

Supplementary Standard Conditions of Contract for Services

TEMPLATE TO BE COMPLETED FOR SUPPLEMENTARY STANDARD CONDITIONS OF CONTRACT FOR SERVICES

This MUST accompany any documents which contain any supplementary Conditions of Contract. Additional lines can be added as required.

Clause No	Clause Range eg 53.2-53.7	Clause Name

Definitions relating to clauses above

(Please ensure that when lifting clauses that you include any definitions relating to that clause)

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1.0 Additional Definitions and Interpretation to be used with these clauses

[Note: when taking clauses from this document ensure that any corresponding Definitions are included in the standard Conditions of Contract]

“Fees Regulations”	Means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
“Insolvency Order”	Means the Insolvency (Northern Ireland) Order 1989 as amended by the Insolvency (Northern Ireland) Order 2005.
“Relevant Convictions”	Means a conviction that is relevant to the nature of the Services or as listed by the Client and/or relevant to the work of the Client.
“Security Schedule”	Means the Schedule outlining the security requirements [for Staff] [for processing personal data]].
“Staff Vetting Procedure”	Means the Client’s procedures detailed in the Security Schedule and as advised to the Contractor by the Client.

3.0 Initial Contract Period

NOTE TO BUYER choose option A or B and use numbering 3.2 only.

3.2(a) It is anticipated that this Contract will commence on [insert date] for a duration of [X] years. The Client may at any time before the completion of the Contract Period invite the Contractor to agree to extend for any period up to and including [XX] months commencing from the termination date of the original Contract Period.

3.2(b) It is anticipated that this Contract will commence on [insert date] for a duration of [X] years with no further extensions.

5.0 Supply of Services

5.17 Time of delivery shall be of the essence and if the Contractor fails to deliver the Services within the time promised or specified in the Specification, the Client may release itself from any obligation to accept and pay for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Client.

18.0 Indemnity

18.4 Subject always to clause 18.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- i. the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Contract shall in no event exceed [five] million pounds (£5,000,000); and

- ii. the annual aggregate liability under this Contract of either Party for all Defaults (other than a Default governed by clause 18.4(i) shall in no event exceed the greater of **[[words] (figures)] or [[words] per cent ([figures]%)** of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises].
- 18.5 Subject always to clause 18.1, in no event shall either Party be liable to the other for any:
- i. loss of profits, business, revenue or goodwill; and/or
 - ii. indirect or consequential loss or damage.
- 18.6 The provisions of clause 18.5 will not limit the Client's right to recover for;
- i. additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;
 - ii. wasted expenditure or charges rendered unnecessary and incurred by the Client arising from a Default by the Contractor;
 - iii. additional cost of procuring replacement services for the remainder of the term of the Contract;
 - iv. additional costs to maintain the Services arising from a Default by the Contractor; and
 - v. anticipated savings.
- 18.7 The Contractor shall effect and maintain with a reputable company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract. [Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.]
- 18.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 18.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 18.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the

Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 18.2.

18.11 Professional Indemnity

The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than [XX] for each individual claim or such higher limit as the Client may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

62.0 Break

62.1 The Client shall have the right to terminate the Contract in all or part at any time by giving [XXX] Months' written notice to the Contractor.

62.2 Subject to clause 62, where the Client terminates this Contract under clause 62 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of this Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 62 (Break).

62.3 The Client shall not be liable under clause 62 to pay any sum which:

- i. was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- ii. when added to any sums paid or due to the Contractor under this Contract, exceeds the total sum that would have been payable to the Contractor if this Contract had not been terminated prior to the expiry of the Contract Period; or
- iii. is a claim by the Contractor for loss of profit, due to early termination of this Contract.

62.4 Save as otherwise expressly provided in this Contract:

- i. termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or

expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

- ii. termination of this Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses 9.0 (Payment), 12.0 (Recovery of Sums Due), 18.0 (Liability, Indemnity and Insurance), 18.11 (Professional Indemnity), 19.0 (Intellectual Property Rights), 23.0 (Consequences of Termination/Expiry), 32.0 (Data Protection Act), 33.0 (Bribery Act 2010), 34.0 (Confidentiality), 35.0 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 36.0 (Freedom of Information), 40.0 (Audit), 46.0 (Remedies Cumulative), and 50.0 (Governing Law and Jurisdiction).

63.0 Licence to Occupy Premises

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

64.0 Counterparts

- 64.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

SCHEDULE 4 SOCIAL CONSIDERATIONS

[Insert Clauses and Requirements identified by department in Business Case and refer to [PGN 01/13 Integrating Social Considerations into Contracts](#)]

Social considerations can be incorporated into public procurement processes and contracts by the following methods:

- 24.1 Linking them to the ‘subject matter’ of the contract; and/or
- 24.2 Using ‘contract performance clauses’.

The ‘subject matter’ of the contract is about the product, service or the construction work the Department wants to procure. Recent case law has clarified the legal position indicating that award criteria which are based on social considerations need not concern solely the persons using or receiving the supplies or services which are the object of the contract but also “other persons”. The case made clear that to be related to the subject matter of the contract an award criterion need not relate to an intrinsic characteristic of the product itself.

If the department has identified social considerations as part of the subject matter of the contracts, the department may include social criteria as part of the award criteria.

Social award criteria may be applied provided they:

- i. Are linked to the subject matter of the contract;
- ii. Do not confer unrestricted freedom of choice on departments;
- iii. Are set out in the contract notice and tender documentation; and
- iv. Comply with the fundamental principles of EU law.

‘Contract performance clauses’ set out how the contract must be performed. They identify mandatory requirements that successful bidders must accept and must be delivered when the contract is awarded to them. Contracts must not be awarded to bidders who do not accept contract performance clauses.

Specifications must clearly describe the procurement requirements so that Contractors can decide whether they wish to bid or not. Therefore, the specification impacts on the level of competition and the Procurement Directives stipulate that specifications must not reduce competition. Bids can only be evaluated against the requirements of the specification.

The new Procurement Directive 2014/24/EU has made it possible to use social considerations as award criteria and contract performance clauses which are linked to the subject matter where they relate to the works, supplies or services to be provided under the contract in any respect and at any stage of their life cycle. When considering the inclusion of social considerations you should seek legal advice.

SCHEDULE 5 SECURITY SCHEDULE

[Insert Clauses and Requirements from Corporate Note on Security for Contractor Staff]

[Insert following Clauses where personal data will be processed]

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

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

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

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

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

The Contractor shall:

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

- n. providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and
- o. providing the Client with any information requested by the Client;

permit the Client or the Client Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 40.0 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;

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

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

- a. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- b. any reasonable instructions notified to it by the Client.

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

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

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

If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the clause 24.0. Until and/or unless a change to the Charges is agreed by the Client pursuant to clause 24.0 the Contractor shall continue to perform the Services in accordance with its existing obligations.

Malicious Software

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

Malicious Software from the ICT Environment.

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

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

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