

NIW Terms and Conditions for Contracts for Goods and Services

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A. GENERAL PROVISIONS

A1 Definitions and Interpretations

A1.1 Definitions

In these conditions:

"Accounts Payable" means the accounts department of the client whose address is outlined in Condition C2.3;

"Adjusted Contract Price" has the meaning ascribed in Condition C4.2;

"Approval" and "Approved" means the written consent of the Contract Manager;

"Award Letter" means the letter issued by the Client to the Contractor awarding the Contract to the Contractor;

"Base Date" means Commencement Date;

"Change in Law" means either a General Change in Law or a Specific Change in Law;

"Client" means Northern Ireland Water Limited (Registered Number NI054463) and its Subsidiaries, with its registered office at Westland House, 40 Old Westland Road, Belfast BT14 6TE, and includes the Contract Manager;

"Client Authorised Person" means, for the purposes of Conditions F3.1 to F3.6 inclusive of the Contract, the person designated by the Client's contract management procedures as being the contract owner.

"Client Property" means any property, other than real property and Intellectual Property Rights, issued or made available to the Contractor by the Client in connection with the Contract;

"Commencement Date" means the date specified as such in the Invitation to Tender or the Award Letter (whichever is the later date);

"Condition" means a condition within the Contract;

"Conditions of Contract" means this document;

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential by its nature, however it is conveyed or on whatever media it is stored, including information which relates to the business affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all Personal Data;

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"Contract" means the agreement between the Client and the Contractor for the provision of Goods and/or Services consisting of these Conditions of Contract and any attached Schedules, the Invitation to Tender, the Contractor's Tender and any other documents (or parts thereof) specified by the Client;

"Contract Manager" means the person for the time being appointed by the Client as being authorised to administer the Contract on behalf of the Client or such person as may be nominated by the Contract Manager to act on its behalf;

"Contract Period" means the period of duration of the Contract in accordance with Condition A2;

"Contract Price" means the price exclusive of any applicable VAT, payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its part of the Contract as determined under the Conditions of the Contract but before taking into account the effect of any adjustment of price in accordance with Condition C4;

"Contracting Authority" means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 and/or the Utilities Contracts Regulations 2006 other than the Client;

"Contractor" means the person or persons, firm or company whose Tender has been accepted by the Client and shall include the Contractor's personal representatives;

"Contractor's Representative" means the individual authorised to act on behalf of the Contractor for the purposes of the Contract;

"Control" means the power of another person to secure, directly or indirectly:

- (a) by means of the holding of shares or the possession of voting power or the power to appoint or remove members of the board of directors or equivalent body in or in relation to the first person or any other person; or
- (b) by means of the right to participate in the income, assets or property of or in relation to the first person or any other person; or
- (c) by virtue of any powers conferred by the constitutional documents of, or any other document regulating, the first person or any other person,

that the activities and business of the first person are conducted in accordance with the wishes or directions of that other person;

"Controller" has the meaning given to it in the DPA 2018;

"Corrupt Gift" has the meaning ascribed to it in Condition D1.2;

"Data" means all information, drawings, documentation and databases relating to the Contract (including, without limitation, health and safety files) to which the Contractor has

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access or which is generated by or for it at any time during the Contract Period together with all information and databases relating to any Equipment which the Contractor obtains, records, updates, maintains and accesses during the Contract Period for the purpose of the provision of the Goods and/or Services;

"Data Protection Laws" means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation: (i) any data protection legislation from time to time in force in the UK including the DPA 2018; and (ii) the GDPR (for so long as and to the extent that the law of the European Union has legal effect in the UK);

"Default" means any breach of the obligations of either Party, including fundamental breach or breach of a fundamental term, persistent breach (of the same or different terms) or any default, act, omission, negligence, breach of statutory duty or otherwise or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other or any liability howsoever arising under or in connection with the Contract including by way of indemnity;

"Demanding Officer" means any officer of the Client, authorised by the Client to sign orders on its behalf;

"DPA 2018" means the Data Protection Act 2018 as amended;

"Equipment" means the Contractor's equipment, plant, Materials etc. used in the performance of its obligations under the Contract;

"Employment Liabilities" means any and all costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the relevant employee(s) (or the termination thereof) including, without prejudice to the foregoing generality, negligence claims by any such employee or third party, and claims for unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages, breach of the TUPE Regulations and equal pay;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner in relation to same;

"Environmental Law" means all Laws applying from time to time in respect of pollution of or protection of the environment or emissions, discharge, releases or escapes into the environment of Hazardous Substances or the production, treatment, storage, transport or disposal of Hazardous Substances;

"Expiry Date" means the date specified in the Invitation to Tender or the Award Letter (whichever is the later date), provided that where the Contract relates to the supply of Goods and not Services and no such meaning is ascribed to it in the Invitation to Tender or the Award Letter (whichever is the later date), the Expiry Date will be the date upon which both Parties have satisfied their respective obligations under the Contract;

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"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

"Force Majeure" has the meaning ascribed to it in Condition H8.1;

"GPDR" means the General Data Protection Regulation (EU 2016/679);

"General Change in Law" means a change in Law which comes into effect after the Commencement Date of the Contract, 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 a comparable supply of services of the same or a similar nature to the supply of the Services;

"Goods" means the goods to be provided as specified outlined in the Specification;

"Good Industry Practice" means using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Law and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under the Contract under the same or similar circumstances, and seeking in good faith to comply with its contractual obligations, all applicable Law, codes of professional conduct, codes of practice, planning conditions and other consents;

"Guarantee Period" means the period defined in Condition B15.4;

"Hazardous Substances" means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance, and including, without limitation, vibration, noise, electricity, heat or other radiation) capable of causing harm to the environment and/or harm to the health of living organisms or other interference with the ecological systems of which they form part and/or harm to property, including in the case of humans offence caused to any sense;

"Health and Safety Policy Statement" means the health and safety policy statement produced by the Contractor in accordance with the Health and Safety at Work (Northern Ireland) Order 1978;

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000 and shall include "environmental information" as defined in the Environmental Information Regulations;

"Insured Amounts" means the minimum levels of insurance cover set out in the Invitation to Tender or, in the absence of specific levels set out in the Invitation to Tender:

- (a) public liability insurance in the minimum sum of five million pounds in respect of any one incident, the number of incidents unlimited; and

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- (b) employer's liability insurance in the minimum sum of ten (10) million pounds in respect of any one incident, the number of incidents unlimited;

"Invitation to Tender" means an invitation for Contractors to bid for the Services required by the Client;

"Intellectual Property Rights" means any and all intellectual property rights including all patents, registered designs and registered trade marks, and any and all applications for the foregoing (and the right to apply for any of the foregoing), copyright, design rights, topography rights, database rights, brands, trade marks, service marks, business names, moral rights, utility model rights, rights in the nature of copyright, know-how, domain names, rights in proprietary and confidential information, rights in inventions and all other industrial, commercial and intellectual property rights and all other rights or forms of protection having equivalent or similar effect to any of the foregoing arising anywhere in the world;

"Key Personnel" means those persons named in the Specification as being key personnel;

"Law" means any applicable law, statute, bye-law, regulation, order, rule of common law, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"Materials" means all goods and commodities or material of any nature and shall, in any contract involving the execution of work and where the context so requires, be deemed to include the execution of work including artwork, text, reports, specifications (including Specifications), drawings, technical information, instructions, plans, data, designs, inventions, products, prototypes, tests, tools or discoveries;

"Monitoring Schedule" means the Schedule containing details of the monitoring arrangements;

"Month" means calendar month and **"Monthly"** shall be construed accordingly;

"Party" means a party to the Contract, that being the Client and the Contractor and **"Parties"** shall be construed accordingly;

"Personal Data" shall have the meaning given to it in the DPA 2018;

"Premises" means the location where any Services are to be performed and/or Goods are to be delivered, as specified in the Specification;

"Pricing Schedule" means the Schedule containing details of the Contract Price;

"Processing" shall have the meaning given to it in the DPA 2018 and **"Process"** and **"Processed"** shall be construed accordingly;

"Prohibited Act" has the meaning ascribed to it in Condition D1.1;

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"Purchase Order" means an order by the Client to the Contractor for Goods and/or Services;

"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, ministers, minority, official or public or statutory person of the government of the United Kingdom or of the European Union;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees 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;

"Replacement Contractor" means any third party service provider appointed by the Client from time to time, to provide any services which are substantially similar to any of the Services, and which the Client receives in substitution for any of the Services following the termination or partial termination of this Contract;

"Request for Information" means a request for information made pursuant to FOIA and/or the Environmental Information Regulations relating to this Contract and/or its subject matter, the Parties and/or the Services;

"Review End Date" means the date or dates specified for the review of the Contract Price in accordance with Condition C4, as specified in the [Invitation to Tender] (provided that the Review End Date shall be the date falling 12 months before the Expiry Date where no other date is specified);

"Schedule" means a schedule attached to the Contract;

"Security System" shall have the meaning ascribed to it in Condition E4.1;

"Services" means the services to be provided as specified in the Specification;

"Specification" means the description of the Goods and/or Services to be provided under the Contract;

"Specific Change in Law" means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Client and which would not affect a comparable supply of goods and/or services of the same or a similar nature;

"Staff" means employees, agents, suppliers, carriers or representatives of the Contractor or Sub-Contractor authorised by the Client to carry out work under this Contract;

"Subcontract" means a contract entered into between the Contractor and a Sub-contractor;

"Sub-contractor" means a sub-contractor engaged by the Contractor in relation to the performance of the Contract;

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"Standard" unless otherwise specified and approved, means the relevant British Standard as issued by the British Standards Institution (BSI) of the edition current at the date of completion of the work, supply of the goods or execution of the test in the case of test methods but may also include a technically equivalent International or European standard or, where that standard provides, in use, technically equivalent levels of safety, suitability and fitness for purpose, the standard of any Member State of the European Union (EU);

"Tax" means any kind of tax, duty, levy or other charge in the nature of taxation (including VAT) whether or not similar to any in force at the date of the Contract and whether imposed by a local governmental or other Relevant Authority in the United Kingdom or elsewhere;

"Tender" means the Contractor's response to the Invitation to Tender;

"Termination Date" means the date of early termination of the Contract in accordance with these Conditions;

"Termination Notice" has the meaning ascribed to it in Condition H2.1;

"Transfer Assistance Period" means (i) the period of nine (9) months immediately preceding the expiry of the Contract or (ii) following notice of termination (or deemed notice of termination) of the Contract in accordance with these Conditions;

"Transfer Date" means the date on which any cessation or partial cessation referred to in Condition H5.6 takes effect so as to transfer the contracts of employment of the Transferring Employees by virtue of the TUPE Regulations;

"Transferring Employees" means those employees who, immediately prior to the expiry or earlier termination of the Contract, are wholly or mainly engaged or employed in the Services;

"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; and

"Variation" has the meaning ascribed in Condition F3.2.

A1.2 Interpretations

- (a) The interpretation and construction of this Contract shall be subject to the following provisions:
 - (i) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - (ii) Words importing the masculine include the feminine and the neuter;

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- (iii) Reference to a Condition is a reference to the whole of that Condition unless stated otherwise;
- (iv) Reference to a sub-Condition is a reference to a paragraph within a Condition unless stated otherwise;
- (v) References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (vi) References 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;
- (vii) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (viii) Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- (ix) A reference to a "working day" shall be to a day (other than a Saturday or a Sunday) on which banks are open for normal business in Northern Ireland.

A2 Contract Period

- A2.1 The Contract Period is specified in the Invitation to Tender.
- A2.2 The Goods and/or Services under the Contract shall be provided by the Contractor during the Contract Period.
- A2.3 The Contract Period will commence in accordance with the Invitation to Tender and terminate on the earlier of:
 - (a) the Expiry Date; or
 - (b) the Termination Date.

A3 Contractor's Status (Principal)

- A3.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Client.
- A3.2 Accordingly:
 - (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Client; and

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- (b) nothing in this Contract shall impose any liability on the Client in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Client to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Client, the Client's employees, servants or agents.

A4 Entire Agreement

A4.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, communications and understandings, whether written or oral concerning the subject matter of the Contract, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation by either Party for which the remedies available shall be all those available under the law governing the Contract.

A4.2 In the event of and only to the extent of any conflict between the Specification, Invitation to Tender, Contractor's Tender and other documents referred to or attached to the Contract, the conflict shall be resolved in accordance with the following descending order of priority:

- (a) the Conditions of Contract;
- (b) the Schedules;
- (c) the Invitation to Tender;
- (d) the Contractor's Tender
- (e) any other document referred to herein.

Unless expressly agreed between the Parties, a Variation shall not take higher precedence than A4.2(e).

A5 Scope of Contract

A5.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Client and the Contractor.

A5.2 Save as expressly provided otherwise in these Conditions of Contract, the Contractor shall not be, or be deemed to be, an agent of the Client and the Contractor shall not hold itself out as having authority or power to bind the Client in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

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A6 Notices

- A6.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned, sent for the attention of the person and to the address and fax number given in the Contract.
- A6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two working days after the day on which the letter was posted or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A7 Mistakes in Information

- A7.1 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 provision of the Goods and/or Services and shall indemnify the Client in relation to any additional reasonable costs occasioned by any discrepancies, errors or omissions therein.

A8 Conflicts of Interest

- A8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Contractor or such persons 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.
- A8.2 The provisions of this Condition shall apply during the Contract Period and indefinitely after the Expiry Date or Termination Date (whichever is earlier).

A9 Fraud

- A9.1 The Contractor shall safeguard the Client's funding of the Contract against fraud generally and, in particular, fraud on the part of the Contractor's staff, directors or suppliers. The Contractor shall notify the Client immediately if it has reason to suspect that any fraud has occurred, is occurring or is likely to occur.

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B. PROVISION OF THE GOODS/SERVICES

B1 General

- B1.1 Subject to Condition, B1.5, the Contractor shall provide the Goods and/or Services during the Contract Period in accordance with the Specification and the quantity, quality and description of the Goods and/or Services and the times and dates of delivery shall be as specified by the Client in the Specification.
- B1.2 The Contractor shall make no delivery of Materials, plant, Equipment or other things nor commence any work on the Client's Premises without obtaining the Client's prior Approval.
- B1.3 The Contractor shall at all times meet the requirements of the standards specified either in the Tender and/or Tender Documents or through relevant Law. Where these standards have not already been defined in the Specification they may alternatively be agreed by the Contract Manager and the Contractor before the planned commencement of the phase of work or delivery of Goods and/or Services concerned. If the standard of work has not been specified in the Contract, the Contractor shall use the best applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice.
- B1.4 In providing the Goods and/or Services, the Contractor shall comply with and take into account all applicable Law, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

B2 Contractor's Staff

- B2.1 Access to the Client's Premises shall not be exclusive to the Contractor and shall be limited to such Staff and the Contractor's suppliers as are necessary to the performance of the Contract. The Contractor shall provide such information and co-operation to third party contractors as the Client may reasonably require to enable those third party contractors to provide goods or services to the Client as efficiently as possible.
- B2.2 The Client reserves the right under this Contract to refuse to admit or to withdraw permission to remain from any member of the Contractor's Staff or any person employed or engaged by a sub-contractor, agent or servant of the Contractor to any Premises occupied by or on behalf of the Client whose admission or continued presence would be, in the opinion of the Client, undesirable. The decision of the Client as to whether any person is to be refused to be admitted to any Premises occupied by or on behalf of the Client

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shall be final and conclusive and shall not relieve the Contractor of its obligations under this Agreement.

- B2.3 If and when directed by the Client, the Contractor shall provide a list of all persons who it is expected may require admission in connection with the Contract to any Premises occupied by or on behalf of the Client, specifying their names, the capacities in which they are concerned with the Contract and other particulars which the Client may reasonably desire.
- B2.4 The Contractor's Staff, engaged within the boundaries of a government establishment shall comply with such rules, regulations and requirements, including those relating to security arrangements, as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- B2.5 If the Contractor shall fail to comply with Condition B2.3 above the Client, whose decision shall be final and conclusive, may decide that if the Contractor does not comply with the provisions of Condition B2.3 within a reasonable time of written notice from the Client so to do then the Client may terminate the Contract provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.
- B2.6 The Contractor shall bear the cost of any notice, instruction or decision of the Client under this Condition.

B3 Materials and Equipment

- B3.1 The Contractor shall provide all Equipment necessary for the provision of the Services or installation of the Goods. All Equipment brought onto the Client's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Client's Premises and the removal of Equipment when no longer required at its sole cost. The Contractor shall ensure that the Client's Premises are appropriate to contain and operate the Equipment.
- B3.2 The Contractor shall maintain all items of Equipment within the Client's Premises in a safe, serviceable and clean condition.
- B3.3 All Equipment shall be at the risk of the Contractor 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 negligence or default of the Client.
- B3.4 The Client may at its option purchase any item of Equipment from the Contractor at any time if the Client considers that the item is likely to be required in the provision of the Services or maintenance of the Goods following the Expiry Date or Termination Date of the Contract. The

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purchase price to be paid by the Client to the Contractor shall be the fair market value of the Equipment.

B3.5 The Client shall have the power at any time during the Contract Period to order in writing:

- (a) that the Contractor remove from the Client's Premises any Materials, plant or Equipment which in the opinion of the Client is either hazardous, noxious or not in accordance with the Contract and substitute with proper and suitable Materials, plant and Equipment; and
- (b) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any Services and/or Goods which, in respect of material or workmanship, is not in the opinion of the Client in accordance with the provisions or requirements of the Contract.

B3.6 Following the Expiry Date or Termination Date (whichever is earlier), the Contractor shall, at the Contractor's own expense, remove the Equipment and unused Materials, clear away from the Client's Premises all rubbish arising due to the performance of the Contract, make good any damage caused to the Client's Premises by the removal of the Equipment and/or performance of the Contract and leave the Client's Premises in a neat and tidy condition.

B4 Inspection of Premises

B4.1 Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Client's Premises before tendering for the Contract so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract. No monetary or other claim made by the Contractor on the grounds of want of knowledge of any or all of the matters referred to in the above clause will be considered by the Client.

B4.2 The Client shall, at the request of the Contractor, grant such access as may be reasonable to the Contractor for the purpose referred to in Condition B4.1.

B5 Licence to occupy Client's Premises

B5.1 Any land or Client's Premises, including temporary buildings, made available to the Contractor by the Client in connection with the Contract, shall be made available free of charge and shall be used by the Contractor solely for the purpose of performing the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on the Expiry Date or Termination Date (whichever is earlier) of the Contract.

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- B5.2 The Contractor shall not use the Client's Premises for any purpose or activity other than those connected with the performance of the Contract unless given prior Approval.
- B5.3 Should the Contractor require modifications to the Client's 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. At the Client's option, following the Expiry Date or Termination Date (whichever is earlier), the Client may make modifications to the Client's Premises to return them to their original specification. Such modifications to return the Client's Premises to their original state shall be carried out by the Client at the Contractor's expense.
- B5.4 The Contractor and its Staff shall observe and comply with such rules and regulations as may be in force at any time for the use of such Client's Premises as determined by the Client, and indemnify the Client for the cost of making good any damage caused by the Contractor and its Staff to the Client Premises, 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.
- B5.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of whatsoever nature in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Client retains the right at any time to use in any manner the Client sees fit any Client Premises owned or occupied by it.

B6 Client Property

- B6.1 Where the Client for the purpose of the Contract issues Client Property free of charge to the Contractor such Client Property shall be and remain the property of the Client. The Contractor shall not in any circumstances have a lien on the Client Property and the Contractor shall take all reasonable steps to ensure that the title of the Client to such Client Property and the exclusion of any such lien are brought to the notice of all Sub-contractors and other persons dealing with the performance of the Contract.
- B6.2 Any Client Property made available or otherwise received by the Contractor shall be deemed by the Client to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Contract Manager otherwise within seven days of receipt.
- B6.3 The Contractor shall maintain all Client Property in good order and condition and shall use Client Property solely in connection with the performance of the Contract and for no other purpose without prior Approval.

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- B6.4 The Contractor shall notify the Contract Manager of any surplus Client Property remaining after completion of the Contract and shall dispose of it as the Client may direct. The Contractor shall indemnify the Client for any wastage of Client Property which has arisen due to bad workmanship or negligence by the Contractor and/or its Staff. Without prejudice to any other rights of the Client, the Contractor shall deliver to the Client any Client Property (whether processed or not) on demand by the Client.
- B6.5 The Contractor shall ensure the security of all Client Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Contract, in accordance with the Client's reasonable security requirements as required from time to time.
- B6.6 The Contractor shall indemnify the Client for any and all loss of or damage to any Client Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Client. The Contractor's liability set out in this Condition shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Client. The Contractor shall inform the Contract Manager within 2 working days of becoming aware of any loss or damage occurring to Client Property made available for the purposes of the Contract.

B7 Provision of Management Information

- B7.1 Goods & Materials – Unless otherwise instructed in the Specification Contractors must submit expenditure reports at least every six months to the Contract Manager, detailing what items have been purchased (correlating to the item numbers in the specification and/or pricing schedule), what office/department has purchased the items, what quantities have been purchased and what the level of expenditure is on the contract. For goods, this should also detail the time to deliver items or the percentage of items delivered on time, the number of returns and details of damaged items.
- B7.2 Services – Unless Otherwise Instructed in the Specification Contractors must 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, contract expenditure, resource levels, work activity and compliance levels etc.
- B7.3 The Client may request additional or more frequent expenditure information which should be made available on request at no additional cost.

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SERVICES - Special Conditions

B8 Key Personnel - Services

- B8.1 The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- B8.2 Key Personnel shall not be released from providing the Services without the Approval of the Client, except by reason of long-term sickness, termination of employment or other extenuating circumstances. The Contractor shall notify the Contract Manager if any member of the Key Personnel is absent.
- B8.3 Any replacements of Key Personnel shall be subject to the Approval of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the member of Key Personnel being replaced and be suitable for the responsibilities of that member of Key Personnel in relation to the Services.
- B8.4 The Client shall not unreasonably withhold its Approval under Conditions B8.2 or B8.3. Such Approval 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 a member of the Key Personnel.

B9 Manner of carrying out the Services

- B9.1 Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date. Without prejudice to any other rights and remedies the Client may have pursuant to the Contract, the Contractor shall indemnify the Client for all reasonable costs incurred by the Client which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor has failed to remedy after being given reasonable notice to do so by the Client.
- B9.2 The introduction of new methods or systems, which are not outlined in the Specification, which impinge on the provision of the Services shall be subject to prior Approval.
- B9.3 The signing by the Contract Manager or his representative of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.
- B9.4 The Client shall have the power to inspect and examine the performance of the Services at the Client's Premises at any reasonable time or, provided that the Client gives reasonable notice to the Contractor, at any premises where any part of the Services is being performed. The Contractor shall provide

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the Client with any information or documents it may require to enable the Client to monitor the Contractor's performance of the Contract.

- B9.5 If the Client informs the Contractor that the Client considers that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Client, the Contractor shall at its own expense re-schedule and perform the Services correctly within such reasonable time as may be specified by the Client in order to rectify this breach of the Services. Should the Contractor fail to remedy the breach within that period or such longer period as the Client may allow, the Client may terminate the contract forthwith without further notice to the Contractor.

SUPPLY OF GOODS – Special conditions

B11 The Goods

- B11.1 If required by the Client, samples of Goods shall be submitted by the Contractor to the Client for evaluation and approval at the Contractor's cost and expense and all subsequent deliveries of the Goods shall be equal in quality to or better than samples of Goods Approved by the Client.
- B11.2 The Goods shall be fully compatible with the Client's equipment.
- B11.3 The Client relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contract.

B12 Delivery

- B12.1 The Goods shall be delivered at the times and dates specified in the Specification. The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B12.2 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle. Where the Goods are collected by the Client, the point of receipt shall be when the Goods are loaded onto the Client's vehicle.
- B12.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Contractor and/or its Staff 'at such place(s) as the Client shall reasonably direct.
- B12.4 Time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Client (at the Client's option) to release itself from any obligation to accept and pay for the Goods and/or cancel all

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or part of the Contract, in either case without prejudice to other rights and remedies hereunder.

- B12.5 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 be entitled to give notice in writing to the Contractor to remove such Goods within seven days of receipt by the Contractor of such notice and to indemnify the Client for any costs incurred by the Client as a result of such over-delivery, including the costs of moving and storing them, failing which the Client shall be entitled to dispose of such Goods and to charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor until they are collected by or on behalf of the Contractor or disposed of or purchased by the Client, as appropriate.
- B12.6 Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments. If, however, the Client does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Client, entitle the Client to terminate the whole of any unfulfilled part of the Contract without further liability to the Client.
- B12.7 If the Client is affected by circumstances of Force Majeure, the Client shall be entitled to suspend partially or totally the date or dates for delivery of the Goods until such time as the circumstances of Force Majeure have ceased and such suspension shall not give rise to any claim by the Contractor against the Client nor entitle the Contractor to terminate the Contract.

B13 Property and Risk

- B13.1 Property and risk in the Goods, shall without prejudice to any other rights or remedies of the Client, including the Client's rights and remedies under Condition B15 hereof, pass to the Client at the time of acceptance of delivery as per Condition B12.2.

B14 Damage in Transit

- B14.1 On dispatch of any consignment of the Goods the Contractor shall send to the Client, at the address for delivery of the Goods, an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods are either damaged in transit or, having been placed in transit, fail to be delivered to the Client, the Client shall elect:
- (a) to reject the consignment; and/or
 - (b) require the Contractor, at the Contractor's expense, to repair or replace the damaged Goods and deliver the repaired or replaced Goods in

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accordance with the timescales specified in the Contract provided that:

- (i) in the case of damage to such Goods in transit the Client shall within thirty days of delivery give notice to the Contractor that the Goods have been damaged;
- (ii) in the case of non-delivery the Client shall, provided that the Client has been advised in writing of the dispatch of the Goods, within ten days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

B15 Inspection, Rejection and Guarantee

B15.1 The Contractor shall permit the Client, or the Client's authorised representatives, to make any inspections or tests to the Goods which may reasonably be required and the Contractor shall afford all reasonable facilities and assistance, at the Contractor's expense, at the Contractor's premises. No failure to make complaint at the time of such inspection or tests of the Goods and no approval given during or after such tests or inspections of the Goods shall constitute a waiver by the Client of any of its rights or remedies in respect of the Goods and, in particular, the Client retains the right to reject the Goods.

B15.2 The Client may by written notice to the Contractor reject any of the Goods which fail to conform to the any approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of the Goods concerned. If the Client rejects any of the Goods pursuant to this Condition, the Client shall be entitled, without prejudice to its other rights and remedies, either to:

- (a) have the Goods concerned, as quickly as possible and in any event within seven days, either repaired by the Contractor or, as the Client shall elect, replaced by the Contractor with Goods which conform in all respects with the approved sample or 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 require a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by the Client in obtaining other goods in replacement of the Goods.

B15.3 The issue by the Client of a receipt note to the Contractor for the Goods shall not constitute any acknowledgement by the Client to the Contractor of the condition or nature of those Goods.

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- B15.4 Unless agreed otherwise, the Contractor shall guarantee the Goods for twelve Months from the date the Goods are put into service or eighteen Months from the delivery date, whichever is sooner (the "**Guarantee Period**"). If the Client gives notice in writing to the Contractor within the Guarantee Period or thirty days thereafter, 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, as quickly as possible remedy such defects, whether by repair or replacement as the Client shall elect, at the Contractor's cost.
- B15.5 Any Goods rejected or returned by the Client as described in Condition B14.2 shall be returned to the Contractor at the Contractor's risk and expense.

B16 Labelling and Packaging

- B16.1 The Goods shall be packed and marked in a proper manner and in accordance with the Client's instructions and/or Specification and any statutory requirements and any requirements of the carriers of the Goods. In particular, the Goods shall be marked with the Contract number or other reference number if appropriate and the net, gross and tare weights. The name of the contents shall be clearly marked on each container and all containers of hazardous Goods and all documents relating thereto shall bear prominent and adequate warnings.
- B16.2 All packaging materials will be considered non-returnable by the Client and will be destroyed by the Client unless the Contractor's advice note states that such materials will be charged for unless returned by the Client. Such materials shall be collected by the Contractor, at the Contractor's expense, or delivered by the Client to the Contractor's premises at the Contractor's expense. The Client accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by the Client unless the Contractor, within ten days of receiving notice from the Client that the packages have been dispatched, notifies the Client of such non-arrival.

B17 Training

- B17.1 Where appropriate, 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.

C. PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the performance of the Contractor's obligations under the Contract by the Contractor, the Client shall pay the Contract Price.

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C1.2 In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a Change in Law, the provisions of Condition C6 shall apply.

C1.3 For the avoidance of doubt, the Contract Price is exclusive of VAT but inclusive of all other Taxes.

C2 Payment and Tax

C2.1 Goods and/or Services shall be supplied in pursuance of a Purchase Order signed by, or an oral order subsequently confirmed in writing, by a Demanding Officer.

C2.2 The Client shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted Monthly in arrears (and following delivery in respect of the supply of Goods) to Accounts Payable, for work completed to the satisfaction of the Client.

C2.3 Invoices should be submitted by the Contractor on a Monthly basis to Accounts Payable at: Accounts Payable, Westland House, Head Office, 40 Old Westland Road, Belfast BT14 6TE or such other address as notified to the Contractor by the Client. The Monthly invoice must contain the Purchase Order number(s) for work carried out within that Month and the name of the Demanding Officer(s) who placed the order(s).

C2.5 An invoice will only be considered for payment by the Client if it is a valid original invoice.

C2.6 The Client reserves the right to withhold payment in relation to any invoice which is not submitted in accordance with the Contract or which covers, or purports to relate to Goods and/or Services which have not been provided in accordance with the Contract. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding of payment in writing.

C2.7 Where the Contractor enters into a Subcontract with a supplier or contractor for the purpose of performing the Contract, it shall include a term within such a Subcontract which requires payment to be made of undisputed sums by the Contractor to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Subcontract requirements. The Contractor is required to keep records of compliance with this clause and, following reasonable notice, provide evidence when requested by the Client.

C2.8 VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

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C2.9 The Client may reduce payment pro rata in respect of any Goods and/or Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Client.

C2.10 The Contractor shall not suspend the supply of the Goods and/or Services unless the Contractor is entitled to terminate the Contract under Condition H2.3 for the Client's failure to pay undisputed amounts.

C3 Recovery of Sums Due

C3.1 Without prejudice to any other right or remedy it may have, the Client reserves the right to set off any amount arising at any time to it by the Contractor against any amount payable by the Client to the Contractor under the Contract or any other agreement between the Client and the Contractor.

C3.2 For the avoidance of doubt, any overpayment by the Client to the Contractor, whether of the Contract Price or of VAT, shall be a sum of money recoverable by the Client from the Contractor in accordance with Condition C3.1.

C3.3 The Contractor shall make any payments due to the Client 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.

C4 Price Adjustment on Review of Contract

C4.1 Save as provided in this Condition C4 and subject to any adjustment made in terms of these Conditions pursuant to a Change, the Contract Price shall be firm for the Contract Period.

C4.2 The Client shall review the Contract Price with the Contractor nine Months prior to each Review End Date.

C4.2 During the nine Month period prior to each Review End Date, the Client may request the Contractor to prepare an adjusted Contract Price for the proposed continuation of Contract beyond that Review End Date (the "**Adjusted Contract Price**"). The Contractor shall issue this Adjusted Contract Price in writing to the Client at least six Months before the Review End Date, for Approval on behalf of the Client.

C4.3 In the event that the parties fail to agree the Adjusted Contract Price to apply in respect of all or part of the Goods and/or Services from the relevant Review End Date at least five Months (or such shorter period as the parties may agree) prior to that Review End Date, the Client may by written notice terminate this Contract in respect of all or part of Goods and/or Services with effect from the Review End Date without liability to either party (although subject to Condition H7.1). The Client shall give the Contractor written notice of such termination at least one Month prior to the Review End Date

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(unless the parties have agreed to extend the period to reach agreement in accordance with this Condition C4.3, in which case the Client shall give the Contractor such period of notice (being less than one Month) as is reasonably practicable in the circumstances).

C5 Euro

C5.1 Any legislative requirement to account for the services in Euro, or to prepare for such accounting, instead of and/or in addition to sterling, shall be implemented by the Contractor at the Contractor's expense.

C5.2 The Client shall provide all reasonable assistance to the Contractor to facilitate such legislative changes.

C5.3 For the avoidance of doubt, such legislative changes shall be deemed to be a General Change in Law.

C6 Change in Law

C6.1 The Contractor shall neither be relieved from its obligations to supply the Goods and/or Services in accordance with the terms of this Contract nor be entitled to an increase in the Contract Price as the result of a:

- (a) General Change in Law; or
- (b) Specific Change in Law, where the effect of such a Specific Change in Law on the Services is known, or ought to have been known by the Contractor, at the Commencement Date.

C6.2 If a Specific Change in Law occurs during the Contract Period, other than a Specific Change in Law referred to in Condition C6.1(b), the Contractor shall notify the Client of the likely effects of such a Specific Change in Law, including:

- (a) whether any change is required to the Goods and/or Services, 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 Goods and/or Services level requirements at any time.

C6.3 As soon as practicable after any notification in accordance with Condition C6.2 the Parties shall discuss and agree the matters referred to in that Condition and any ways in which the Contractor can mitigate the effect of the Specific Change in Law, including:

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- (a) providing written evidence to the Client 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 to the Client that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
- (c) giving written evidence to the Client as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) demonstrating to the Client that any other expenditure that has been avoided has been taken into account in adjusting the Contract Price.

C6.4 Any adjustment to the Contract Price or relief from the Contractor's obligations agreed by the Parties pursuant to this Condition C6 shall be implemented in accordance with Condition F3.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

- D1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Client 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 the Contract or any other contract with the Client, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract (a "**Prohibited Act**"). A Prohibited Act will be committed by the Contractor if it commits an offence under the Prevention of Corruption Acts 1889 to 1916.
- D1.2 The Contractor shall not enter into the Contract if a commission has been paid or is agreed to be paid in connection with the Contract to any employee or representative of the Client by the Contractor or on the Contractor's behalf (a "**Corrupt Gift**"), unless before the Contract is entered into particulars of any such Corrupt Gift and the terms and conditions of any agreement for the payment of such a Corrupt Gift has been disclosed in writing to the Client.
- D1.3 Where the Contractor or Contractor's Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by Condition D1.1 or D1.2 in relation to the Contract or any other contract with the Client, the Client has the right to:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from such termination; and

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- (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this Condition, whether or not the Contract has been terminated.

D1.4 In exercising its rights or remedies under this Condition, the Client shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, a Prohibited Act and/or providing a Corrupt Gift; and
- (b) give all due consideration, where appropriate, to action other than the termination of the Contract.

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order, or regulation relating to discrimination whether in race, gender, religion, disability, sexual orientation or otherwise in employment.

D2.2 The Contractor shall take all reasonable steps to secure the observance of Condition D2.1 by the Contractor and its Staff and all Sub-contractors employed by the Contractor in the performance of the Contract.

D3 The Contracts (Rights of Third Parties) Act 1999

D3.1 No term of the Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to the Contract.

D4 Environmental Requirements

D4.1 The Client is registered to the ISO 14001 standard for Environmental Management Systems and is thus required to assess the contractor's ability to support and assist in meeting the requirements of the standard. The Contractor shall, when working on the Client's Premises, perform the Contract in accordance with all Environmental Law and according to the Client's Environmental Policy which is available on the Clients website. which includes conservation of energy, water, wood, paper and other resources, reduction of waste and appropriate disposal of unavoidable waste, phasing out the use of ozone depleting substances and minimising the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D5 Health and Safety

D5.1 While on the Client's Premises, the Contractor shall comply with the Client's health and safety policy, health and safety procedures, site access procedures, permit to work systems and the like.

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- D5.2 Prior to commencing work, the Contractor shall notify the Client of all health and safety hazards which may arise in connection with the performance of the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Client's Premises and which may affect the Contractor in the performance of the Contract.
- D5.3 The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of the Contract on the Client's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury. In addition the Contractor shall notify the Client immediately in the event of any incident occurring in the performance of the Contract on the Client's Premises where that incident had the potential to cause any personal injury whether or not any injury occurred.
- D5.4 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations, codes of practice and guidance relating to health and safety.
- D5.5 The Contractor shall make its Health and Safety Policy Statement and health and safety policy available to the Client on request.

D6 Vehicle Legislation

- D6.1 The Contractor shall ensure that no vehicle used or driven by him for the performance of the Contract contravenes any Law affecting the use, condition or operation of any vehicle.
- D6.2 In relation to the provision of Goods and/or Services, the Contractor shall comply with all relevant vehicle legislation, including, for the avoidance of doubt, the Motor Vehicles (Construction and Use) Regulations 1999.

D7 Off Payroll Workers

- D7.1 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.
- D7.2 The Client will inform the Contractor in the award letter of the Employment Status Decision in respect of the Contractor (the "Notification of Employment Status Decision"), 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

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is a 'Deemed Employee' of the Client, the Notification of Employment Status Decision shall contain a request for information, the 'Deemed Employee Details' form, which the Contractor shall provide.

- D7.3 On receipt of the Notification of Employment Status Decision the Contractor shall return the Deemed Employee Details form within any applicable time limit 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.
- D7.4 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 clauses D7.1 to D 7.3 above.
- D7.5 For the avoidance of doubt, classification as a Deemed Employee and/or the issuing of any Employment Status Decision 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.
- D7.6 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.
- D7.7 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.
- D7.8 Recruitment agencies and other third parties supplying workers to the public sector**
- D7.9 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.
- D7.10 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 (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

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circumstances, the Contractor shall be obliged to send a Supplier Information Checklist directly to the Client at: Tax.Admin@niwater.com

- D7.11 The Client will then inform the Contractor by a notice (the “Off Payroll Worker Notice”) 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 Income Tax (Earnings and Pensions) Act 2003 (as amended) or any statutory re-enactment thereof (the “ITEPA 2003”).
- D7.12 The Contractor hereby warrants that all the information contained within the Individual Worker Information is true, accurate, complete and not misleading.
- D7.13 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 clauses ref D7.9 to D7.12 and clause D7.18 below in the event of the Contractor being non-UK tax resident.
- D7.14 For the avoidance of doubt classification as an Agency Supplied Deemed Employee and/or the issuing of any Off-Payroll Worker Notice, 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.
- D7.15 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.
- D7.16 For the avoidance of doubt, “tax deductions and tax payments” shall include income tax and class 1 national insurance.
- D7.17 The Client shall monitor the Contract throughout its duration and shall have the ability, if it so wishes, to alter the Off-Payroll Worker Notice, in the event that the nature of the Contract changes at any point during the duration of the Contract.
- D7.18 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.

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E. PROTECTION OF INFORMATION

E1 Data Protection

- E1.1 The Contractor undertakes to the Client that it shall (and shall procure that any and all of its Staff involved in the provision of this Contract shall) take all necessary steps to ensure that it operates at all times within the requirements of the Data Protection Laws. This includes ensuring that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. The Contractor warrants to the Client that it has, and will continue to maintain, a valid and up-to-date registration or notification to the Office of the Information Commissioner in the United Kingdom under the Data Protection Laws to Process Personal Data under the terms of this Contract.
- E1.2 Without limiting Condition E1.1, if the Client or any third party passes to the Contractor, or otherwise gives the Contractor access to, Personal Data to be Processed under this Contract:
- (a) the Contractor will not Process Personal Data held by it under this Contract except in accordance with this Contract or otherwise on the written instructions of the Client. The Contractor shall provide the Client with such information as the Client may reasonably require with a view to satisfying itself that the Contractor is complying with its obligations under this Condition E1 and the Data Protection Laws and shall also provide all assistance required by the Client to ensure that it may fulfil its obligation to respond to requests for exercising rights held by data subjects;
 - (b) the Contractor will acquire no rights or interest in the Personal Data and will return all copies of such Personal Data to the Client, or delete same, on demand;
 - (c) the Contractor warrants, represents and undertakes that it shall ensure the protection of the rights of data subjects through the implementation of appropriate technical and organisational measures and that Processing will meet the requirements of the Data Protection Laws. This includes the implementation of appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental, intentional or reckless alteration, unauthorised disclosure, or loss of or destruction, unauthorised access or damage to Personal Data as if it were the Controller in relation to those Personal Data in compliance with the Data Protection Laws and will provide evidence of such measures to the Client on reasonable prior notice. The Contractor will notify the Client of any breach of the foregoing security measures and any actual or suspected breach of the the Data Protection Laws as soon as

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possible and no later than 24 hours after discovery of the actual or suspected breach;

- (d) the Contractor will use reasonable endeavours to ensure that its employees will maintain proper records of the Processing of any Personal Data received from the Client or from a third party on behalf of the Client carried out by it with regard to the Data Protection Laws;
- (e) the Contractor shall ensure that it does not do anything and that it does not refrain from doing anything knowingly or negligently which places the Client in breach of the Client's obligations under the Data Protection Laws; and
- (f) the Contractor shall not engage another processor without prior specific or general written authorisation of the Client and shall, in any event, ensure that any processor it appoints is under equivalent obligations to the Contractor as the Contractor is to the Client. In the case of general written authorisation, the Contractor shall inform the Client of any intended changes concerning the addition or replacement of other processors, thereby giving the Client the opportunity to object to such changes.

E1.3 The Contractor will not transfer any Personal Data Processed for or on behalf of the Client by the Contractor under this Agreement outside the European Economic Area except with the prior written consent of the Client and in accordance with any additional terms the Client may impose on such transfer. The foregoing provisions of this Condition shall also apply to any further transfers of Personal Data agreed between the Client and the Contractor.

E1.4 On termination of this Contract and/or at the end of the Contract Period, for whatever reason, the Contractor shall forthwith cease to Process Personal Data Processed under this Contract and shall return or, at the Client's sole option, destroy and provide to the Client a certificate of destruction of that Personal Data, to the Client together with all copies of such Personal Data in its possession and control. The Contractor and its employees will not retain any copy of any part of such Personal Data in any form or media and will provide the Client with a certificate signed by one of its senior managers confirming that it has fully complied with this Condition.

E1.5 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after Expiry Date or Termination Date.

E1.6 The Contractor shall indemnify and hold harmless the Client against any loss or damage suffered by the Client in relation to the Processing of any Personal Data by the Contractor and any of its sub-contractors (including any processor appointed by the Contractor in accordance with Condition E1.2(f) or otherwise).

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E2 Confidentiality

E2.1 Each Party:

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

E2.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Client under or in connection with the Contract:

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- (b) is treated as confidential and not disclosed, without prior Approval, or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

E2.3 The Contractor shall ensure that its Staff or professional advisors or consultants are made aware of the Contractor's confidentiality obligations under this Contract. Without limiting the generality of the foregoing, where in the opinion of the Client it is considered necessary, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.

E2.4 The Contractor shall not use any Confidential Information it receives from the Client otherwise than for the purposes of the Contract.

E2.5 The provisions of Conditions E2.1 to E2.4 shall not apply to any Confidential Information received by one Party from the other which the receiving Party can show by reference to documentary or other evidence:

- (a) is or becomes public knowledge, other than by breach of this Condition;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

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- (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed or acquired by the receiving Party without access to, or use or knowledge of, the Confidential Information; or
- (e) must be disclosed pursuant to a statutory, legal, regulatory or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Condition E3.

E2.6 Nothing in this Condition shall prevent the Client:

- (a) disclosing any Confidential Information obtained from or about the Contractor for the purpose of:
 - (i) the examination and certification of the Client's accounts; or
 - (ii) any examination of the economy, efficiency and effectiveness with which the Client has used its resources by or on behalf of the Northern Ireland Audit Office or the National Audit Office; or
 - (iii) any examination of information by the Client's own professional advisers, insurance advisers or internal or external auditors;
- (b) disclosing any Confidential Information obtained from or about the Contractor:
 - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
 - (ii) to its own employees and/or any person engaged in providing any services to the Client for any purpose relating to or ancillary to this Contract; or
 - (iii) to a person to whom this Contract has been assigned or novated pursuant to Condition F9.1, or any successor body to the Client under Condition F9.2.

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provided that in disclosing information under sub-paragraph (b)(i) and (ii) the Client discloses only the information which is necessary for the purpose concerned and makes such persons aware of the confidential nature of the Confidential Information.

- E2.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E2.8 In the event that the Contractor fails to comply with all or any part of this Condition E2, the Client reserves the right to terminate the Contract by notice in writing pursuant to Condition H2.1(b) with immediate effect.
- E2.9 The provisions of confidentiality as set out in this Condition E2 shall apply during the continuance of this Contract and indefinitely after the Expiry Date or Termination Date.

E3 Freedom of Information

- E3.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client, at the Contractor's expense, to enable the Client to comply with these disclosure requirements.
- E3.2 The Contractor shall and shall procure that its Sub-contractors shall:
- (a) upon receipt of a Request for Information, transfer the Request for Information to the Client as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Client with a copy of all Information, which the Client considers falls within the scope of the Request for Information, in the Contractor's possession or power in the form that the Client requires within five (5) Working Days or such other period as the Client may specify; and
 - (c) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in FOIA and/or the Environmental Information Regulations and to enable the Client to comply with its disclosure obligations in a timeous manner.
- E3.3 The Contractor acknowledges that the Client shall be solely responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information (including Confidential

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Information and all information provided to the Client by and/or on behalf of the Contractor):

- (a) is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations; and
- (b) is to be disclosed in response to a Request for Information.

The Contractor acknowledges that in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so in writing by the Client.

E3.4 The Contractor acknowledges that the Client may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of FOIA, be obliged under the FOIA and/or the Environmental Information Regulations to disclose Information (including Confidential Information):

- (a) without consulting with the Contractor, or
- (b) without prejudice to Condition E3.3, following consultation with the Contractor and having taken its views into account.

E3.5 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the subject matter of the Contract is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

E3.6 The Contractor acknowledges that any lists or Schedules provided by the Contractor outlining Confidential Information are of indicative value only and that the Client may nevertheless be obliged to disclose Confidential Information in accordance with Condition E3.4.

E4 Security of Confidential Information

E4.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained during the performance of the Contract, the Contractor undertakes to the Client to set-up and maintain appropriate security systems (the "**Security System**").

E4.2 The Contractor will immediately notify the Client of any breach of the Security System and shall keep a written record of all such breaches. The Contractor will use its best endeavours to recover such Confidential Information or Data from an unauthorised source. This obligation is in addition to the Contractor's obligations under Condition E3. The Contractor will co-operate with the Client in any investigation that the Client considers necessary to undertake as a result of any breach of the Security System in relation to Confidential Information or Data.

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E4.3 The Client may require the Contractor to alter any Security System at any time during the Contract Period at the Contractor's expense.

E5 Publicity, Media and Official Enquiries

E5.1 Without prejudice to the Client's obligations under FOIA and/or the Environmental Information Regulations, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party. The Contractor shall not unreasonably withhold its consent to such a request by the Client.

E5.2 The provisions of this Condition shall apply during the Contract Period and indefinitely after the Expiry Date or Termination Date (whichever is earlier).

E6 Security

E6.1 The Client shall be responsible for maintaining the security of its Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Client while on the Client's Premises, and shall ensure that all of its Staff and Sub-contractors shall likewise comply with such security requirements.

E6.2 The Client shall provide the Contractor, upon request, copies of its written security procedures for its Premises and shall afford the Contractor, upon request, with an opportunity to inspect its physical security arrangements on its Premises.

E7 Intellectual Property Rights

E7.1 All Intellectual Property Rights arising in or relating to the Services provided under this Contract shall vest in and/or remain the property of the Client.

E7.2 All Intellectual Property Rights in any Materials:

- (a) furnished to or made available to the Contractor by the Client shall remain the property of the Client; and
- (b) prepared by or for the Contractor for use, or intended use, in relation to the Services and/or the performance of this Contract shall belong to the Client and the Contractor assigns (and shall procure that any of its employees, agents and/or Sub-contractors assign) to the Client any Intellectual Property Rights in any Materials so created or developed immediately on their creation. The Contractor shall not (and shall procure that the Contractor's employees, servants, agents, suppliers and Sub-contractors shall not) without the Client's prior written approval (except when necessary for the implementation of the Contract), use or disclose to any third party:

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- (i) any Materials and/or Intellectual Property Rights arising therein or relating thereto; or
- (ii) any information, whether or not relevant to this Contract, which the Contractor may obtain in performing this Contract.

E7.3 The Contractor shall not knowingly do anything or knowingly refrain from doing anything to imperil or otherwise impugn the validity of any registration or protection of, or any application for registration of, any Intellectual Property Rights legally or beneficially owned by or vested in the Client, or to prejudice any such Intellectual Property Rights in any respect. The Contractor shall at the reasonable cost of the Client render all possible assistance to the Client regarding the registration and/or prosecution of such Intellectual Property Rights. The Contractor shall, and shall procure that any of its employees, agents, Sub-contractors or consultants engaged in the provision of the Services and/or the creation of any Materials shall, execute any such deeds, documents and/or other writings required to give effect to the rights so assigned pursuant to Condition E7.2(b)

E7.4 The Contractor shall procure that its employees who are engaged in respect of the Services, or who develop any Intellectual Property Rights as a result of this Contract, waive, and where the Contractor is an individual or a partnership, the Contractor waives, any and all moral rights (as defined in the Copyright, Designs and Patents Act 1988) (if any) which they or it may have in respect of the Services provided under this Contract.

E7.5 The Contractor grants the Client, at no additional cost, a perpetual, non-exclusive, irrevocable, worldwide, royalty-free licence (with rights to sub-licence) to use, copy, reproduce, modify, adapt and to maintain any Intellectual Property Rights owned by the Contractor and used in the provision of the Services. The Contractor shall obtain Approval before using any material (including Materials), in relation to the performance of the Contract, which is owned by or may be subject to any third party Intellectual Property Rights. Where the Client so approves, the Contractor shall procure that the owner of such third party Intellectual Property Rights grants to the Client, a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, copy, reproduce, modify, adapt and maintain such. Such third party licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Client and shall be granted at no additional cost to the Client.

E7.6 It is a condition of the Contract that the Materials and Services being provided by the Contractor will not infringe any Intellectual Property Rights of any third party and that the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified the Client and the Crown against all actions, suits, claims, demands, losses, charges,

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damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim relates to:

- (a) designs furnished by the Client with no input from the Contractor;
or
- (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

E7.7 The Client shall notify the Contractor in writing as soon as reasonably practicable of any claim or demand brought against the Client and/or the Crown (where this is known by the Client) for infringement or alleged infringement of any Intellectual Property Right in Materials and/or Services supplied or licensed by the Contractor to the Client. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in Materials and/or Services 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 which shall not to be unreasonably withheld or delayed.

E7.8 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of defending any claim or demand made or action brought against the Client and/or the Crown or the Contractor for infringement or alleged infringement by the Client and/or Crown of any Intellectual Property Rights in connection with the performance of the Contract and shall be repaid all costs and expenses incurred in so doing including legal costs and disbursements on a solicitor and client basis.

E7.9 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 Intellectual Property Rights by the Client or the Contractor in connection with the performance of the Contract.

E7.10 If a claim, demand or action for infringement or alleged infringement of any third party's Intellectual Property Rights is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Client, which shall not be unreasonably withheld or delayed, either:

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- (a) modify any or all of the Materials and/or Services without reducing the performance or functionality of the same, or substitute alternative Materials and/or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Materials and/or Services or to the substitute Services; or
- (b) procure a licence for the Client to use the Materials and/or Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client.

E7.11 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E8 Audit and the Northern Ireland Audit Office

E8.1 The Contractor shall keep and maintain until ten years, or such other period as the Parties may agree, after the Expiry Date or Termination Date (whichever is earlier), full and accurate records of the Contract including the Goods and/or Services provided by the Contractor under the Contract, all expenditure reimbursed by the Client to the Contractor, and all payments made by the Client to the Contractor. The Contractor shall, upon the Client's request, afford the Client or the Contract Manager such access to those records as may be required by the Client in connection with the Contract (including, without limitation, such access as may be required by the Client to ensure its compliance with the requirements of the Northern Ireland Audit Office or National Audit Office or to comply with internal or external audit requirements).

F. CONTROL OF THE CONTRACT

F1 Assignment and Sub-Contracting by the Contractor

F1.1 The Contractor shall not assign, transfer, charge, Sub-contract or in any other way dispose of the Contract or any part thereof without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though they were its own.

F1.3 Where the Client has consented to the placing of Subcontracts, copies of each Subcontract shall be sent by the Contractor to the Client within two working days when requested to by the Client.

F1.4 The Contractor shall not use the services of self-employed individuals without prior Approval.

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F2 Waiver

- F2.1 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Condition A6, and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given.
- F2.2 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise 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.
- F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
- F2.4 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by Law.

F3 Variation

- F3.1 Unless specifically provided otherwise, the Contractor shall not be entitled to vary the provision of the Goods and/or Services, except as directed by the Client.
- F3.2 The Client shall be entitled during the Contract Period by notice to the Contractor to change the contract and add to or omit from, or otherwise vary, the provision requirements of the Goods and/or Services (a "Variation"), such Variation being a written notice from a Client Authorised Person. The Contractor shall perform such Variation and be bound by the Contract so far as it is applicable, as though the said Variations were stated in the Contract.
- F3.3 In the event that a Variation does not require an amendment to the Contract Price and the Contractor is unable within the timescale reasonably notified by the Client Authorised Person pursuant to Condition F3.2 to carry out the Variation, the Client may terminate the Contract and the Contractor shall indemnify the Client for any loss suffered by the Client which results from such termination.
- F3.4 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 and agreed in writing with the Contractor by the Client Authorised Person and shall be such amount as properly and fairly reflects the nature and extent of the Variation taking account of all relevant circumstances. In the event that both Parties fail to agree an amendment to the Contract Price, this dispute shall be resolved in accordance with Condition I1.

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F3.5 In the event that a Variation may prevent the Contractor from complying with its obligations under the Contract, the Contractor shall notify the Client Authorised Person in writing immediately, whereupon the Client Authorised Person shall inform the Contractor within 14 days of receipt of such notification whether or not the said Variation requires to be carried out. For the avoidance of doubt, until the Client Authorised Person has confirmed to the Contractor in writing whether or not the Variation requires to be carried out, the Contractor does not require to implement the Variation.

F3.6 No term or provision of this Contract shall be considered as waived by the Client unless a waiver is given in writing by the Client Authorised Person. No such waiver shall be a waiver of a past breach nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in the waiver.

F4 Severability

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed without the invalid, illegal or unenforceable provision.

F4.2 In the event of either Party identifying an invalidity so fundamental so as to prevent the accomplishment of the performance of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

F5 Remedies in the event of inadequate performance

F5.1 Where a complaint is received about the standard of Goods and/or Services or about the way any Goods and/or Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contract, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of Condition H2.

F5.2 In the event that the Client ascertains that there has been a material breach of the Contract by the Contractor, or the Contractor's performance of its duties under the Contract has failed to meet the requisite requirements as set out in the Contract, then the Client may, without prejudice to its rights under Condition H2 of the Contract, do any of the following:

- (a) 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 Goods and/or Services as the Contractor shall have failed to provide; or

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- (b) without terminating the Contract, itself provide or procure the provision of part of the Goods and/or Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will be able to provide and/or perform such part of the Goods and/or Services in accordance with the provisions of the Contract; or
- (c) partially terminate the Contract in respect of that part of the Goods and/or Services. In such an event, the Client shall apply a pro rata reduction to the Contract Price and thereafter the Client shall itself provide or shall procure a third party to provide such part of the Goods and/or Services; and/or
- (d) terminate, in accordance with Condition H2, the whole of the Contract.

F5.3 The Contractor shall indemnify the Client in relation to any costs reasonably incurred by the Client, including any reasonable administration costs in respect of the provision of any part of the Goods and/or Services by the Client or by a third party, to the extent that such costs exceed the Contract Price which would otherwise have been payable to the Contractor for such part of the Goods and/or Services.

F5.4 If the Contractor fails to perform any of the Goods and/or Services to the reasonable satisfaction of the Client in accordance with the Contract such failure will be a Default and the terms of Condition H2 will apply.

F5.5 The remedies of the Client under this Condition may be exercised successively in respect of any one or more failures by the Contractor.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Monitoring of Contract Performance

F7.1 The Contractor shall comply with the monitoring arrangements set out in Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.

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F8 Possible Extension of the Contract Period

F8.1 Subject to satisfactory performance by the Contractor during the Contract Period, the Client may wish to extend the Contract for a further period beyond the Expiry Date. Any extension must be granted in writing by the Client and the terms of Condition C4 will apply in respect of the Contract Price (with changes required in the context of the provision). The Conditions in this Contract will otherwise apply throughout any such extended period.

F9 Assignment, Sub-contracting and Novation by the Client

F9.1 Subject to Condition F9.3, the Client shall be entitled to:

- (a) assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract; or
- (b) assign, novate or otherwise dispose of its rights and obligations under this Contract to any other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by the Client provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract; or
- (c) assign, novate or otherwise dispose of its rights and obligations under this Contract to any private sector body to which a substantial part of the functions or undertaking of the Client are transferred.

F9.2 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to Condition F9.3, 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.

F9.3 If the Contract is novated pursuant to Condition F9.1(b) to a body (the Transferee") which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority, the rights of termination of the Client in Condition H1 and H2 shall be available to the Contractor in the event of the bankruptcy or insolvency of the Transferee;

F9.4 The Client shall be entitled to disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contract by the Contractor. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

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G. LIABILITIES

G1 Liability, Indemnity and Insurance

- G1.1 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 any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.
- G1.4 Subject always to clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:
- a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed ten million pounds (£10,000,000); and
 - b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses E7 (Intellectual Property Rights) or G1.4a shall in no event exceed the greater of three hundred per cent (300%) of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises.
- G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and/or
 - (b) loss of savings (whether anticipated or otherwise);

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(c) Indirect or consequential loss or damage.

- G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 10 (ten) years following the expiration or earlier termination of the Contract.
- G1.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.9 The Contractor shall give the Client, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G3 Warranties and Representations

- G3.1 The Contractor warrants and represents that:
- (a) the Contractor has the 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 the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including Good Industry Practice and,

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without limiting the generality of this Condition, in accordance with its own established internal procedures;

- (c) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff and Sub-contractors with all due skill, care and diligence; and
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 Termination by the Client on change of control and insolvency etc

H1.1 The Client may terminate the Contract by issuing a Termination Notice to the Contractor which will have immediate effect where the Contractor, or any party which Controls the Contractor:

- (a) undergoes a change of Control; or
- (b) being an individual or a firm, a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or any partner in the firm or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors or if an administrator is appointed to manage the Contractor's or firm's affairs; or
- (c) being a company, passes a resolution for winding up or dissolution, otherwise than for the purposes of and followed by an amalgamation or reconstruction, or an application is made, or any meeting of its directors or members resolves to make an application, for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed or the court makes a winding-up order or the company makes a composition or arrangement with its creditors or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court or possession is taken of any of its property under the terms of a fixed or floating charge; or
- (d) is unable to pay its debts within the meaning of Article 103 of the Insolvency (Northern Ireland) Order 1989; or

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(e) makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

(f) ceases, or threatens to cease, to trade,

or any similar event occurs, as set out in the foregoing paragraphs (a) to (f), under the law of any other jurisdiction within the United Kingdom.

H1.2 The Client may only exercise its right under Condition H1.1(a) within six Months after a change of Control is notified to the Contract Manager and shall not be permitted to do so where it has Approved the change of control. The Contractor shall notify the Contract Manager immediately when any change of Control occurs.

H1.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Client shall be entitled to terminate this Contract by notice to the Contractor or the Contractor's Representative with immediate effect.

H2 Termination on Default

Contractor Default

H2.1 The Client may terminate the Contract with immediate effect if the Contractor commits a Default, or terminate the provision of any part of the Contract, by serving a written termination notice to the Contractor or the Contractor's Representative (the "**Termination Notice**") if:

(a) the Contractor has not remedied the Default to the satisfaction of the Client within 30 days, or such other period as may be specified in the Termination Notice by the Client, after issue of the Termination Notice specifying the Default and requesting it to be remedied; or

(b) the Default is not capable of remedy; or

(c) the Default is a fundamental breach of the Contract.

H2.2 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 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.

Client Default

H2.3 The Contractor may terminate this Contract if the Client is in material breach of its obligations to pay undisputed amounts by giving the Client 90 days'

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notice specifying the breach and requiring its remedy. The Contractor's right of termination under this Condition H2.3 shall not apply to non payment of the amounts where such non payment is due to the Client exercising its rights under Condition C3.1.

H3 Break Clause

H3.1 The Client shall have the right at its own discretion to terminate the Contract, or to terminate the provision of any part of the Contract at any time and for any reason, by giving three Months' written notice to the Contractor. The Client may extend the period of notice at any time before such notice expires.

H4 Consequences of Termination

Termination under Condition H1 and H2

H4.1 Subject to condition H2, where the Client terminates the Contract under Condition H1 and H2, or terminates the provision of all or any part of the Contract under any other Condition, and then makes other arrangements for the provision of Goods and/or Services, the Contractor shall indemnify the Client against all costs associated with making those other arrangements on an on-going basis until the Expiry Date and any additional expenditure incurred by the Client associated with the termination of the Contract. Where the Contract is terminated under Conditions H1 and H2, no further payments shall be payable by the Client to the Contractor until the Client has established the final cost of making such subsequent arrangements.

Termination under Condition H3

H4.2 Subject to Condition H4.3, where the Client terminates the Contract under Condition H3, the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit to the Client a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under H3.

H4.3 The Client shall not be liable under Condition H4.2 to pay any sum 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 its insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the

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Contractor if the Contract had not been terminated prior to the Expiry Date.

H4.4 On termination of the Contract, for whatever reason, the Contractor shall immediately deliver to the Client:

- (a) all Materials (including Client Property) and all copies of information and Data provided by the Client to the Contractor for the purposes of the Contract. The Contractor shall certify to the Client that it has not retained any copies of the Materials or other information or data, except for one copy which the Contractor may use for audit purposes only and subject to the confidentiality obligations set out in Condition E2;
- (b) all Materials, programmes (including source codes), back-up media, Data and other documentation or items created by or on behalf of the Contractor and deliverable to the Client in the proper performance of the Contract, whether or not then complete. All Intellectual Property Rights in such Materials, programmes, Data and other documentation or items shall immediately pass to the Client, who shall be entitled to enter the premises of the Contractor to take possession of them.

H4.5 If the Contractor fails to fulfil its obligations under Condition H4.4, then the Client may enter the Contractor's premises and take possession of any items which should have been returned under it. Until they are returned or re-possessed the Contractor shall be solely responsible for their safe keeping.

H5 TUPE on Cessation

H5.1 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 Supplier 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.

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- H5.2 The Contractor undertakes that in the Transfer Assistance Period it shall not without the prior written consent of the Client:
- (a) materially vary 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.
- H5.3 The Contractor shall during the Contract Period 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.
- H5.4 The parties acknowledge that by virtue of the cessation or partial cessation of the provision of the Services by the Contractor (whether or not on the Expiry Date or the Termination Date) 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 but the parties agree that the provisions of Conditions H5.5 to H5.9 inclusive shall apply irrespective of whether or not the TUPE Regulations do apply as anticipated in this Condition H5.4.
- H5.5 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.
- H5.6 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.

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H5.7 The Contractor shall indemnify the Client and/or any Replacement Contractor (as the case may be) against all Employment Liabilities which it incurs 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 Transferring Employees or their representatives before the Transfer Date and whether liability for any such claim arises before, on or after the Transfer Date.

H5.8 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 this Condition H5.7 which directly effect or which are intended to directly benefit the Replacement Contractor as it would were it a party to the Contract.

H6 Disruption

H6.1 The Contractor shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of the Client, its employees or any other contractor employed by the Client.

H6.2 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 the Contract.

H6.3 In the event of industrial action by the Contractor's Staff, the Contractor's suppliers or Sub-contractors, the Contractor shall seek the Client's Approval to its proposals to perform its obligations under the Contract.

H6.4 If the Contractor's proposals referred to in Condition H6.3 are considered insufficient or unacceptable by the Client, then the Contract may be terminated by the Client by notice in writing to the Contractor which shall have immediate effect.

H6.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Client, an appropriate allowance by way of extension of time will be Approved by the Client. In addition, the Client will reimburse any additional expense incurred by the Contractor in fulfilling the provisions of the Contract as a result of such disruption.

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H7 Recovery upon Termination

- H7.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and the Client accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- H7.2 At the end of the Contract Period, howsoever arising the Contractor shall forthwith deliver to the Client upon request all the Client's Property, including materials, documents, information, access keys, relating to the Contract, in its possession or under its control or in the possession or under the control of any permitted suppliers or Sub-contractors and in default of compliance with this Clause the Client may recover possession thereof and the Contractor grants 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.
- H7.3 At the end of the Contract Period, howsoever arising and/ or after the Contract Period the Contractor shall co-operate free of charge with the Client and any new contractor appointed by the Client to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.
- H7.4 The provisions of this Condition shall survive the Contract Period and indefinitely after the Expiry Date or Termination Date (whichever is earlier).

H8 Force Majeure

- H8.1 For the purpose of this Condition, "Force Majeure" means any event or occurrence, omission or accident which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including governmental regulations, strikes, lock-outs or other industrial disputes, act of God, war, riot or civil commotion, terrorism, accident, fire, flood, storm or any other natural disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.
- H8.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract by notice in writing with immediate effect.

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- H8.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay of its Staff and/or Sub-contractors shall be regarded as due to Force Majeure only if such Staff and/or Sub-contractors are impeded by Force Majeure from complying with an obligation to the Contractor.
- H8.4 Condition H8 does not affect the Client's rights under Condition H6.4.
- H8.5 If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in condition H8.3 it shall forthwith notify the other Party by the most expeditious method then available and shall inform the other Party of the period which it estimates that such failure or delay shall continue.

I. DISPUTES AND LAW

I1 Governing Law

- I1.1 This Contract shall be governed by and interpreted in accordance with Northern Ireland law and the Parties submit to the jurisdiction of the courts of Northern Ireland.

I2 Dispute Resolution

- I2.1 If any dispute arises out of or in connection with this Contract, finance directors or other senior representatives of the Parties with authority to settle the dispute will, within 21 days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute.
- I2.2 If the dispute is not resolved at that meeting the Parties may attempt to settle it by mediation. Unless otherwise agreed between the Parties the mediator will be nominated by the Centre for Effective Dispute Resolution ("CEDR"). Unless otherwise agreed between the Parties the mediation will be in accordance with the CEDR Model Mediation Procedure. To initiate the mediation a Party must give notice in writing ("ADR Notice") to the other Party to the dispute requesting a mediation. The mediation will start not later than 30 days after the date of the ADR Notice. If the mediation is to be a CEDR Mediation a copy of the ADR Notice should be sent to CEDR Solve.
- I2.3 If the Parties reach agreement on the resolution of the dispute during or as a result of a mediation, the agreement shall be reduced to writing and shall be binding on the Parties.
- I2.4 If the Parties agree to mediate in respect of a dispute neither Party may commence any court proceedings or arbitration in relation to that dispute until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation.

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- I2.5 If the Parties do not agree to mediate or if the dispute is not settled by mediation within 42 days of commencement of the mediation, or within such further period as the Parties may agree in writing, the dispute shall be referred to and finally resolved by the Courts, unless the Parties agree to resolve the dispute by arbitration in accordance with the provisions of Condition I2.7.
- I2.6 If either Party intends to commence court proceedings it shall serve written notice on the other Party of its intention and the Party receiving the notice shall have 14 days following receipt of the notice to serve a reply requesting that the dispute be referred to and resolved by arbitration in accordance with the provisions of Condition I2.7.
- I2.7 If the Parties agree to resolve a dispute by arbitration, including any question regarding the existence, validity or termination of the Contract, it shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("**LCIA**") Rules, which Rules are deemed to be incorporated by reference into this Clause and the following shall apply:
- (a) the number of arbitrators shall be one;
 - (b) unless otherwise agreed between the Parties the arbitrator shall be appointed by the LCIA;
 - (c) the seat, or legal place, of arbitration shall be Belfast, Northern Ireland;
 - (d) the language to be used in the arbitral proceedings shall be English; and
 - (e) the governing law of the contract shall be the substantive law of Northern Ireland.
- 12.8 The performance of the Contract will not be suspended, cease or be delayed by the reference of a dispute to dispute resolution pursuant to this Condition I2 and the Contractor (and its employees, agents and sub-contractors) shall continue to comply fully with the requirements of the Contract at all times
- I2.9 Nothing in this dispute resolution Condition I2 shall prevent the Parties from seeking from any competent court an interim order restraining the other Party from doing any act or compelling the other Party to do any act, nor from issuing proceedings necessary to preserve a Party's legal rights."

J. CONSTRUCTION RELATED CONTRACTS - CONSTRUCTION CONTRACT MONITOR (CCM) – Special Conditions

J1 Appointment of the CCM

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- J1.1 The Client may appoint a Construction Contract Monitor (“CCM”) from a list of persons or organisations held by the Client. The objectives of the appointment of the CCM are:
- to limit opportunities for criminals, or criminal or paramilitary organisations to target any work being carried out under this contract,
 - to encourage fair competition and equal opportunities for all,
 - to promote sustainability through monitoring compliance with appropriate legislation and tax regimes, including those concerning aggregate exploitation, waste disposal and landfill, and
 - any other objectives set out elsewhere in this contract.
- J1.2 The CCM shall act as stated in this contract and in a spirit of mutual trust and cooperation with the Contract Manager, the Client and the Contractor.
- J1.3 The Client does not appoint as the CCM any person or organisation that provides or has provided within 5 years of the commencement date any accountancy, audit or legal services to the Contractor or to the Contractor’s ultimate parent company or to a company with the same ultimate parent company as the Contractor.
- J1.4 The Client may replace the CCM at any time after he has notified the Contractor of the name of the replacement.
- J1.5 A Supplier means any person or organisation with a contract with the Contractor in relation to any of the works or services carried out under this contract, including, but not limited to those
- supplying Plant and Materials,
 - supplying or hiring Equipment,
 - designing any parts of the works,
 - carrying out any other professional services,
 - supplying labour,
 - who are Subcontractors or Subconsultants, or
 - supplying any other works or services in relation to this contract

J2 Role of the CCM

- J2.1 The CCM monitors and audits the Contractor’s activities and those of his Suppliers with respect to
- payments to criminal or paramilitary organisations,
 - payment of aggregate taxes,
 - payment of landfill taxes,
 - compliance with waste disposal legislation, and
 - employment of labour-only subcontractors.

The CCM advises the Client of his findings with respect to these matters.

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J2.2 As soon as he is appointed the CCM provides the Contractor with a schedule of all of the persons he intends to employ in carrying out his duties. The CCM provides the Contractor with the CVs of all such persons if requested to by the Contractor.

After notification to the Contractor the CCM may remove people from, or add people to this schedule.

J2.3 Within 30 days of his appointment the CCM will examine the existing procedures and systems used by the Contractor and present a report to Employer, Contract Manager and Contractor. This report will include recommendations as to any changes the CCM requires to the Contractor's procedures in order to meet the objectives of the appointment of the CCM set out in this contract.

J2.4 The CCM may, without prior notice to or permission from the Contractor, conduct reviews and surveillance of the Contractor and his employees, officials and Suppliers at any place where they are carrying out work or services in connection with this contract.

J2.5 The CCM issues a monthly report to the Client, the Contract Manager and the Contractor, which includes details of

- the areas he has targeted for investigation and any appropriate findings or observations,
- recommendations he has made to the Contractor, and the Contractor's response or action,
- the number of events and reports submitted to each appropriate authority in accordance with the Notification Table, and
- such other information as the CCM considers appropriate to the objectives of his appointment.

J2.6 The CCM immediately notifies any of the events in the Notification Table to the named appropriate authority. The CCM issues a copy of any notification to the Contractor

Notification Table:

Event	Appropriate authority
Suspected or actual criminal activity	Police Service of Northern Ireland
Suspected or actual unethical or irregular business activity, or breach of this contract by the Contractor, or his Suppliers, or any government employee	The Client and the Contract Manager

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An ongoing investigation by any law enforcement officer, official of any government agency or other civil authority of the activities of the Contractor, or his Suppliers.	The Client
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J2.7 The CCM does not disclose any commercially confidential information except as required by the Notification Table.

J2.8 If the CCM decides that the Contractor has failed to comply with the requirements of this clause he notifies the Contractor of that failure. The CCM sends a copy of his notification to the Client and Contract Manager. Following such a notification the Client makes no further payments to the Contractor under this contract until the CCM notifies the Client, Contract Manager and Contractor that the failure has been corrected.

A notification issued by the CCM's under this subclause is treated as a notice from the Contract Manager or Client, as appropriate, that the Contractor has substantially failed to comply with his obligations under this contract.

J3 Responsibilities of the Contractor

J3.1 The Contractor cooperates with the CCM in the carrying out of his duties and complies with any request issued by him. The Contractor ensures that all of his employees, officials and Suppliers also cooperate with the CCM and comply with his requests.

J3.2 The Contractor implements such procedures as are recommended or required by the CCM in order to meet the objectives of the appointment of the CCM set out in this contract.

J3.3 The Contractor immediately notifies the CCM if, in connection with the Contractor's business

- any of its employees, officials, or Suppliers involved with the contract are
 - interviewed, questioned, or otherwise contacted by any law enforcement officer or official of any government department or civil authority in connection with any criminal, civil, or administrative investigation, or
 - notified that they are the subject of any criminal, civil or administrative investigation, or
- the Contractor becomes aware of or suspects any unethical or criminal conduct or other impropriety in connection with this contract.

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- J3.4 The Contractor allows the CCM to examine all of his records, including those held electronically, that relate directly or indirectly to this contract, and that are in the possession or control of
- the Contractor
 - any subsidiary of the Contractor,
 - the Contractor's ultimate parent company,
 - any company with the same ultimate parent company as the Contractor, or
 - any other company directly or indirectly controlled by the Contractor or its owners or shareholders.
- J3.5 The Contractor issues to Others any necessary instructions to enable the CCM to have access to any records that are partly or wholly under the Contractor's control but not in the Contractor's possession.
- J3.6 The Contractor provides any authorisations, permissions and/or waivers requested by the CCM to obtain records from Others relating to the Contractor and this contract that are not maintained by the Contractor, including, but not limited to bank records, credit reports and the like.
- J3.7 The Contractor provides the CCM with access to and use of an appropriate private and secure workspace, photocopying facilities and communications equipment.
- J3.8 The Contractor maintains such records as the CCM shall require relating to its own workforce, and that of its Suppliers.
- J3.9 If, and to the extent, required by the CCM, the Contractor ensures that his Suppliers provides to the CCM facilities to inspect their records, including those held electronically.
- J3.10 If the Contractor, or an employee or official of the Contractor, becomes aware of any improper or illegal conduct by any of its employees, officials or Suppliers, he immediately notifies the CCM.
- J3.11 The Contractor includes in any contract he has with a Supplier appropriate provisions that
- allow the CCM to have the rights with regards to the Supplier set out in this contract, and
 - give the Contractor the right to withhold payment to the Supplier if the Supplier
 - fails to cooperate with the CCM, or
 - fails to comply with any action required or requested by the CCM, or
 - fails to supply complete, accurate and truthful information in compliance with a request from the CCM.
- J3.12 The Contractor withholds payment to a Supplier who
- fails to cooperate with the CCM, or

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- fails to comply with any action required or requested by the CCM, or
- fails to supply complete, accurate and truthful information in compliance with a request from the CCM.

J3.13 The Contractor does not disclose to Others any dealings or communications with, or actions by, the CCM in relation to the CCM's duties or actions under this contract.

J4 Other Matters

J4.1 The following are additional compensation events.

- a) If the Contractor is required to pay fees to external accountants, auditors or solicitors in relation to any requests from or requirements of the CCM, but excluding any fees incurred in challenging or disputing a decision of the CCM.
- b) Complying with any specific requirements of the CCM as to security, to the extent that such requirements are greater than an experienced contractor would have deemed reasonable to have allowed for in his tender taking into account
 - his knowledge of the area in which the works or services are being carried out,
 - any information provided by the Employer in this contract,
 - any information available from a visual inspection of the area in which the works or services are being carried out, and
 - any other information which an experienced Contractor could reasonably be expected to have or to obtain.
 - Only the difference between the security required by the CCM and that which it would have been reasonable to have allowed for is taken into account when assessing this compensation event.

J4.2 With the exception of the compensation events set out in the preceding subclause, the Contractor is required to include the costs of complying with all the requirements of this clause in the Prices.

J4.3 Any information provided in accordance with this clause to the Client, Contract Manager or CCM may be used by any Governmental Department or Agency for statistical or information publications. Where such information is used it will not identify any individuals or organisations, except to the extent set out in the Notification Table.