with any requirements of the MSA 2015; and
- (b) includes in its contracts with its sub-contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 42.0.

42.3 The Contractor shall indemnify the Client against any losses, liabilities, damages, costs (including, but not limited to, reasonable legal fees) and expenses incurred by the Client as a result of the Contractor's and/or its Staff's breach of the MSA 2015.

43.0 BRIBERY ACT 2010

43.1 Both Parties shall:

- (a) have and shall maintain in place throughout the Contract Period their own policies and procedures to ensure compliance with all applicable Law relating to anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010) and will ensure that all such policies and procedures are enforced;
- (b) comply with all applicable Law relating to anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010) and with their own anti-bribery and anti-corruption policies (including any relevant industry code on anti-bribery and anti-corruption), in each case as may be updated from time to time; and
- (c) not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 (or which would constitute such an offence if the offending activity, practice or conduct had been carried out in the UK).

43.2 The Parties agree that any breach of this clause 43.0 shall constitute a material breach which is incapable of remedy for the purposes of clause 29.0 of this Contract.

44.0 PREVENTION OF CORRUPTION

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

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

44.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by clauses 44.1 or 44.2, the Client may:

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

45.0 PREVENTION OF FRAUD

45.1 The Contractor will take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Client.

45.2 The Contractor will notify the Client immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur.

45.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with an Authority the Client may:

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

46.0 TAX NON-COMPLIANCE

46.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Client in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasion of Tax Non-Compliance.

46.2 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (a) notify the Client in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly provide to the Client:
 - i. details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - ii. such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require.

46.3 The Contractor shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
 - i. a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - ii. a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) have and shall maintain in place throughout the term of this Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including, without limitation, employees of the Contractor) and to ensure compliance with clause 46.3(a);
- (c) notify the Client in writing if it becomes aware of any breach of clause 46.3(a) or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017; and
- (d) within three Months of the Commencement Date, and annually thereafter, certify to the Client (in writing and signed by an officer of the Contractor), compliance with this clause 46.3 by the Contractor and all persons associated with it under clause 46.4. The Contractor shall provide such supporting evidence of compliance as the Client may reasonably request.

46.4 The Contractor shall ensure that any person associated with the Contractor who is performing Services and/or providing Goods in connection with this Contract does so only on the basis of a contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in clause 46.3 ("**Relevant Terms**"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms.

46.5 Breach of clause 46.3 shall be deemed a material breach of this Contract.

- 46.6** For the purposes of clause 46.3(b), the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.

47.0 CONFLICTS OF INTEREST

- 47.1** The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.
- 47.2** The Client reserves the right to terminate this Contract, acting reasonably, immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of this Contract. The actions of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

48.0 FORCE MAJEURE

- 48.1** Neither Party will have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from Force Majeure. The Party affected by such circumstances will promptly notify the other Party (the “**Unaffected Party**”) in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than one Month, the Unaffected Party may immediately terminate this Contract by providing written notice to the other Party.
- 48.2** Any failure or delay by the Contractor in performing its obligations under this Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 48.3** If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 48.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

49.0 WAIVER

- 49.1** Any waiver or relaxation (either partly, or wholly) of any of the conditions of the Contract will be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of this Contract will not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 49.2** The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 49.3** A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract. The remedies available to either Party do not exclude rights provided by Law.

50.0 REMEDIES CUMULATIVE

Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract (whether under this Contract, statute or common Law) are cumulative and may be exercised concurrently or separately, and the exercise of one right or remedy will not be deemed an election of such right or remedy to the exclusion of other rights or remedies.

51.0 SEVERANCE

If any provision of this Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, the offending portion of the provision will, to the minimum required in order to give effect to the Parties' written intentions (other than the offending intention) be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and will not in any way affect any other circumstances of, or the validity or enforcement of this Contract.

52.0 NOTICES

52.1 Any notice or other communication which is to be given by either Party to the other shall be sent by email to the email address routinely used by the Contract Manager for the Client and the Contractor's Representative for the Contractor. Provided the relevant communication is not returned as undelivered (which includes receiving an out of office reply from the designated email address), the notice or communication shall be deemed to have been given 4 hours after the notice was sent, or sooner where the other Party acknowledges receipt of such notice or communications.

52.2 All written and oral communications, all documents and the labelling and marking of all packages shall be in English.

53.0 GOVERNING LAW AND JURISDICTION

The validity, construction and performance of this Contract, and all contractual and non-contractual matters arising out of it, will be governed by the laws of Northern Ireland and, subject to clause 34.0, will be subject to the exclusive jurisdiction of the courts of Northern Ireland to which the Parties submit.

54.0 IMPORTANCE OF REPUTATION

The Contractor acknowledges that the Client is subject to scrutiny by the general public and by Regulatory Bodies. The Contractor shall not take any action or omit to take any action, in relation to the Deliverables, which in the reasonable opinion of the Contract Manager would, or would be likely to, harm the reputation of the Client (including in respect of the Contractor's dealings with its sub-contractors and any third parties).

55.0 ENTIRE CONTRACT

55.1 Any variation to the provisions of this Contract (including any special conditions of contract agreed between the Parties) will be inapplicable unless evidenced as provided for in clause 35.0.

55.2 This Contract contains the whole contract between the Parties and supersedes and replaces any prior written or oral contracts, representations or understandings between them. The Parties confirm that they have not entered into this Contract on the basis of any representation

that is not expressly incorporated into this Contract. Nothing in this clause will exclude liability for Fraud or fraudulent misrepresentation.

56.0 PRIORITY OF DOCUMENTS

In the event of, and only to the extent of, any conflict between these conditions of contract and any document referred to herein, unless the condition in a document lower in the order of precedence below specifically states otherwise, the conflict shall be resolved in accordance with the following order of precedence:

- i. Purchase Orders;
- ii. the Clarifications;
- iii. the Specification;
- iv. these General Terms;
- v. the appendices listed, and in the order they appear, in the Specification;
- vi. the Procurement Documentation (excluding Clarifications); and
- vii. the Contractor's Tender.

VARIATION TO CONTRACT FORM

CONTRACT TITLE:

FOR THE PROVISION OF:.....

CONTRACT REF: VARIATION NO: DATE:../../.....

BETWEEN:

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1. This Contract is varied as follows:

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2. Words and expressions in this Variation shall have the meaning/s given to them in this Contract.
3. This Contract, including any previous Variation(s), shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Client Signature: Full Name: Grade: Date:	For: The Contractor Signature: Full Name: Grade: Date:
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APPENDIX 1 - SOFTWARE DEVELOPMENT APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 DEFINITIONS

In this appendix, and in addition to the defined terms used in the rest of the Contract, the following words will have the following meanings:

"Acceptance Test"	has the meaning set out in section 8.3 of this appendix.
"Acceptance Test Criteria"	means the criteria agreed by the Parties in accordance with section 8.0 of this appendix.
"Acceptance Test Period"	means the period agreed by the Parties in accordance with section 8.0 of this appendix.
"Acceptance Test Procedure"	means the procedure(s) agreed by the Parties in accordance with section 8.0 of this appendix.
"Bespoke Software"	means software programs developed by the Contractor specifically for the Client under this Contract including, without limitation, those described in the Award Letter.
"Client System"	means the Client's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this Contract which is owned by the Client or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the Services.
"Client Hardware"	means the computers and other equipment to be used by the Client in conjunction with the Contractor Software, including, if relevant and without limitation, those described in the Specification and/or Award Letter.
"Client Software"	means the software described in the Specification.
"Completion Date"	means the date for delivery of the Software as Ready for Service as specified in the Specification or Purchase Order or otherwise agreed in writing by the Parties.
"Contractor Software"	means the Contractor Standard Software, the Modified Software and the Bespoke Software, which (together) is developed to meet all requirements of the Specification.
"Contractor Standard Software"	means the software programs proprietary to the Contractor, specified in the Award Letter which are to be provided to the Client without modification.
"Delivery Method"	means the method that the Software or any Software Module is to be provided to the Client, as described in the Award Letter.

"Deployment Date"	means the estimated date by which the Contractor will complete deployment of a specified Software Module via the Delivery Method, as specified in the Implementation Plan.
"Development Services"	means the design and development of the Contractor Software in accordance with this Contract.
"Implementation Plan"	means the implementation plan referred to in section 2.12 of this appendix.
"ICT Environment"	means the Client System and the Contractor System.
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
"Milestone"	means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan by which the Milestone shall be completed.
"Modified Software"	means the software programs proprietary to the Contractor and/or third parties specified as such in the Award Letter, modified or to be modified by the Contractor under this Contract.
"Modified Software (Contractor)"	means those elements of the Modified Software specified as such in the Award Letter, which are elements of software owned by the Contractor which are modified or to be modified by the Contractor under this Contract.
"Modified Software (Third Party)"	means those elements of the Modified Software specified as such in the Award Letter, which are elements of software owned by a third party which are modified or to be modified by the Contractor under this Contract.
"New Release"	means a new release of all or any part of the Software suitable for use by the Client in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added but which does not constitute a New Version.
"New Version"	means a new version of any element of the Software released after the completion of the Acceptance Tests which provides additional and/or improved functionality and/or performance.

"Pre-Deployment Test Plan"	means the document prepared as specified in section 5.2(a) of this appendix and to be annexed to this Contract in accordance with that section.
"Pre-Deployment Tests"	means the tests to be carried out on the Modified Software and the Bespoke Software before deployed through the Delivery Method, as defined more fully in section 5.1 of this appendix.
"Ready for Service"	means deployed through the Delivery Method, tested and having passed or deemed to have passed the Acceptance Tests under section 8.0 of this appendix.
"Service Acceptance Procedures"	means the procedures as specified in section 8.0 of this appendix.
"Service Credits"	means the credits payable by the Contractor as set out in the Specification.
"Service Levels"	means the service levels as set out in the Specification.
"Software"	means the Contractor's Software and the Third Party Software.
"Software Module"	means any one of the individual software programs in the Software.
"Software Delivery Date"	means the estimated delivery date specified in the Implementation Plan on which the Contractor will deliver a Software Module via the Delivery Method.
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software.
"Third Party Software"	means the software programs proprietary to third parties, which are specified in the Award Letter and which are to be provided to the Client without modification by the Contractor as part of the Software.
"Virus"	means any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

2.0 SOFTWARE DEVELOPMENT & DOCUMENTATION

- 2.1 The Contractor shall carry out all of the Development Services with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the Software to meet the requirements of the Specification and (if relevant) Purchase Order by the Completion Date.

- 2.2** The Contractor shall provide the Third Party Software and any Modified Software (Third Party) to the Client under the licence terms provided by the relevant third parties (copies of which shall be provided to the Client promptly on request), and the Client agrees to be bound by such licence terms provided that such terms do not conflict with any of the provisions of this Contract.
- 2.3** The Contractor shall provide the Contractor Software under the terms of this Contract.
- 2.4** The Contractor shall provide to the Client, within 30 days after the successful completion of the Service Acceptance Procedures in accordance with section 8.0 of this appendix, copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the Software. Such Documentation shall be supplied in electronic form.
- 2.5** The Client may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the Software and for training the Client's personnel in use of the Software. The Client shall ensure that all of the Contractor's proprietary notices are reproduced in any such copy.
- 2.6** The Client may provide copies of the Documentation to any third party who needs to know the information contained in it, including to any third party after the Contract Period, provided that the recipient is subject to written obligations of confidentiality for the purposes of providing goods or services to the Client.
- 2.7** The Contractor warrants:
- (a) that there has not been included or used in, or on the development of, the Contractor Software any open-source software or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>) or anything similar, nor does any Contractor Software operate in such a way that it is compiled with or linked to any of the foregoing; and
 - (b) the Contractor Software does not comprise or include, and is not derived from, any open-source software which is licensed subject to a requirement that the Client is to cause any modification, development or product (in whole or part) of the Contractor Software to be published, made freely available or licensed as a whole at no charge to third parties under the terms of such licence.
- 2.8** The Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the Parties).
- 2.9** Notwithstanding section 2.8 of this appendix, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 2.10** Any cost arising out of the actions of the Parties taken in compliance with the provisions of section 2.9 of this appendix shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor or the Client Data (whilst the Client Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Client when provided to the Contractor; and
 - (b) by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

- 2.11 The Client and the Contractor acknowledge the importance of detailed planning for the implementation of all the Development Services under this Contract and the need to develop the Implementation Plan.
- 2.12 The Contractor shall ensure that the Implementation Plan prepared and delivered to the Client incorporates all the Milestones and Milestone Dates (including without limitation the Acceptance Test Period) and shall deliver a draft implantation plan to the Client within 1 Month of the Commencement Date (unless extended by the Client). Once agreed with the Client (at which point, it shall form the "**Implementation Plan**"), the Contractor shall monitor its performance against the Implementation Plan.

3.0 LICENCE TERMS

- 3.1 In the event that there is a conflict between the provisions of this appendix and any provisions in clause 9.0 of the General Terms (Intellectual Property Rights), the provisions of this appendix shall supersede the conflicting provisions of clause 9.0 of the General Terms.

- 3.2 All IPRs arising in or relating to any goods, equipment or documentation provided, furnished to or made available to the Contractor by or on behalf of the Client under this Contract (including but not limited to, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material ("**IP Materials**")) shall remain vested in the Client and its licensors.

- 3.3 Unless otherwise specified in this section, the Contractor hereby grants, and (as necessary) shall procure the grant by any third party, to the Client a fully-paid-up, transferable, unlimited, royalty-free, irrevocable, perpetual, worldwide and non-exclusive licence (with a right to sub-licence) to download, install, use, copy, reproduce, decompile, disassemble, reverse engineer, adapt, modify, develop and maintain all IPRs in:

- (a) the Contractor Software (excluding the Contractor Standard Software);
- (b) the Documentation;
- (c) the descriptions of the Services, including technical specifications, user manuals, operating manuals, process definitions and procedures; and
- (d) Contractor's Background IPRs,

for any purpose relating to the Services (or connected to the receipt of the Services) or to the exercise of the Client's business or the function of the Software (including, without limitation, to achieve the requirements specified in the Specification), subject to the Client's agreement and acknowledgement that the Contractor shall not be liable for any such Software to the extent it is modified by the Client or on request by the Client by a party other than the Contractor or the Contractor's subcontractor. For the avoidance of doubt, the licence to the Software granted by this Contract shall permit all customers and prospective customers of the Client to access and use the Software as provided for in the Specification.

- 3.4 The Contractor hereby grants, or shall procure that the owners or the authorised licensors, hereby grant, a licence of any Third Party Software to the Client on the Third Party Software owner's standard licence terms, for the duration of the Contract Period, provided that such terms permit the Client to use and copy the Third Party Software for any purpose relating to the Services or to the exercise of the Client's business or function of the Software (including, without limitation, to achieve the requirements specified in the Specification). The Contractor shall also grant to the Client a royalty-free, non-exclusive licence to use and copy the Contractor Standard Software for the duration of the Contract Period for any purpose relating to the Client's use or receipt of the Services (or connected to the receipt of the Services) or to the exercise of the Client's business or the function of the Contractor Software (including, without limitation, to achieve the requirements specified in the Specification).

- 3.5** The Contractor shall, if requested by the Client, grant or procure the grant of a licence of the same subject matter and on the same basis as set out in section 3.3 of this appendix to a Replacement Contractor, subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor.
- 3.6** The Contractor will deliver to the Client the Source Code and binary code forms of the New Release (insofar as it relates to Modified Software and/or Bespoke Software), the Modified Software and Bespoke Software within seven days of the Deployment Date, and otherwise when requested by the Client, and shall provide updates of the Source Code on each New Release (insofar as it relates to Modified Software and/or Bespoke Software) on media that is reasonably acceptable to the Client.
- 3.7** The Client hereby grants the Contractor a non-exclusive, limited licence over the Client Software as owned or licensed by the Client which is provided (in source code form) to the Contractor on or after the Commencement Date for the purpose of the Contractor carrying out the Services to the extent necessary.
- 3.8** Without prejudice to clause 9.4 of the General Terms, if a claim, demand or action for infringement or alleged infringement of any IPRs is made in connection with this Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services and/or the Software (subject to the approval of the Client) without reducing the performance or functionality of the same, or substitute alternative services and/or software of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified or substitute services and software; or
 - (b) procure a licence to use and supply the Services and/or the Software, which are the subject of the alleged infringement, on terms which are acceptable to the Client.
- 3.9** The provisions of section 3.8 of this appendix shall not apply insofar as any such claim or demand or action is in respect of:
- (a) any modification carried out by or on behalf of the Client to any Service and/or the Software provided under this Contract if such modification was not authorised by the Contractor in writing; or
 - (b) any use by the Client of the Services and/or the Software in a manner not reasonably to be inferred from the Specification or requirements of the Client or normal function of any element of the Software.
- 3.10** In the event that the Contractor has availed itself of its rights to modify the Services and/or the Software or to supply a substitute service or software pursuant to section 3.8(a) of this appendix or to procure a licence under section 3.8(b) of this appendix and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Contractor shall have no further liability thereafter under section 3.8 of this appendix in respect of the said claim, demand or action.
- 3.11** In the event that a modification, permission or substitution in accordance with section 3.8(a) of this appendix above is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with section 3.8(b) of this appendix:
- (a) the Client shall be entitled to terminate this Contract pursuant to clause 29.0 of the General Terms ('Termination on Default'); and
 - (b) the Contractor shall be liable for the value of the additional costs incurred in implementing and maintaining replacement services and software.

- 3.12** The Client warrants that the Contractor's use of any third party item supplied by the Client in accordance with any instructions given by the Client in connection with the use of such item shall not cause the Contractor to infringe any third party's IPRs in such item.
- 3.13** The Contractor shall not infringe any IPRs of any third party in connection with the provision of the Software and New Releases to the Client. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client harmless from and against all actions, suits, claims, demands, losses (whether direct or indirect), charges, damages, costs, expenses, penalties, reasonable legal and other professional fees awarded against or incurred or paid by the Client and other liabilities which the Client may suffer or incur as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's IPRs arising out of or in connection with the provision of the Software and New Releases to the Client, except where any such claim arises from: (a) items or materials based upon designs supplied by the Client; or the (b) use of data supplied by the Client which is not required to be verified by the Contractor under any provision of this Contract.
- 3.14** Each licence granted pursuant to sections 3.3 and 3.4 of this appendix shall be non-exclusive, but the licence for the Software granted under this Contract (taken as an entirety) shall be on an exclusive basis.
- 3.15** The Client may sub-license the rights granted to it pursuant to sections 3.3 and 3.4 of this appendix to a third party (including for the avoidance of doubt to any Replacement Contractor) provided that:
- (a) the sub-licence only authorises the third party to use such IPRs for the benefit of the Client; and
 - (b) the third party has entered into a confidentiality undertaking with the Client.
- 3.16** The Client may copy the Contractor Standard Software, Third Party Software and/or Contractor's Background IPR (as relevant) in order to create an archival copy and a back-up copy of it. When physically copying the Third Party Software, the Client shall use reasonable endeavours to include the original machine readable copyright notice, and a label affixed to the media identifying the software and stating: "This medium contains an authorised copy of copyrighted software which is the property of [*name of owner*]."
- 3.17** A licence granted under sections 3.3 or 3.4 shall not include a right for the Client, or any person on behalf of the Client, to:
- (a) provide a copy of the Software to any person for money or for other valuable consideration;
 - (b) use the Software as an integral part of any product which is supplied to any person for money or for other valuable consideration (other than to fulfil the functional objective of the Software, as set out in the Specification); or
 - (c) use the Software in the development of any product that competes with those of the Contractor; or
 - (d) to exploit commercially the Software (other than to fulfil the functional objective of the Software, as set out in the Specification).
- 3.18** The Client may:
- (a) assign, novate or otherwise dispose of its rights and obligations under sections 3.3 and/or 3.4 of this appendix to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Client; and
 - (b) transfer those licences to other machines or users within the Client.
- 3.19** Any change in the legal status of the Client which means that it ceases to be a body governed by public law shall not affect the validity of any licence granted under this Contract. If the Client

ceases to be a body governed by public law, the terms of this Contract shall be binding on any successor body to the Client.

- 3.20** If a licence is novated pursuant to section 3.18 above or there is a change of the Client's status pursuant to section 3.19 above, the rights acquired from the Client relating to the licence granted under sections 3.3 and 3.4 of this appendix shall not extend beyond those previously enjoyed by the Client.

4.0 DEVELOPMENT & DEPLOYMENT

- 4.1** The Contractor shall carry out the Development Services including, without limitation, developing the Bespoke Software and making the modifications to the Modified Software in order to provide the Software in accordance with the requirements of the Specification and (if relevant) the Purchase Order.

- 4.2** The Contractor agrees:

- (a) to deliver and deploy the Software via the Delivery Method;
 - (b) to carry out, in conjunction with the Client, the Acceptance Tests; and
 - (c) to provide the Software as Ready for Service by the Completion Date,
- on the terms and conditions set out in this Contract.

- 4.3** In performing the Development Services, the Contractor shall comply with the Client's reasonable instructions to ensure minimal disruption to the Client's business of providing water and sewerage services to business and residential customers in Northern Ireland.

- 4.4** The Contractor warrants that the Contractor System and assets used in the performance of the Services:

- (a) will be free of all encumbrances; and
- (b) will be Date Compliant.

5.0 PRE-DEPLOYMENT TESTING

- 5.1** Before deploying any item of Contractor Standard Software or Third Party Software via the Delivery Method, the Contractor shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Specification once properly deployed ("**Pre-Deployment Tests**"). If requested, the Pre-Deployment Tests shall be Approved in advance.

- 5.2** The Contractor shall carry out the Pre-Deployment Tests on the Modified Software and Bespoke Software before deploying them through the Delivery Method in accordance with the following provisions:

- (a) no later than 30 days after each module of Modified Software and Bespoke Software has been agreed, the Client shall deliver to the Contractor proposed user acceptance criteria and test data for the Pre-Deployment Tests for each module. These criteria and data shall be such as the Contractor considers are required (acting reasonably) to show that each module complies with the relevant parts of the Specification. The Contractor shall provide the Client with assistance to prepare such user acceptance criteria and test data at the Client's request. The Parties shall use best endeavours to agree the pre-deployment test plan containing the Pre-Deployment Tests for each module within 30 days from the date of delivery to the Contractor of the proposed criteria and data (such plan constituting the "**Pre-Deployment Test Plan**" on agreement), and such Pre-Deployment Test Plan shall be annexed to this Contract;

- (b) within a reasonable time before the Software Delivery Date for each Software Module of the Modified Software and Bespoke Software, the Contractor shall carry out the agreed Pre-Deployment Tests for the appropriate Software Module. The Contractor shall give the Client at least 14 days' notice of the start of the Pre-Deployment Tests and permit the Client to observe all or any parts of the testing (either remotely or in person) if requested; and
- (c) if the Software Module fails to pass the Pre-Deployment Tests then, subject to section 5.3, the Contractor shall remedy the defects and deficiencies, and the relevant test(s) shall be repeated within a reasonable time.

5.3 If the Software Module fails, in some material respect, to pass the Pre-Deployment Tests with less than 95% success rate, then the Client may, by written notice to the Contractor, choose at its sole discretion to specify (without prejudice to the Client's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms as are set out in section 5.2(b) of this appendix. If the Software Module fails such further tests, then the Client may:

- (a) request a repeat test under section 5.2(b) of this appendix;
- (b) permit deployment of the Software Module through the Delivery Method subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the Contract Price as, after taking into account all the relevant circumstances, is reasonable; or
- (c) if the Contractor is unable to correct material defects within a period of eight weeks from the start of Pre-Deployment Tests under section 5.2(b) of this appendix, reject the Software Module as not being in conformity with this Contract, and terminate this Contract.

6.0 SOFTWARE DEPLOYMENT & DELAYS

6.1 The Contractor shall deploy each Software Module through the Delivery Method by the applicable Software Delivery Date.

6.2 If the Software is to be installed at the Client's Premises, the Contractor shall supply to the Client, within a reasonable time before any Software Delivery Date, such information and assistance as may be necessary to enable the Client to prepare the Premises for the installation of the relevant Software Module.

6.3 The Contractor shall complete deployment of each Software Module through the Delivery Method by the Deployment Date for that Software Module.

6.4 If required within the Implementation Plan, the Client shall be responsible for ensuring that each item of Client Hardware is installed and is in working order and available to the Contractor no later than the relevant date specified in the Implementation Plan.

7.0 LATE DELIVERY OF DEVELOPMENT SERVICES

7.1 If the Contractor becomes aware that there is, or there is reasonably likely to be, a delay to the performance or completion of the Development Services it shall:

- (a) notify the Client; and
- (b) use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay (unless it can demonstrate that the Client is responsible for such delay).

7.2 If the delay or anticipated delay referred to in section 7.1 of this appendix relates to a Milestone set out in the Implementation Plan, liquidated damages shall apply in accordance with sections 7.4 to 7.7 (inclusive).

Delay Payments

- 7.3** If any delivery is delayed at the request of, or because of the acts or omissions of, the Client, the Implementation Plan shall be amended to take account of such delay, in accordance with clause 35.0 of the General Terms.
- 7.4** If a Milestone has not been achieved on or before the relevant Milestone Date set out in the Implementation Plan and such delay is caused by the acts or omissions of the Contractor or any third party manufacturer, the Contractor shall pay a payment to the Client in respect of that delay ("**Delay Payment**"). Delay Payments shall accrue:
- (a) at the daily rate specified in the Specification or (if relevant) Purchase Order (the "**Delay Payment Rate**");
 - (b) from (but excluding) the relevant Milestone Date to (and including) the date on which the Milestone is achieved; and
 - (c) on a daily basis, with any part day's delay counting as a day.
- 7.5** The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the losses which the Client will incur as a result of any failure by the Contractor to achieve the relevant Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 7.6** The Delay Payment in respect of a Milestone shall be shown as a deduction from the amount due from the Client to the Contractor in the next invoice due to be issued by the Contractor after the date on which the relevant Milestone is achieved.
- 7.7** Each Party confirms that:
- (a) it has taken specific legal advice on the effect of this section; and
 - (b) based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this section will be unenforceable for any reason.

8.0 DEVELOPMENT SERVICE ACCEPTANCE PROCEDURES

- 8.1** Within 30 days of the Implementation Plan being agreed, the Client and Contractor shall meet to agree: the Acceptance Test Criteria; the Acceptance Test Procedure; and the Acceptance Test Period (in line with the delivery Milestones stated within the Implementation Plan) unless the Acceptance Test Period is already set out in the Specification.
- 8.2** The Contractor shall, during the Acceptance Test Period, make available the products of the Development Services to the Client for the Service Acceptance Procedures to be performed.
- 8.3** The Client will conduct tests on the products of the Development Services to test whether they meet the requirement specified in the Specification (the "**Acceptance Tests**").
- 8.4** The Client will perform the Service Acceptance Procedures in respect of each element of the products of the Development Services (including any applicable delivery Milestones stated within the Implementation Plan of this Contract).
- 8.5** The Service Acceptance Procedures shall be recorded as successful and the Contractor notified accordingly where all the Acceptance Test Criteria are met.
- 8.6** The Service Acceptance Procedures shall be recorded as unsuccessful and the Contractor notified accordingly where any of the Acceptance Test Criteria are not met.

- 8.7** In the event that the Service Acceptance Procedures in respect of each element of the products of the Development Services or any part thereof, have not been recorded as successful pursuant to section 8.6 by the end of the relevant Acceptance Test Period, the Client will extend the Acceptance Test Period by a period of ten (10) Working Days (or such other period as the Parties may agree) during which the Contractor shall correct the faults which caused the Service Acceptance Procedures to be recorded as unsuccessful and the Service Acceptance Procedures shall be re-performed.
- 8.8** In the event that after the Client has extended the Acceptance Test Period pursuant to section 8.7 of this appendix, the relevant Service Acceptance Procedures have not been recorded as successful by the end of that period, the Client shall, without prejudice to its other rights and remedies, be entitled to:
- (a) extend the Acceptance Test Period for a further period (or periods) specified by the Client during which the Contractor shall correct the faults which caused the Service Acceptance Procedures to be recorded as unsuccessful and the Service Acceptance Procedures shall be re-performed; or
 - (b) reject the Development Services and terminate this Contract and receive a full refund of all sums paid under this Contract in respect of Service provision after the commencement of the Service Acceptance Procedures.
- 8.9** If the Client fails to carry out the relevant Acceptance Tests within the Acceptance Test Period and such failure is wholly and solely due to the actions or inactivity of the Client, the Acceptance Tests shall be deemed to have been completed successfully.
- 9.0 NEW RELEASES & NEW VERSIONS**
- 9.1** If the Contractor maintains a database containing information on known program defects, defect corrections, restrictions and bypasses in respect of the Software, it shall provide the Client with access to such database at no additional charge.
- 9.2** The Contractor shall supply New Releases to the Contractor and deploy same promptly through the Delivery Method, and each such New Release will from that point form part of the Software.
- 9.3** The Contractor shall notify the Client promptly in writing of the issue of any New Version, specifying:
- (a) the charge for deployment of the New Version;
 - (b) any additional fee for the New Version;
 - (c) in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.
- 9.4** The Client may, at its sole discretion, opt to take the New Version if it offers good value for money and/or valuable added functionality. If the Client does so, this will be dealt with in accordance with clause 35.0 of the General Terms and the New Version will from that point form part of the Software.
- 9.5** For the avoidance of doubt, nothing in this Contract shall oblige the Client to take any New Version.
- 9.6** The Contractor shall ensure that all New Releases and New Versions:
- (a) comply with (or exceed) the same standards and requirements as in relation to the Software under this Contract;

- (b) will not adversely affect the performance or functionality of the Software or introduce Viruses or Defects into the Software or Client System;
- (c) integrate, without cost to the Client, with the Software and Client System; and
- (d) do not infringe the Intellectual Property Rights of any third party.

10.0 SURVIVAL

10.1 Sections 1.0, 2.5, 2.6 and 3.0 of this appendix shall survive termination or expiry of the Contract.

APPENDIX 2 - ESCROW APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 DEFINITIONS

In this appendix, and in addition to the defined terms used in the rest of the Contract, the following words will have the following meanings:

"Deposited Software"	means the Source Code of the Software which is to be placed in escrow in accordance with section 2.1 of this appendix.
"Escrow Agreement"	if included as a requirement within the Specification or Purchase Order; means the agreement in the form set out in (or alongside the Specification) (or otherwise specified by the Client) that may be entered into by the Contractor and the Client in relation to the Deposited Software.
"Escrow Agent"	means the agent appointed for the purposes of section 2.0 of this appendix.

2.0 ESCROW

- 2.1** Within 1 Month of the Commencement Date the Contractor and the Client shall meet to agree which items of Software shall be Deposited Software.
- 2.2** The Contractor shall deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with the Escrow Agent on the basis of the Escrow Agreement or on such other terms as the Client, the Contractor and the Escrow Agent shall agree. The Contractor shall ensure that the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Contractor shall pay the initial storage fees under the Escrow Agreement and the Client shall pay the release fees.
- 2.3** Where the Contractor is unable to procure compliance with the provisions of section 2.2 of this appendix in respect of any Third Party Software, it shall provide the Client with written evidence of its inability to comply with these provisions and shall agree with the Client a suitable alternative to escrow that affords the Client the nearest equivalent protection. The Contractor shall be excused from its obligations under section 2.2 of this appendix only to the extent that the Parties have agreed on a suitable alternative.
- 2.4** In circumstances where the Client obtains the release of the Source Code from escrow, the Contractor hereby grants to the Client a perpetual, assignable, royalty-free and non-exclusive licence to use, copy, reproduce, modify, adapt, maintain and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services or the Client's normal business undertakings.

3.0 SURVIVAL

- 3.1** This appendix shall survive termination or expiry of the Contract.

APPENDIX 3 – SOFTWARE SERVICES DELIVERABLES APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 DEFINITIONS

In this appendix, and in addition to the defined terms used in the rest of the Contract, the following words will have the following meanings:

“Bespoke Software”	means software programs developed by the Contractor specifically for the Client under this Contract including, without limitation, those described in the Award Letter.
“Client Hardware”	means the computers and other equipment to be used by the Client in conjunction with the Contractor Software, including, if relevant and without limitation, those described in the Specification and/or Award Letter.
“Client System”	means the Client’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this Contract which is owned by the Client or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the Software Services.
“Contractor Software”	means the Contractor Standard Software, the Modified Software and the Bespoke Software, which (together) is developed to meet all requirements of the Specification.
“Contractor Standard Software”	means the software programs proprietary to the Contractor, specified in the Award Letter which are to be provided to the Client without modification.
“Defect”	means an error in the Software that causes it to fail to operate in accordance with the Specification and relevant Documentation or a vulnerability in the Software (being a weakness in the computational logic (for example, code) that, when exploited, results in a negative impact to confidentiality, integrity, or availability).
“Delivery Method”	means the method that the Software or any Software Module is to be provided to the Client, as described in the Award Letter.
“Deployment Date”	means the estimated date by which the Contractor will complete deployment of a specified Software Module via the Delivery Method, as specified in the Implementation Plan.
“Implementation Plan”	means the implementation plan referred to in section 8.3 of this appendix.

"Milestone"	means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan by which the Milestone shall be completed.
"Modified Software"	means the software programs proprietary to the Contractor and/or third parties specified as such in the Award Letter, modified or to be modified by the Contractor under this Contract.
"New Release"	means a new release of all or any part of the Software suitable for use by the Client in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added but which does not constitute a New Version.
"New Version"	means a new version of any element of the Software released after the completion of the Acceptance Tests which provides additional and/or improved functionality and/or performance.
"Restoration Time Target"	means the period of time noted within the Specification during which Defects should be remedied.
"Service Credits"	means the credits payable by the Contractor as set out in the Specification.
"Service Levels"	means the service levels as set out in the Specification.
"Software"	means the Contractor Standard Software and the Third Party Software.
"Software Delivery Date"	Means the estimated delivery date specified in the Implementation Plan on which the Contractor will deliver a Software Module via the Delivery Method.
"Software Module"	means any one of the individual software programs in the Software.
"Software Services"	shall have the same meaning as "Services" set out in the General Terms, excluding "Development Services" if the Software Development Appendix forms part of this Contract and "ICT Services" if the ICT Services Appendix forms part of the Contract.
"Third Party Software"	means the software programs proprietary to third parties, which are specified in the Award Letter and which are to be provided to the Client without modification by the Contractor as part of the Software.
"Training"	means the training by the Contractor of such of the Client's personnel as nominated by the Client to ensure a working knowledge of the Software in

	accordance with the Specification and Award Letter (if included in those documents).
"Virus"	means any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

2.0 THE SOFTWARE SERVICES

2.1 The Contractor shall:

- (a) from the Commencement Date (or such other time specified in the Purchase Order, Specification, Award Letter or agreed by the Parties) for the remainder of the Contract Period, provide the Software Services in accordance with this Contract including the Specification;
- (b) if required in the Specification and Purchase Order, provide Training in accordance with the Specification; and
- (c) make available to the Client suitably qualified personnel to carry out such tasks on a consultancy basis concerning the Software Services as the Client may specify from time to time.

2.2 In consideration of the amounts due under this Contract, the Contractor shall supply the Software Services to the Client from the Commencement Date (or such other time specified in the Specification or agreed by the Parties) for the remainder of the Contract Period in accordance with the Specification, the Purchase Order, the Client's requirements, the Tender, the relevant Service Levels and the provisions of the Contract, which shall include the Contractor complying with any obligations set out in the Specification.

2.3 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. The Contractor shall provide the Software Services and meet its responsibilities and obligations hereunder in accordance with the terms of the Contract. Without prejudice to any other provisions of the Contract, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

2.4 The Contractor shall ensure that all Staff supplying the Software Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Software Services.

2.5 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Software Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

2.6 Without prejudice to any other right of the Client, if the Client informs the Contractor in writing that the Client reasonably believes that any part of the Software Services do not meet the requirements of the Contract (including, without limitation, the Service Levels) or differ in any way from those requirements, and this is other than as a result of a Default by the Client, the Contractor shall at its own expense re-schedule and carry out the relevant Software Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.

2.7 Where indicated in the Specification that support services are required as part of the Software Services, the Contractor shall ensure that support is available by telephone and email during the hours specified in the Specification and/or the Purchase Order to provide assistance to the

Client in respect of the following: (a) remedying Defects in the Software Services; and (b) providing advice on the use of the Software Services.

- 2.8** Where indicated in the Specification that support services are required, the Contractor shall correct Defects notified to it by the Client in a timely manner appropriate to the seriousness of the circumstances and as specified in the Service Levels in accordance with the following procedure: (a) the Client shall promptly notify the Contractor of all Defects of which it becomes aware. Where such notification is made orally, the Contractor shall provide written confirmation (which may be sent by email) of the notification without undue delay and commence carrying out the relevant Software Services to use its best endeavours to remedy the Defect within the Restoration Time Target. Any failure to meet the Service Levels described in the Commercial Terms shall entitle the Client to Service Credits calculated in accordance with the provisions of section 6.0 of this appendix.
- 2.9** Without prejudice to any other right set out in this Contract, in the event that the Contractor fails to provide all Software Services at or above the relevant Minimum Service Levels described in the Commercial Terms for three consecutive Months, it shall (within 10 days of the end of the third such Month) provide a "Service Improvement Plan" to the Client in writing, containing reasons for the failures and remedial measures it intends to implement to prevent any further failure (with such measures being subject to the reasonable amendment and approval by the Client). In the event that the Contractor fails to provide all Software Services at or above the relevant Minimum Service Levels described in the Commercial Terms for a further three consecutive Months, then the Client shall have the right to terminate the Contract, immediately on written notice, without liability.
- 2.10** The Client envisages that it may require additional services and/or software development to be provided by the Contractor during the Contract Period. While the precise scope and extent of such additional services cannot be agreed at this time, the intention is for any such additional services to be included within the scope of this Contract in accordance with the Variation procedure set out in clause 35.0 of the General Terms, the precise scope and extent of such additional services being agreed between the Parties. Without limiting the generality of the above, as at the Commencement Date, the Client envisages that it may require those additional services identified under the "Potential Services" heading in the Specification. For the avoidance of doubt, the terms of the Contract shall apply to any such additional services.

3.0 LICENCE TERMS

- 3.1** In the event that there is a conflict between the provisions of this appendix and any provisions in clause 9.0 of the General Terms (Intellectual Property Rights), the provisions of this appendix shall supersede the conflicting provisions of clause 9.0 of the General Terms.
- 3.2** All IPRs arising in or relating to any goods, equipment or documentation provided, furnished to or made available to the Contractor by or on behalf of the Client under this Contract (including but not limited to, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material ("**IP Materials**")) shall remain vested in the Client and its licensors.
- 3.3** Unless otherwise specified in this section, the Contractor hereby grants, and (as necessary) shall procure the grant by any third party, to the Client a fully-paid-up, transferable, unlimited, royalty-free, irrevocable, perpetual, worldwide and non-exclusive licence (with a right to sub-licence) to download, install, use, copy, reproduce, decompile, disassemble, reverse engineer, adapt, modify, develop and maintain all IPRs in:
- (a) the Contractor Software (excluding the Contractor Standard Software);
 - (b) the Documentation;

- (c) the descriptions of the Software Services, including technical specifications, user manuals, operating manuals, process definitions and procedures; and
- (d) Contractor's Background IPRs,

for any purpose relating to the Software Services (or connected to the receipt of the Software Services) or to the exercise of the Client's business or the function of the Software (including, without limitation, to achieve the requirements specified in the Specification), subject to the Client's agreement and acknowledgement that the Contractor shall not be liable for any such Software to the extent it is modified by the Client or on request by the Client by a party other than the Contractor or the Contractor's subcontractor. For the avoidance of doubt, the licence to the Software granted by this Contract shall permit all customers and prospective customers of the Client to access and use the Software as provided for in the Specification.

- 3.4** The Contractor hereby grants, or shall procure that the owners or the authorised licensors, hereby grant, a licence of any Third Party Software to the Client on the Third Party Software owner's standard licence terms, for the duration of the Contract Period, provided that such terms permit the Client to use and copy the Third Party Software for any purpose relating to the Software Services or to the exercise of the Client's business or function of the Software (including, without limitation, to achieve the requirements specified in the Specification). The Contractor shall also grant to the Client a royalty-free, non-exclusive licence to use and copy the Contractor Standard Software for the duration of the Contract Period for any purpose relating to the Client's use or receipt of the Services (or connected to the receipt of the Software Services) or to the exercise of the Client's business or the function of the Contractor Software (including, without limitation, to achieve the requirements specified in the Specification).
- 3.5** The Contractor shall, if requested by the Client, grant or procure the grant a licence of the same subject matter and on the same basis as set out in section 3.3 of this appendix to a Replacement Contractor, subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor.
- 3.6** The Client hereby grants the Contractor a non-exclusive, limited licence over the Software as owned or licensed by the Client which is provided (in source code form) to the Contractor on or after the Commencement Date for the purpose of the Contractor carrying out the Software Services to the extent necessary.
- 3.7** Without prejudice to clause 9.4 of the General Terms, if a claim, demand or action for infringement or alleged infringement of any IPRs is made in connection with this Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
 - (a) modify any or all of the Software Services and/or the Software (subject to the approval of the Client) without reducing the performance or functionality of the same, or substitute alternative services and/or software of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified or substitute services and software; or
 - (b) procure a licence to use and supply the Software Services and/or the Software, which are the subject of the alleged infringement, on terms which are acceptable to the Client.
- 3.8** The provisions of section 3.7 of this appendix shall not apply insofar as any such claim or demand or action is in respect of:
 - (a) any modification carried out by or on behalf of the Client to any Service and/or the Software provided under this Contract if such modification was not authorised by the Contractor in writing; or

- (b) any use by the Client of the Software Services and/or the Software in a manner not reasonably to be inferred from the Specification or requirements of the Client or normal function of any element of the Software.
- 3.9** In the event that the Contractor has availed itself of its rights to modify the Services and/or the Software or to supply a substitute service or software pursuant to section 3.8(a) of this appendix or to procure a licence under section 3.8(b) of this appendix and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Contractor shall have no further liability thereafter under section 3.8 of this appendix in respect of the said claim, demand or action.
- 3.10** In the event that a modification, permission or substitution in accordance with section 3.8(a) of this appendix above is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with section 3.8(b) of this appendix:
- (a) the Client shall be entitled to terminate this Contract pursuant to clause 29.0 of the General Terms ("**Termination on Default**"); and
 - (b) the Contractor shall be liable for the value of the additional costs incurred in implementing and maintaining replacement services and software.
- 3.11** The Client warrants that the Contractor's use of any third party item supplied by the Client in accordance with any instructions given by the Client in connection with the use of such item shall not cause the Contractor to infringe any third party's IPRs in such item.
- 3.12** The Contractor shall not infringe any IPRs of any third party in connection with the provision of the Software and New Releases to the Client. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client harmless from and against all actions, suits, claims, demands, losses (whether direct or indirect), charges, damages, costs, expenses, penalties, reasonable legal and other professional fees awarded against or incurred or paid by the Client and other liabilities which the Client may suffer or incur as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's IPRs arising out of or in connection with the provision of the Software and New Releases to the Client, except where any such claim arises from: (a) items or materials based upon designs supplied by the Client; or the (b) use of data supplied by the Client which is not required to be verified by the Contractor under any provision of this Contract.
- 3.13** Each licence granted pursuant to sections 3.3 and 3.4 of this appendix shall be non-exclusive, but the licence for the Software granted under this Contract (taken as an entirety) shall be on an exclusive basis.
- 3.14** The Client may sub-license the rights granted to it pursuant to sections 3.3 and 3.4 of this appendix to a third party (including for the avoidance of doubt any Replacement Contractor) provided that:
- (a) the sub-licence only authorises the third party to use such IPRs for the benefit of the Client; and
 - (b) the third party has entered into a confidentiality undertaking with the Client.
- 3.15** The Client may copy the Contractor Standard Software, Third Party Software and/or Contractor's Background IPR (as relevant) in order to create an archival copy and a back-up copy of it. When physically copying the Third Party Software, the Client shall use normal endeavours to include the original machine readable copyright notice, and a label affixed to the media identifying the software and stating: "This medium contains an authorised copy of copyrighted software which is the property of [*name of owner*]."
- 3.16** A licence granted under sections 3.3 or 3.4 shall not include a right for the Client, or any person on behalf of the Client, to:
- (a) provide a copy of the Software to any person for money or for other valuable consideration;

- (b) use the Software as an integral part of any product which is supplied to any person for money or for other valuable consideration (other than to fulfil the functional objective of the Software, as set out in the Specification); or
- (c) use the Software in the development of any product that competes with those of the Contractor; or
- (d) to exploit commercially the Software (other than to fulfil the functional objective of the Software, as set out in the Specification).

3.17 The Client may:

- (a) assign, novate or otherwise dispose of its rights and obligations under sections 3.3 and/or 3.4 of this appendix to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Client; and
- (b) transfer those licences to other machines or users within the Client.

3.18 Any change in the legal status of the Client which means that it ceases to be a body governed by public law shall not affect the validity of any licence granted under this Contract. If the Client ceases to be a body governed by public law, the terms of this Contract shall be binding on any successor body to the Client.

3.19 If a licence is novated pursuant to section 3.18 above or there is a change of the Client's status pursuant to section 3.19 above, the rights acquired from the Client relating to the licence granted under sections 3.3 and 3.4 of this appendix shall not extend beyond those previously enjoyed by the Client.

4.0 PRE-DEPLOYMENT TESTING

4.1 Before deploying any item of Contractor Standard Software or Third Party Software via the Delivery Method, the Contractor shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Specification once properly deployed ("**Pre-Deployment Test**").

4.2 If the Software Module fails, in some material respect, to pass the Pre-Deployment Tests with less than 95% success rate, then the Client may, by written notice to the Contractor, choose at its sole discretion to specify (without prejudice to the Client's other rights and remedies) a new date for carrying out further tests on the Software Module. If the Software Module fails such further tests, then the Client may:

- (a) request a repeat test;
- (b) permit deployment of the Software Module through the Delivery Method subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the Contract Price as, after taking into account all the relevant circumstances, is reasonable; or
- (c) if the Contractor is unable to correct material defects within a period of eight weeks from the start of Pre-Deployment Tests under section 4.1 of this appendix, reject the Software Module as not being in conformity with this Contract, and terminate this Contract

5.0 SOFTWARE DEPLOYMENT & DELAYS

5.1 The Contractor shall deploy each Software Module through the Delivery Method by the applicable Software Delivery Date.

5.2 If the Software is to be installed at the Client's Premises, the Contractor shall supply to the Client, within a reasonable time before any Software Delivery Date, such information and assistance as may be necessary to enable the Client to prepare the Premises for the installation of the relevant Software Module.

5.3 The Contractor shall complete deployment of each Software Module through the Delivery Method by the Deployment Date for that Software Module.

5.4 If required within the Implementation Plan, the Client shall be responsible for ensuring that each item of Client Hardware is installed and is in working order and available to the Contractor no later than the relevant date specified in the Implementation Plan.

6.0 SERVICE LEVELS & CREDITS

6.1 The Service Levels and Service Credits are as set out in the Commercial Terms and shall apply to Contractor's provision of the Software Services.

6.2 The Contractor confirms that it has modelled the Service Credits and has taken them into account in setting the Contract Price. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

7.0 NEW RELEASES & NEW VERSIONS

7.1 If the Contractor maintains a database containing information on known program defects, defect corrections, restrictions and bypasses in respect of the Software, it shall provide the Client with access to such database at no additional charge.

7.2 The Contractor shall supply New Releases to the Contractor and deploy same promptly through the Delivery Method, and each such New Release will from that point form part of the Software.

7.3 The Contractor shall notify the Client promptly in writing of the issue of any New Version, specifying:

- (a) the charge for deployment of the New Version;
- (b) any additional fee for the New Version;
- (c) in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.

7.4 The Client may, at its sole discretion, opt to take the New Version if it offers good value for money and/or valuable added functionality. If the Client does so, this will be dealt with in accordance with clause 35.0 of the General Terms and the New Version will from that point form part of the Software.

7.5 For the avoidance of doubt, nothing in this Contract shall oblige the Client to take any New Version.

7.6 The Contractor shall ensure that all New Releases and New Versions:

- (a) comply with (or exceed) the same standards and requirements as in relation to the Software under this Contract;
- (b) will not adversely affect the performance or functionality of the Software or introduce Viruses or Defects into the Software or the Client System;
- (c) integrate, without cost to the Client, with the Software and the Client System; and
- (d) do not infringe the Intellectual Property Rights of any third party.

8.0 MONITORING OF CONTRACT PERFORMANCE

- 8.1** The Client or its authorised representatives may inspect or test the performance of Software Services (either complete or in process) during normal business hours on reasonable notice at the Contractor's premises (and the premises of the Contractor's sub-contractors) and the Contractor shall provide (and procure the provision by its sub-contractors of) all reasonable assistance in relation to any such inspection or test, free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the Software Services and the Client reserves all of its rights specified in this Contract.
- 8.2** The Client and the Contractor acknowledge the importance of detailed planning for the implementation of all the Software Services under this Contract and the need to develop the Implementation Plan.
- 8.3** The Contractor shall ensure that the Implementation Plan prepared and delivered to the Client incorporates all of the Milestones and Milestone Dates and shall deliver a draft implementation plan to the Client within 1 Month of the Commencement Date (unless extended by the Client). Once agreed with the Client (at which point, it shall form the "**Implementation Plan**"), the Contractor shall monitor its performance against the Implementation Plan.
- 8.4** The Contractor shall ensure that the Implementation Plan:
- (a) clearly outlines in a detailed plan all the steps required to implement the Milestones to be achieved;
 - (b) clearly outlines the required roles and responsibilities of all Parties concerned; and
 - (c) is produced using a software tool as specified, unless otherwise agreed by the Client.
- 8.5** After approval of the Implementation Plan it shall be maintained and updated by the Contractor as may be necessary to reflect the then current state of the implementation of the Software Services.
- 8.6** Both Parties shall perform all their obligations under this Contract in accordance with the Implementation Plan.
- 8.7** In the event that the Contractor fails, due to its Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the Contractor shall, at the request of the Client and without prejudice to the Client's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Client.
- 8.8** In the event that any obligation of the Contractor specified in the Implementation Plan is delayed as a result of a Default by the Client then:
- (a) the date associated with the relevant obligation(s) as specified in the Implementation Plan (and the dates similarly associated with any subsequent obligation(s) specified in the Implementation Plan) shall be amended by a period of time equal to the period of such Client Default (or other such period as the Parties agree);
 - (b) both Parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay to the performance of the Software Services; and
 - (c) the Client shall reimburse those costs of the Contractor which are both reasonably and necessarily incurred by the Contractor as a direct result of such delay.

- 8.9** When requested by the Client, the Contractor shall provide reports electronically to the Client at the address stipulated by the Client.
- 8.10** Such reports shall otherwise be submitted on a quarterly basis in respect of the immediately preceding quarter by the 10th day of each quarter and shall include:
- (a) a record of the Software Services provided to the Client;
 - (b) a record of the invoices raised by the Contractor;
 - (c) a record of any failures to provide Software Services in accordance with the Contract;
 - (d) details of the number and nature of any complaints from the Client;
 - (e) details of sub-contractors used; and
 - (f) a forecast of the value of invoices to the Client for each of the following three (3) Months.
- 8.11** When requested by the Client, the Contract Manager and the Contractor's Representative and/or other nominated representatives shall attend review meetings at a location and frequency to be agreed between the Parties.
- 9.0 SURVIVAL**
- 9.1** Sections 1.0 and 3.0 of this appendix shall survive termination or expiry of the Contract.

APPENDIX 4 – ICT SERVICES DELIVERABLES APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 DEFINITIONS

In this appendix, and in addition to the defined terms used in the rest of the Contract, the following words will have the following meanings:

"Defect"	means an error in the Services such that it/they are not provided in accordance with the Specification and relevant Documentation.
"ICT Services"	shall have the same meaning as "Services" set out in the General Terms, excluding "Development Services" if the Software Development Appendix forms part of this Contract and "Software Services" if the Software Services Appendix forms part of this Contract.
"Implementation Plan"	means the implementation plan referred to in section 4.3 of this appendix.
"Milestone"	means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan by which the Milestone shall be completed.
"Minimum Service Levels"	means the minimum service levels (if any) specified in the Commercial Terms.
"Restoration Time Target"	means the period of time noted within the Specification during which Defects should be remedied.
"Service Credits"	means the credits payable by the Contractor as set out in the Specification.
"Service Levels"	means the service levels as set out in the Specification.
"Training"	means the training by the Contractor of such of the Client's personnel as nominated by the Client to ensure a working knowledge of the ICT Services in accordance with the Specification and Award Letter (if included in those documents).

2.0 THE ICT SERVICES

2.1 The Contractor shall:

- (a) from the Commencement Date (or such other time specified in the Purchase Order, Specification, Award Letter or agreed by the Parties) for the remainder of the Contract Period, provide the ICT Services in accordance with this Contract including the Specification;

- (b) if required in the Specification and Purchase Order, provide Training in accordance with the Specification; and
 - (c) make available to the Client suitably qualified personnel to carry out such tasks on a consultancy basis concerning the ICT Services as the Client may specify from time to time.
- 2.2** In consideration of the amounts due under this Contract, the Contractor shall supply the ICT Services to the Client from the Commencement Date (or such other time specified in the Specification or agreed by the Parties) for the remainder of the Contract Period in accordance with the Specification, the Purchase Order, the Client's requirements, the Tender, the relevant Service Levels and the provisions of the Contract which shall include the Contractor complying with any obligations set out in the Specification.
- 2.3** The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. The Contractor shall provide the ICT Services and meet its responsibilities and obligations hereunder in accordance with the terms of the Contract. Without prejudice to any other provisions of the Contract, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 2.4** The Contractor shall ensure that all Staff supplying the ICT Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the ICT Services.
- 2.5** The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the ICT Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 2.6** Without prejudice to any other right of the Client, if the Client informs the Contractor in writing that the Client reasonably believes that any part of the ICT Services do not meet the requirements of the Contract (including, without limitation, the Service Levels) or differ in any way from those requirements, and this is other than as a result of a Default by the Client, the Contractor shall at its own expense re-schedule and carry out the relevant ICT Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.
- 2.7** Where indicated in the Specification that support services are required, the Contractor shall ensure that support is available by telephone and email during the hours specified in the Specification and/or the Purchase Order to provide assistance to the Client in respect of the following: (a) remedying Defects in the ICT Services; and (b) providing advice on the use of the ICT Services.
- 2.8** Where indicated in the Specification that support services are required, the Contractor shall correct Defects notified to it by the Client in a timely manner appropriate to the seriousness of the circumstances and as specified in the Services Levels. The Client shall promptly notify the Contractor of all Defects of which it becomes aware. Where such notification is made orally, the Contractor shall provide written confirmation (which may be sent by email) of the notification without undue delay and commence carrying out the relevant ICT Services to use its best endeavours to remedy the Defect within the Restoration Time Target. Any failure to meet the Service Levels described in the Commercial Terms shall entitle the Client to Service Credits calculated in accordance with the provisions of section 3.0 of this appendix.
- 2.9** Without prejudice to any other right set out in this Contract, in the event that the Contractor fails to provide all ICT Services at or above the relevant Minimum Service Levels for three consecutive Months, it shall (within 10 days of the end of the third such Month) provide a "**Service Improvement Plan**" to the Client in writing, containing reasons for the failures and remedial measures it intends to implement to prevent any further failure (with such measures being subject to the reasonable amendment and approval by the Client). In the event that the

Contractor fails to provide all ICT Services at or above the relevant Minimum Service Levels for a further three consecutive Months, then the Client shall have the right to terminate the Contract, immediately on written notice, without liability.

- 2.10** The Client envisages that it may require additional services and/or software development to be provided by the Contractor during the Contract Period. While the precise scope and extent of such additional services cannot be agreed at this time, the intention is for any such additional services to be included within the scope of this Contract in accordance with the Variation procedure set out in clause 35.0 of the General Terms, the precise scope and extent of such additional services being agreed between the Parties. Without limiting the generality of the above, as at the Commencement Date, the Client envisages that it may require those additional services identified under the "Potential Services" heading in the Specification. For the avoidance of doubt, the terms of the Contract shall apply to any such additional services.
- 2.11** Without prejudice to clause 9.4 of the General Terms, if a claim, demand or action for infringement or alleged infringement of any IPRs is made in connection with this Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the ICT Services (subject to the approval of the Client) without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified or substitute services; or
 - (b) procure a licence to use and supply the ICT Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client.
- 2.12** The provisions of section 2.11 of this appendix shall not apply insofar as any such claim or demand or action is in respect of:
- (a) any modification carried out by or on behalf of the Client to any ICT Service provided under this Contract if such modification was not authorised by the Contractor in writing; or
 - (b) any use by the Client of the ICT Services in a manner not reasonably to be inferred from the Specification or requirements of the Client or normal function of any element of the ICT Services.
- 2.13** In the event that the Contractor has availed itself of its rights to modify the ICT Services or to supply a substitute service pursuant to section 2.11(a) of this appendix or to procure a licence under section 2.11(b) of this appendix and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Contractor shall have no further liability thereafter under section 2.11 of this appendix in respect of the said claim, demand or action.
- 2.14** In the event that a modification, permission or substitution in accordance with section 2.11(a) of this appendix above is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with section 2.11(b) of this appendix:
- (a) the Client shall be entitled to terminate this Contract pursuant to clause 29.0 of the General Terms ('Termination on Default'); and
 - (b) the Contractor shall be liable for the value of the additional costs incurred in implementing and maintaining replacement services.
- 2.15** The Client warrants that the Contractor's use of any third party item supplied by the Client in accordance with any instructions given by the Client in connection with the use of such item shall not cause the Contractor to infringe any third party's IPRs in such item.

- 2.16** All IPRs arising in or relating to any goods, equipment or documentation provided, furnished to or made available to the Contractor by or on behalf of the Client under this Contract (including but not limited to, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material ("**IP Materials**")) shall remain vested in the Client and its licensors.

3.0 SERVICE LEVELS & CREDITS

- 3.1** The Service Levels and Service Credits are as set out in the Commercial Terms and shall apply to Contractor's provision of the ICT Services.
- 3.2** The Contractor confirms that it has modelled the Service Credits and has taken them into account in setting the Contract Price. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

4.0 MONITORING OF CONTRACT PERFORMANCE

- 4.1** The Client or its authorised representatives may inspect or test the performance of ICT Services (either complete or in process) during normal business hours on reasonable notice at the Contractor's premises (and the premises of the Contractor's sub-contractors) and the Contractor shall provide (and procure the provision by its sub-contractors of) all reasonable assistance in relation to any such inspection or test, free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the ICT Services and the Client reserves all of its rights specified in this Contract.
- 4.2** The Client and the Contractor acknowledge the importance of detailed planning for the implementation of all the ICT Services under this Contract and need to develop the Implementation Plan.
- 4.3** The Contractor shall ensure that the Implementation Plan prepared and delivered to the Client incorporates all of the Milestones and Milestone Dates and shall deliver a draft implementation plan to the Client within 1 Month of the Commencement Date (unless extended by the Client). Once agreed with the Client (at which point, it shall form the "**Implementation Plan**"), the Contractor shall monitor its performance against the Implementation Plan.
- 4.4** The Contractor shall ensure that the Implementation Plan:
- (a) clearly outlines in a detailed plan all the steps required to implement the Milestones to be achieved;
 - (b) clearly outlines the required roles and responsibilities of all Parties concerned; and
 - (c) is produced using a software tool as specified, unless otherwise agreed by the Client.
- 4.5** After approval of the Implementation Plan, it shall be maintained and updated by the Contractor as may be necessary to reflect the then current state of the implementation of the ICT Services.
- 4.6** Both Parties shall perform all their obligations under this Contract in accordance with the Implementation Plan.
- 4.7** In the event that the Contractor fails, due to its Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the Contractor shall, at the request of the Client and without prejudice to the Client's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Client.

- 4.8** In the event that any obligation of the Contractor specified in the Implementation Plan is delayed as a result of a Default by the Client then:
- (a) the date associated with the relevant obligation(s) as specified in the Implementation Plan (and the dates similarly associated with any subsequent obligation(s) specified in the Implementation Plan) shall be amended by a period of time equal to the period of such Client Default (or other such period as the Parties agree);
 - (b) both Parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay to the performance of the ICT Services; and
 - (c) the Client shall reimburse those costs of the Contractor which are both reasonably and necessarily incurred by the Contractor as a direct result of such delay.
- 4.9** When requested by the Client, the Contractor shall provide reports electronically to the Client at the address stipulated by the Client.
- 4.10** Such reports shall otherwise be submitted on a quarterly basis in respect of the immediately preceding quarter by the 10th day of each quarter and shall include:
- (a) a record of the ICT Services provided to the Client;
 - (b) a record of the invoices raised by the Contractor;
 - (c) a record of any failures to provide ICT Services in accordance with the Contract;
 - (d) details of the number and nature of any complaints from the Client;
 - (e) details of sub-contractors used; and
 - (f) a forecast of the value of invoices to the Client for each of the following three (3) Months.
- 4.11** When requested by the Client, the Contract Manager and the Contractor's Representative and/or other nominated representatives shall attend review meetings at a location and frequency to be agreed between the Parties.

5.0 SURVIVAL

- 5.1** Sections 1.0 and 2.11 to 2.16 (inclusive) of this appendix shall survive termination or expiry of the Contract.

APPENDIX 5 - GOODS DELIVERABLES APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

The Goods

1.0 DEFINITIONS

In this appendix, and in addition to the defined terms used in the rest of the Contract, the following words will have the following meanings:

"Installation Works"	means, as the context so requires: (a) collectively, all works which the Contractor is to carry out at the Commencement Date (or such other period as specified in the Specification and/or Purchase Order or agreed by the Parties) to install the Goods in accordance with the Specification; or (b) where there are a series of works to be carried out during the Contract Period, to install the Goods in accordance with the Specification, and/or Purchase Order, each set of installation works.
"Liquidated Damages Payments"	means the amounts described (if any) in the Commercial Terms.

2.0 GUARANTEE OF TITLE

2.1 The Contractor warrants that:

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

3.0 SUPPLY OF GOODS

3.1 The Contractor shall supply and, where relevant, install the Goods in accordance with the Specification and Purchase Order.

3.2 The Contractor acknowledges that the Client relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

3.3 The Contractor shall perform its obligations in relation to the supply and delivery of Goods under the Contract:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in compliance with all applicable Laws.

3.4 The Contractor shall ensure that:

- (a) the Goods conform in all respects with the Specification;

- (b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in the Contract and Purchase Order;
 - (c) the Goods conform in all respects with all applicable Laws;
 - (d) the Goods are fully compatible with any equipment, to the extent specified in the Specification and Purchase Order; and
 - (e) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Client, expressly or by implication, and in this respect the Client relies on the Contractor's skill and judgement.
- 3.5** The Contractor shall notify the Client as soon as is practicable if it develops new or improved products during the Contract Period which meet and exceed (or meet for a lower cost) the requirements of the Specification. Provided that written consent of both Parties is obtained, the new or improved products may be used in substitution for the Goods under the Contract and, in such circumstances, an additional fee (if applicable) shall be agreed between the Parties prior to the substitution of the new or improved products. For the avoidance of doubt, nothing in this Contract shall oblige the Client to take or accept a substitute product in place of the Goods.
- 3.6** If any Goods provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contract holds from such third parties in respect of those Goods will be held on trust for the Client.
- 3.7** The Client or its authorised representatives may inspect or test the Goods (either complete or in the process of manufacture) during normal business hours on reasonable notice at the Contractor's premises (and the premises of the Contractor's sub-contractors) and the Contractor shall provide (and procure the provision by its sub-contractors of) all reasonable assistance in relation to any such inspection or test, free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with sections 7.0 and 10.0 of this appendix.
- 3.8** The Contractor hereby guarantees the Goods against faulty materials or workmanship from the date of Delivery (as defined in section 5.3 of this appendix) for the longest period of: 12 Months after Delivery; the minimum warranty period specified in the Specification; and the warranty period specified in the Contractor's Tender. If the Client, within such guarantee period or within 25 Working Days thereafter, gives notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge.
- 3.9** In the event of the goods being recalled by the Contractor or initiated by the manufacturer of the Goods or any competent Government authority (or any such similar regulatory body), the Contractor shall, without delay and at its own expense, arrange for the collection of such Goods and credit the Client for any Goods delivered but unused by the Client including partly used packs.
- 3.10** For the avoidance of doubt, the Contract Price shall include (without limitation) the costs of packaging, insurance, delivery, unloading, stacking and carriage of the Goods unless otherwise provided for in the Contract. The Contract Price shall also include (without limitation) the cost of instruction of the Client's personnel in the use and maintenance of the Goods if required by and in accordance with the requirements detailed in the Specification.

- 3.11 Where noted in the Specification, the Contract Price shall include the cost of the instruction of the Client's staff in the use of the Goods, such instruction to be in accordance with the requirements of the Contract and the training requirements specified in the Specification.

4.0 LABELLING

- 4.1 The Goods shall be packed and marked in a proper manner and in accordance with the Client's instructions and any Law and any requirements of the carriers.

5.0 DELIVERY

- 5.1 The Contractor shall deliver the Goods in accordance with the Specification and any milestones specified in the Specification and Purchase Order.
- 5.2 Where any access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and its sub-contractors will at all times comply with the reasonable requirements of the Client's security arrangements.
- 5.3 Unless otherwise stated in the Specification or Purchase Order, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises and the Client has signed for delivery. Where the Goods are collected by the Client, the point of delivery shall be when the Goods are loaded on the Client's vehicle and the Client has signed for delivery ("**Delivery**").
- 5.4 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Client or duly authorised person shall reasonably direct.
- 5.5 Unless otherwise stated in the Specification, title and risk in the Goods will, without prejudice to any of the rights or remedies of the Client, pass to the Client on completion of Delivery.
- 5.6 The Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Client elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 Working Days and to refund to the Client any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Client may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Client.
- 5.7 The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date of delivery stated in the Specification and/or Purchase Order unless otherwise agreed in advance by the Parties.
- 5.8 Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments.
- 5.9 If the Contractor fails to deliver the Goods in accordance with times or milestones specified in the Specification or Purchase Order (as appropriate), Contractor shall pay the Client, as liquidated damages, the Liquidated Damages Payments.
- 5.10 Contractor shall pay the Liquidated Damages Payments on demand or the Client may deduct them from its payments to the Contractor.
- 5.11 The Liquidated Damages Payments shall accrue from the scheduled date of delivery specified in the Specification or Purchase Order (as applicable) and shall continue until the earlier of:
(i) delivery of the Goods by Contractor; or
(ii) termination of this Contract by the Client.

5.12 The Parties confirm that the Liquidated Damages Payments are reasonable and proportionate to protect the Client's legitimate interest in performance.

5.13 Sections 5.9 to 5.12 (inclusive) of this appendix are without prejudice to the right of Client to claim general damages arising out of any Default by the Contractor (including, without limitation, failure to deliver the Goods in accordance with time or milestones specified in the Specification or Purchase Order).

6.0 PACKAGING

6.1 The Goods shall be packed and marked in a proper manner and in accordance with the Specification and any further instructions of the Client and all Laws and any requirements of the carriers tasked by the Contractor with delivering the Goods.

6.2 All packaging materials shall be consistent with the Client's environmental policy and considered non-returnable.

6.3 Unless otherwise specified in the Specification, the Contractor shall remove all packaging associated with the delivery of the Goods and ensure that this is disposed of properly in accordance with all Laws.

7.0 MANNER OF CARRYING OUT INSTALLATION WORKS

7.1 If required in the Specification and/or Purchase Order, the Contractor shall carry out any Installation Work in accordance with the Specification.

7.2 The Contractor shall not deliver any materials or plant nor commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Contractor shall, at the Client's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Client are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Contractor's expense as soon as reasonably practicable.

7.3 When the Contractor reasonably believes it has completed the Installation Works it shall notify the Client in writing. Following receipt of such notice, the Client shall inspect the Installation Works and shall, by giving written notice to the Contractor:

- (a) accept the Installation Works, or
- (b) reject the Installation Works and provide reasons to the Contractor if, in the Client's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.

7.4 If the Client rejects the Installation Works in accordance with section 7.3 (b) of this appendix, the Contractor shall immediately rectify or remedy any defects and if, in the Client's reasonable opinion, the Installation Works do not, within 15 Working Days (or, if longer, the period specified in the Specification), meet the requirements set out in the Specification, the Client may terminate the Contract with immediate effect by notice in writing.

7.5 The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Client in accordance with section 7.3(a) of this appendix. Notwithstanding acceptance of any Installation Works in accordance with that section, the Contractor shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Client of the Installation Works.

7.6 Throughout the Contract Period, the Contractor shall:

- (a) have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Installation Works;
- (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works; and
- (c) not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

7.7 On completion of any Installation Works the Contractor shall remove its plant, Equipment and unused materials and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Staff.

7.8 The Contractor shall ensure that all persons engaged in the installation of the Goods comply with the vetting procedures of Staff as set out in clause 11.0 of the General Terms.

8.0 INSPECTION OF PREMISES

8.1 The Contractor is deemed to have inspected the Premises before submitting its Tender and/or to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

9.0 CANCELLATION OF ORDERS

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

10.0 REJECTION OF GOODS

10.1 The Client may by written notice to the Contractor reject any of the Goods which fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this section the Client may (without prejudice to other rights and remedies) either:

- (a) have such Goods promptly, and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other goods in replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

10.2 For the avoidance of doubt, the Client will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this section 10.0.

10.3 The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client's acceptance of them.

10.4 Any Goods rejected or returned by the Client as described in this section 10.0 of this appendix shall be returned to the Contractor at the Contractor's risk and expense.

11.0 CHANGES IN DISTRIBUTION ARRANGEMENTS

Contractor must give at least 4 weeks' notice of changes in distribution arrangements to the Client for consideration prior to acceptance by the Client.

12.0 WEEE REGULATIONS

12.1 All electrical and electronic equipment which are supplied as part of the Goods must be supplied in accordance with and conform to the requirements of the WEEE Regulations.

12.2 Prices submitted must include the cost of disposal on a "like for like" basis of any waste electrical and electronic equipment identified by the Authority as part of this Contract. Furthermore the Contractor must comply with the requirements of the regulations in including appropriate date to market marking and within their prices the cost of disposal of the equipment supplied as part of this Contract.

12.3 The Contract must discharge any current and future obligations in full under the WEEE Regulations with regard to registration, safe disposal and provision of information to appropriate bodies.

12.4 Further information can be obtained from the website: <http://www.bis.gov.uk> (as may be updated from time to time). The Producer compliance scheme and non-household user obligations for all non-household waste started on 1 July 2007.

13.0 SURVIVAL

13.1 Sections 1.0, 3.6, 3.8, 3.9, 10.0 and 12.3 of this appendix shall survive termination or expiry of the Contract.

APPENDIX 6 - DATA PROTECTION APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 DEFINITIONS

In this appendix, and in addition to the defined terms used in the rest of the Contract, the following words will have the following meanings:

"Controller" "Processor" "Data Subject" "Personal Data Breach" "Data Protection Officer"	each have the meaning given in the GDPR.
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this 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 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.
"Joint Controller"	means where two or more Controllers jointly determine the purposes and means of processing.
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
"Sub-processor"	means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.

2.0 DATA PROTECTION

- 2.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor unless otherwise specified in this Data Protection Appendix. The only processing that the Contractor is authorised to do is listed in the Data Protection Appendix by the Client and may not be determined by the Contractor.
- 2.2** The Contractor shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.

- 2.3** 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.
- 2.4** The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with this Data Protection Appendix, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
 - (c) ensure that:
 - i. the Staff do not process Personal Data except in accordance with this Contract (and in particular this Data Protection Appendix);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this section;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the UK or European Economic Area 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 EU GDPR Article 46 or LED Article 37) as determined by the Client;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
 - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

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

2.5 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 UK 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.

2.6 The Contractor's obligation to notify under section 2.5 of this appendix shall include the provision of further information to the Client in phases, as details become available.

2.7 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 section 2.5 of this appendix (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 UK Information Commissioner's Office, or any consultation by the Client with the UK Information Commissioner's Office.

2.8 The Contractor shall allow for audits of its Personal Data processing activities by the Client or the Client's designated auditor.

2.9 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

2.10 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) notify the Client in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Client;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this section 2.0 of this appendix 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.

2.11 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

2.12 The Client may, at any time on not less than 30 Working Days' notice, revise this appendix by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

2.13 The Parties agree to take account of any guidance issued by the UK Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the UK Information Commissioner's Office.

3.0 POLICIES

3.1 The Contractor shall at all times comply (and shall ensure all Staff comply) with all of the mandatory statements and policies (each as may be updated by the Client from time to time on written notice by the Client), detailed in the Specification.

3.2 The Contractor shall comply with all Client ICT policy and strategic requirements when using ICT systems to perform Client business and to handle Client Data, including those arising from legal obligations such as: the DPA 2018; the GDPR; the Privacy and Electronic Communications Regulations (EC Directive) 2003; the Police and Criminal Evidence (Northern Ireland) Order 1989; the Civil Evidence (Northern Ireland) Order 1997; and Health and Safety Regime legislation (each as may be updated, replaced or amended from time to time).

3.3 Data Standards

The Contractor shall develop, document, operate, maintain and comply with standards and procedures for ensuring the quality and integrity of all key data which must, as a minimum, be of the same standard as would be reasonably expected of a competent provider of the services equivalent to the Services, and must comply with all requirements specified in the Specification and contained in the Tender.

3.4 Data Processing Table

- (a) The Data Processing Table included in the Specification forms part of this appendix.
- (b) The contact details of the Client's Data Protection Officer are: John Collins, Head of Corporate Information imu@niwater.com Tel: 02890357486 / Ext: 20242
- (c) The contact details of the Contractor's Data Protection Officer are as specified in the Award Letter.
- (d) The Contractor shall comply with any further written instructions with respect to Processing by the Client.
- (e) Any such further instructions shall be incorporated into this appendix in accordance with clause 35.0 of the General Terms.

4.0 SURVIVAL

4.1 Sections 1.0, 2.4(e), 2.5, 2.6 and 2.7 of this appendix shall survive termination or expiry of the Contract.

APPENDIX 7 - KEY PERSONNEL APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 DEFINITIONS

In this appendix, and in addition to the defined terms used in the rest of the Contract, the following words will have the following meanings:

"Key Personnel"	means any persons specified as such in the Award Letter, or otherwise notified by the Client to the Contractor in writing subject to the terms of this Appendix.
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2.0 KEY PERSONNEL

- 2.1** The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. The Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 2.2** Any replacements to the Key Personnel shall be subject to the agreement of the Client. 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 as demonstrated by meeting all mandatory requirements for Key Personnel as specified within the Specification.
- 2.3** The Client shall not unreasonably withhold its agreement under section 2.2 of this appendix. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel and compliance with The Utilities Contracts Regulations 2016.

APPENDIX 8 – OFF-PAYROLL WORKERS APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 OFF-PAYROLL WORKERS

- 1.1 As part of the tender process the Client will issue a list of questions (the “**Supplier Information Checklist**”) for completion by the Contractor. The Contractor hereby warrants that all the information provided to the Client in the Supplier Information Checklist is true, accurate, complete and not misleading.
- 1.2 The Client will inform the Contractor in the Award Letter of the Employment Status Decision in respect of the Contractor (the “**Status Determination Statement**”), subject to any statutory right of appeal, pursuant to the Income Tax (Earnings and Pensions) Act 2003 (as amended) or any statutory re-enactment thereof (the “**ITEPA 2003**”). If the Contractor is a deemed employee of the Client (“**Deemed Employee**”), the Status Determination Statement shall contain a request for information (under a ‘Deemed Employee Details’ form) to which the Contractor shall promptly provide a response to in accordance with section 1.3 of this appendix.
- 1.3 On receipt of the Status Determination Statement, the Contractor shall return the Deemed Employee Details form within any applicable time limit specified by the Client and in any event within no later than 7 days of receipt. The Contractor hereby warrants that all the information contained within the Deemed Employee Details form is true, accurate, complete and not misleading.
- 1.4 The Contractor shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with any breach of the warranties set out at sections 1.1 to 1.3 of this appendix.
- 1.5 For the avoidance of doubt, classification as a Deemed Employee and/or the issuing of any Status Determination Statement does not denote the existence of an employment relationship between the Client and the individual worker, nor does it confer any employment rights upon that individual worker.
- 1.6 The Client, pursuant to the ITEPA 2003, will make the necessary “tax deductions and tax payments” on behalf of the Deemed Employee. For the avoidance of doubt, “tax deductions and tax payments” shall include income tax and class 1 national insurance.
- 1.7 The Client shall monitor the Contract throughout its duration and shall have the ability, if it so wishes, to alter the Employment Status Decision, in the event that the nature of the Contract changes at any point during the duration of the Contract.
- 1.8 Where the Contractor supplies the services of an individual to the Client and that individual is not an employee of the Contractor, then the Contractor shall provide the Client with the relevant details as requested in the Supplier Information Checklist regarding that individual (the “**Individual Worker Information**”). The Contractor shall be responsible for informing the Client, on each and every occasion, where the identity of the individual supplied by it changes. In those circumstances, the Contractor shall be obliged to send a Supplier Information Checklist directly to the Client at: Tax.Admin@niwater.com.
- 1.9 The Client will then inform the Contractor by a notice (the “Status Determination Statement for Third Parties”) if the Client has determined that the individual is deemed, subject to any statutory right of appeal, to be an employee (an “**Agency Supplied Deemed Employee**”) pursuant to the ITEPA 2003.
- 1.10 The Contractor hereby warrants that all the information contained within the Individual Worker Information is true, accurate, complete and not misleading.

- 1.11** The Contractor shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with any breach of the warranties set out at sections 1.8 to 1.10 of this appendix and section 1.16 of this appendix in the event of the Contractor being non-UK tax resident.
- 1.12** For the avoidance of doubt, classification as an Agency Supplied Deemed Employee and/or the issuing of any Status Determination Statement for Third Parties, does not denote the existence of an employment relationship between the Client and the individual worker, nor does it confer any employment rights upon that individual worker.
- 1.13** The Contractor, pursuant to the ITEPA 2003, hereby warrants that it will make the necessary tax deductions and tax payments on behalf of the Agency Supplied Deemed Employee.
- 1.14** For the avoidance of doubt, “tax deductions and tax payments” shall include income tax and class 1 national insurance.
- 1.15** The Client shall monitor the Contract throughout its duration and shall have the ability, if it so wishes, to alter the Status Determination Statement for Third Parties, in the event that the nature of the Contract changes at any point during the duration of the Contract.
- 1.16** Where the Contractor is not tax resident in the United Kingdom of Great Britain and Northern Ireland, it agrees to inform the Client of this and to provide all information, reasonably requested, to the Client in relation to same. The Contractor hereby warrants that all such information provided shall be true, accurate, complete and not misleading.

2.0 SURVIVAL

- 2.1** Sections 1.4 and 1.11 of this appendix shall survive termination or expiry of the Contract.

APPENDIX 9 - PROFESSIONAL TERMS APPENDIX

THIS APPENDIX SHALL APPLY IF NOTED BY THE CLIENT IN THE SPECIFICATION

1.0 PROFESSIONAL TERMS

- 1.1** Subject to section 1.2 of this appendix, the Contractor's terms and conditions provided within its Tender ("**Contractor T&Cs**") shall form part of this Contract only to the extent that they supplement the remainder of this Contract.
- 1.2** For the avoidance of doubt, nothing within the Contractor's Tender or its terms and conditions or any other terms and conditions it seeks to imply or are implied by law, trade custom or practice shall take precedence over any other provision of the Contract in the event of any conflict or ambiguity between such terms.
- 1.3** Section 1.2 of this appendix shall survive termination or expiry of the Contract.