

# **Supplementary Standard Conditions of Contract for Supplies**

## TEMPLATE TO BE COMPLETED FOR SUPPLEMENTARY STANDARD CONDITIONS OF CONTRACT FOR SUPPLIES

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

| Clause No | Clause Range<br>eg 53.2-53.7 | Clause Name |
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**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 Definitions and Interpretation

[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.   |
| “General Change in Law”    | Means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Goods.   |
| “Installation Works”       | Means, as the context so requires,<br><br>a. collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or<br><br>b. where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of installation works. |
| “Receipt”                  | Means the physical or electronic arrival of the invoice at the address given by the Client to the Contractor for the submission of invoices.  |
| “Relevant Conviction”      | Means a conviction relevant to the nature of the Goods being provided.  |
| “Staff Vetting Procedures” | Means the Client’s procedures for the vetting of personnel as set out in the Security Schedule  |
| “TUPE”                     | Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006. Contractors shall comply with their obligations under these regulations.  |
| “Insolvency Order”         | Means the Insolvency (Northern Ireland) Order 1989 as amended by the Insolvency (Northern Ireland) Order 2005.  |

## 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.

## 19.0 Indemnity

19.4 Subject always to clause 19.1, 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 clauses 19.4(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.

19.5 Subject always to clause 19.1, 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.

19.6 The provisions of clause 19.5 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.

19.7 The Contractor shall effect and maintain such insurance 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.

19.8 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.

## **60.0 Break**

60.1 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.

60.2 Subject to clause 60, where the Client terminates this Contract under clause 60 (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 60 (Break).

60.3 The Client shall not be liable under clause 60 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.

60.4 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 (Insurance), 19.0 (Indemnity) 20.0 (Intellectual Property Rights), 23.0 (Termination), 26.0 (Bribery Act 2010), 38.0 (Confidentiality), 31.0 (Data Protection Act), 32.0 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 33.0 (Freedom of Information), 40.0 (Audit), 46.0 (Remedies Cumulative), and 48.0 (Governing Law and Jurisdiction).

## **61.0 Inspection, Rejection and Guarantee**

61.1 The Client or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 5.1.6.

### **61.2 Inspection of Premises**

Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

## **62.0 Contract Performance**

62.1 The Contractor shall perform its obligations under the Contract:

- i. with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- ii. in accordance with Good Industry Practice; and
- iii. in compliance with all applicable Laws.

## **63.0 Severability**

63.1 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this contract, and will not in any way affect any other circumstances of or the validity or enforcement of this Contract.

## **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.

## **65.0 Training**

65.1 Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Client's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

## 66.0 TUPE

66.1 Both Parties shall comply with their obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (TUPE) if any.

### 66.2 Contractor's Responsibilities

66.2.1 Not later than twelve months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Client all information that the Client may reasonably request in relation to the Contractor's staff including the following:

- i. the total number of Staff assigned to providing the services;
- ii. the salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in clause 66.2.1(i);
- iii. the conditions of contract of employment/engagement of the Staff referred to in clause 66.2.1(i) and their job titles;
- iv. details of any current disciplinary or grievance proceedings ongoing or likely to arise and details of any claims current or threatened; and
- v. details of all collective agreements with a brief summary of the current state of negotiations with trade unions and of any current industrial disputes and claims for recognition by any trade union.

If the Contractor becomes aware that the information it provided pursuant to clause 66.2.1 has become untrue, inaccurate or misleading, it shall notify the Client and provide the Client with up to date information.

66.2.2 At intervals to be stipulated by the Client (which shall not be more frequent than every thirty days) and immediately prior to the end of the Contract Period the Contractor shall deliver to the Client a complete update of all such information which shall be disclosable pursuant to clause 66.2.1.

66.2.3 At the time of providing the information disclosed pursuant to clauses 66.2.1 and 66.2.2, the Contractor shall warrant the completeness and accuracy of all such information and the Client may assign the benefit of this warranty to any Replacement Contractor.

66.2.4 The Client may use the information it receives from the Contractor pursuant to clause 66.2.1 and 66.2.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.



66.2.5 The Contractor shall indemnify and keep indemnified the Client and the any Replacement Contractor against any liabilities which the Client or any Replacement Contractor may suffer or incur as a result of or in connection with:

- i. the provision of information pursuant to clause 66.2.2 and 66.2.3; and
- ii. any claim or demand by any of the Staff or a trade union arising directly or indirectly from any act, fault or omission of the Contractor or any sub-Contractor of it on or before the end of the Contract Period.

66.2.6 The Contractor undertakes to the Client that, during the twelve months prior to the end of the Contract Period the Contractor shall not (and shall procure that any sub-Contractor shall not) without the prior consent of the Client (such consent not to be unreasonably withheld or delayed):

- i. amend or vary (or promise to amend or vary) the conditions of contract of employment or engagement of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business;
- ii. terminate or give notice to terminate the employment or engagement of any Staff (other than for reasons of misconduct, qualification or capability); or
- iii. remove or vary the involvement of any of the Staff from or in the provision of the Services other than in the normal course of business.

### 66.3 CLIENT'S RESPONSIBILITIES – ONLY TO BE USED WHEN OUTSOURCING FOR THE FIRST TIME

66.3.1 The Client shall indemnify and keep indemnified the Contractor against any liabilities which the Contractor may suffer or incur as a result of or in connection with any claim or demand by any of the client's staff or their trade union arising directly or indirectly from any act, fault or omission of the Client on or before the Commencement Date.

### **67.0 Manner of Carrying out Installation Work**

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

67.2 Any access to, or occupation of, the Premises which the Client may grant the Contractor from time to time shall be on a non-exclusive licence basis free of charge. The Contractor shall use the Premises solely for the purpose of performing its obligations under this Contract and shall limit access to the Premises to such Staff as is necessary for that purpose. The Contractor shall co-operate (and ensure

that its Staff co-operate) with such other persons working concurrently on the Premises as the Client may reasonably request.

- 67.3 When the Contractor reasonably believes it has completed the Installation Works it shall notify the Client in writing. Following receipt of such notice, the Client shall inspect the Installation Works and shall, by giving written notice to the Contractor:
- i. accept the Installation Works, or
  - ii. reject the Installation Works and provide reasons to the Contractor if, in the Client's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.
- 67.4 If the Client rejects the Installation Works in accordance with clause 67.3(ii), the Contractor shall immediately rectify or remedy any defects and if, in the Client's reasonable opinion, the Installation Works do not, within [5] Working Days, meet the requirements set out in the Specification, the Client may terminate this Contract with immediate effect by notice in writing.
- 67.5 The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Client in accordance with clause 67.3(i). Notwithstanding acceptance of any Installation Works in accordance with that clause, the Contractor shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of estoppels or waiver shall arise as a result of the acceptance by the Client of the Installation Works.
- 67.6 Throughout the Contract Period, the Contractor shall:
- i have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Installation Works;
  - ii. provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works;
  - iii. not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.
- 67.7 On completion of any Installation Works the Contractor shall remove its plant, equipment and unused materials and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Staff.
- 67.8 The Contractor shall ensure that all persons engaged in the installation of the Goods comply with Staff Vetting Procedures as set out in the Security Schedule. ]

## **68.0 Liquidated Damages**

- 68.1 If the Contractor fails to deliver the Goods by the date(s) agreed, specified in the

Specification or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the “Agreed Delivery Date”):

- i. the Contractor shall pay the Client a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered to the Client, equal to [ ]% of the Contract Price for the relevant Goods, up to a maximum amount of [ ]% of the Contract Price for the relevant Goods (“Liquidated Damages Threshold”). Subject to clause 68.3, during the period in which liquidated damages are payable under this clause 68.1(i) (“Liquidated Damages Period”) the liquidated damages payable in accordance with this clause 68.1(i) shall be the Client’s only remedy for any loss or damage suffered or incurred by the Client in relation to the failure by the Contractor to deliver the Goods by the Agreed Delivery Date; and
- ii. where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Client shall be entitled to:
  - a. claim any remedy available to it (whether under this Contract or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
  - b. without prejudice to clause 68.1(ii)(a), the Client shall be entitled to terminate this Contract with immediate effect by giving notice in writing to the Contractor.

68.2 The Contractor shall not be obliged to pay any sums pursuant to clause 68.1(i) if and to the extent the failure by the Contractor to deliver the Goods by the Agreed Delivery Date directly results from the Client’s Default provided that the Contractor notifies the Client immediately of such circumstances in sufficient detail to enable the Client to remedy the situation. Except as set out in this clause 68.2, no payment or concession to the Contractor by the Client or other act or omission of the Client shall in any way affect its rights to liquidated damages pursuant to clause 68.1 or be deemed to be a waiver of the right of the Client to recover any damages unless such waiver has been expressly made in writing by the Client.

68.3 Notwithstanding clause 68.1(i), the Contractor does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Client, whether or not such performance or re-performance gives rise to additional costs for the Contractor and the cost of re-performance shall be borne solely by the Contractor and shall not be re-charged to the Client whether by way of costs, reimbursement or otherwise.

68.4 Having given careful consideration to this matter, all monies payable by the Contractor under clause 68.1(i) are considered by the Parties to be a genuine pre-estimate of the losses which the Client will incur in relation to the Contractor’s failure to deliver the Goods by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Client in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging

that hypothetically the losses sufferable by the Client might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Contractor waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause 68.0. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

68.5 Each Party confirms that (i) it has taken specific legal advice on the effect of this clause and (ii) based on such advice, it does not enter into this Contract in anticipation that, or with any expectation that this clause will be unenforceable for any reason.

## **69.0 Security of Supply**

### **69.1 Financial Distress**

69.1.1 Upon request from the Client at any time, the Contractor shall provide to the Client last up to date audited accounts, up to date credit ratings (where the Contractor is rated by a ratings agency) and/or such other ratings and/or creditworthiness reports as the Parties mutually agree in writing) relating to the Contractor.

69.1.2 Where the ratings/reports referred to in clause 69.1.1 indicate any negative change to the Contractor's failure or delinquency scores over the previous reported position or any significant deterioration in the financial position of the Contractor, the Client shall be entitled to request and the Contractor shall make available its relevant personnel for a meeting in person or by teleconference) to review the reasons behind such changes and any proposed action by the Contractor to remedy it. The Client shall furthermore be entitled to set reasonable thresholds below which further reports or meetings will be triggered and/or below which the Client will have the rights set out at clause 69.1.3.

69.1.3 Where (i) the Client would be entitled to request a meeting or call pursuant to clause 69.1.2 on three or more occasions during the Contract Period; or (ii) the thresholds referenced at clause 69.1.2 have been breached, and in each case no reasonable explanation has been provided by the Contractor, the Client shall have the right to terminate the Contract forthwith on notice to the Contractor. For these purposes, a reasonable explanation would include a bona fide restructuring exercise which would have no adverse consequences for the performance of the Contractor's obligations under the Contract.

### **69.2 Guarantee or other security**

69.2.1 Where required by the Client, the Contractor shall procure that the Guarantor shall, within 10 working days of a written request at any time to do so from the Client, execute and deliver to the Client a Guarantee together with a certified copy extract of the board minutes of the Guarantor approving the execution of such Guarantee,

or such other form of security reasonably requested by the Client in all the circumstances.

## **70.0 Safety, Quality and Efficacy of Medicinal Products**

70.1 The sale, supply, importation, manufacture or assembly of such of the Goods as are medicinal products within the meaning of the Medicines Act 1968 shall comply with the provisions of the Medicines Acts 1968 and 1971 and the regulations made thereunder.

## **71.0 Waste Electrical and Electronic Equipment Regulations (WEEE Directive)**

71.1 All electrical and electronic equipment must be supplied in accordance with and conform to the requirements of the Waste Electrical and Electronic Equipment Regulations.

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

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

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

## 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:

- i. Linking them to the 'subject matter' of the contract; and/or
- ii. 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 37.0 (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).