

# **COMMERCIAL CONDITIONS OF CONTRACT FOR SERVICES CONTRACTS**

**RESOURCE ID 2933249**

**THE PROVISION OF POSTAL SERVICES FOR  
THE NORTHERN IRELAND PUBLIC SECTOR  
2021**

**These Services clauses MUST be read in  
conjunction with the Public Sector Standard  
Conditions of Contract.**

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## 1.0 Interpretation

- 1.1 These Commercial Conditions of Contract shall at all times be read in conjunction with the Public Sector Standard Conditions of Contract. If there is any ambiguity or inconsistency in or between the Public Sector Standard Conditions of Contract and the Commercial Conditions of Contract, the Commercial Conditions of Contract shall take precedence.
- 1.2 The definitions set out in the Public Sector Standard Conditions of Contract shall apply to the Contract, including to these Commercial Conditions of Contract, unless otherwise expressly defined in these Commercial Conditions of Contract. For the avoidance of doubt, any references to clauses stated in these Commercial Conditions of Contract shall be in relation to the clauses which are contained in the Commercial Conditions of Contract unless expressly stated otherwise.
- 1.3 In these Commercial Conditions of Contract, the following words will have the following meanings:

“Affiliates”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
“Client Data”	means:- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:  (i) supplied to the Contractor by or on behalf of the Client; or  (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or  (b) any Personal Data for which the Client is the Data Controller.
“Client System”	means the Client’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this Contract which is owned by the Client or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the Services.

“Contractor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of the contractor's obligations under this Contract.
“Contractor Software”	means software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services.
“Contractor System”	means the information and communications technology system used by the Contractor in implementing and performing the Services including the Software, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client’s System).
“Control”	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “ <b>Controls</b> ” and “ <b>Controlled</b> ” shall be interpreted accordingly.”
“Controller” “Processor” “Data Subject” “Personal Data Breach” “Data Protection Officer”	have the meaning given in the GDPR.
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	means:  i. the GDPR, the LED and any applicable national implementing Laws amended from time to time;

	<ul style="list-style-type: none"> <li>ii. the DPA 2018 to the extent that it relates to processing of personal data and privacy; and</li> <li>iii. all applicable Law about processing of personal data and privacy.</li> </ul>
“Data Protection Schedule”	means the Schedule to the Commercial Conditions of Contract entitled ‘ <i>Processing, Personal Data and Data Subjects.</i> ’
“Data Subject”	has the meaning given in the GDPR.
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“DPA 2018”	means Data Protection Act 2018
“Equipment”	means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under this Contract.
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679).
“ICT Environment”	means the Client System and the Contractor System.
“Joint Controller”	means where two or more Controllers jointly determine the purposes and means of processing.
“Joint Controller Agreement Schedule”	means the Schedule to the Commercial Conditions of Contract entitled ‘Joint Controller Agreement’.
“Key Personnel”	means any persons specified as such in the Tender or the Specification (as the case may be), or otherwise notified by the Client to the Contractor in writing.
“LED”	Law Enforcement Directive (Directive (EU) 2016/680).
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros whether or not its operation is immediate or delayed, and whether the malicious software is

	introduced wilfully, negligently or without knowledge of its existence.
“Personal Data”	means personal data (as defined in the GDPR) which is Processed by the Contractor or any sub-contractor on behalf of the Client or the Authority pursuant to or in connection with this Contract.
“Process”	has the meaning given to it under the GDPR and “ <b>Processed</b> ” and “ <b>Processing</b> ” shall be construed accordingly.
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
“Purchase Order”	means the Client’s order for Services which has a unique number, and details the Services to be supplied by the Contractor to the Client in accordance with the terms of this Contract.
“Software”	means the Contractor’s Software or the Third Party Software.
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
“Third Party Software”	means software which is proprietary to any third party (other than an Affiliate of the Contractor) which in any case will be or is proposed to be used by the Contractor for the purposes of providing the Services.

## 2.0 Initial Contract Period

2.1 The Contract will commence on **01 August 2021** for a duration of **3** years.

2.2.1 The Client may, no later than six Months prior to the Initial Contract Period Expiry Date, give notice in writing to the Contractor to invite the Contractor to agree to extend the Contract for any period up to and including **24** Months commencing from the Initial Contract Period Expiry Date (the "**First Extension Period**").

2.2.2 The Contractor shall notify the Client in writing within the reasonable timescale as specified by the Client of its decision as to whether it agrees to accept any proposed extension of the Contract.

### **3.0 Extension of the Contract Period**

3.1 If it is agreed by both Parties that the Contract is to be extended under clause 2.2.1, the provisions of the Contract will apply, subject to any variation or adjustment to the Contract Price pursuant to clause 4.3 of this Contract, for the duration of any such extended period.

3.2 If the Contractor does not agree in writing to accept any proposed extension of the Contract within the timescale as specified by the Client, the Contract shall automatically terminate at the Initial Contract Period Expiry Date or upon the expiry of any current extension period (if the Contract has continued past the Initial Contract Period Expiry Date).

### **4.0 Contract Price**

4.1 In consideration of the performance of the Contractor's obligations under the Contract, the Client shall pay the Contract Price in accordance with this clause, clause 5.0 and Schedule 2 (Pricing Schedule) during the Contract Period.

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

4.3 In the event that the Contractor agrees to extend the Initial Contract Period, the variation to the Contract Price shall be calculated in respect of any such extension as follows:

- i. For the First Extension Period, any variation to the Contract Price shall be based on the percentage change in the Consumer Prices Index as

published by the Office of National Statistics (the “**Percentage Change**”) between the Commencement Date and the date 6 Months before the expiry of the Initial Contract Period.

- ii. For any further extensions to the Contract after the First Extension Period, any further variation to the Contract Price shall be based on the Percentage Change between the commencement date of the current contract extension period and the date 6 Months prior to the expiry of the current extension period.

## **5.0 Payment**

- 5.1 The Client will pay the Contractor the Contract Price for the Services no later than 30 days after the receipt of a valid invoice in accordance with Schedule 2 (Pricing Schedule).
- 5.2 The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Specification and Schedule 2. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.
- 5.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice. The characteristics of a valid invoice are detailed in Schedule 2 (Pricing Schedule).
- 5.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 5.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 5.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 5.6 The Contractor shall make any payments due to the Client (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.



## **6.0 Recovery of Sums Due**

- 6.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), that sum may be deducted unilaterally by the Client from any sum then due, or which at any later time may become due, to the Contractor under this Contract.
- 6.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 6.3 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **7.0 Supply of Services**

- 7.1 In consideration of the amounts due under this Contract Price, the Contractor will provide the Services to the Client during the Contract Period in accordance with the Specification which shall include the Contractor complying with any obligations set out in the Specification.
- 7.2 If any Services provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contractor holds from such third parties in respect of those Services will be held on trust for the Client.
- 7.3 In providing the Services, the Contractor shall:
- 7.3.1 co-operate with the Client in all matters relating to the Services, and comply with all the Client's instructions;
  - 7.3.2 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and within sufficient numbers to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;
  - 7.3.3 provide Staff with a form of identification that is acceptable to the Client and which staff shall display on their clothing at all times when they are on the Client's Premises
  - 7.3.4 instruct its Staff not to smoke on the Client's Premises except where it is expressly permitted to do so.
  - 7.3.5 ensure that the Services will conform with all descriptions and requirements set out in the Specification;

- 7.3.6 provide all Equipment, tools and vehicles and such other items as are required to provide the Services;
- 7.3.7 at all times comply with the Quality Standards, and where applicable maintain registration with the relevant Quality Standards authorisation body; and
- 7.3.8 the Contractor shall perform all its obligations under the Contract in accordance with all applicable Law and Good Industry Practice.
- 7.4 Without prejudice to any other right of remedy of the Client, if the Client informs the Contractor that it considers that any part of the Services does not meet the Specification or the requirements of the Contract or differs in any way (other than in a minor inconsequential way) from the Specification or its 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 re-perform any part of the Services correctly within such reasonable time as may be specified by the Client.
- 7.5 The Client envisages that it may require additional services and/or goods to be provided by the Contractor during the Contract Period. While the precise scope and extent of such additional services cannot be agreed at this time, the intention is for any such additional services to be included within the scope of this Contract in accordance with the Variation Procedure set out in Clause 11 of the Public Sector Standard Conditions of Contract, the precise scope and extent of such additional services being agreed between the Parties. Without limiting the generality of the above, as at the Commencement Date, the Client envisages that it may require those additional services identified under the "Potential Services" heading in the Specification. For the avoidance of doubt, the terms of the Contract shall apply to any such additional services.

## **8.0 Access to Premises**

- 8.1 The Client may inspect and examine the manner in which the Contractor supplies the Services, at the Premises, during normal business hours, on reasonable notice to the Contractor.
- 8.2 If necessary, the Client will provide the Contractor with reasonable access at reasonable times to its Premises for the purpose of providing the Services.

## **9.0 Provision and Removal of Equipment**

- 9.1 The Contractor shall provide all the Equipment necessary for the supply of Services.

- 9.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed by both Parties in writing, Equipment brought onto the Premises will remain the property of the Contractor.
- 9.4 The Contractor shall maintain all their items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Client shall be entitled at any time during the Contract Period to order in writing, that the Contractor at its own expense and as soon as reasonably practicable:
- i. remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
  - ii. replace such item with a suitable substitute item of Equipment.
- 9.6 If the Contractor provides Services from the Client's Premises, on completion of the Services, or upon the termination or expiry of the Contract (whichever is the earliest date) the Contractor will vacate the Client's Premises, remove his plant, Equipment and unused materials and will clear away from these Premises all rubbish arising out of the Services and leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

## **10.0 Inspection of Premises**

- 10.1 The Contractor is deemed to have inspected the Premises before submitting its tender so as to have understood the nature and extent of the Services to be carried out and is satisfied in relation to all matters connected with the performance of its obligations under this Contract.

## **11.0 Late Delivery of Services**

- 11.1 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.

## **12.0 Staff and Key Personnel**

- 12.1 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.
- 12.2 The Contractor shall engage, employ and pay all monies due to Staff required to carry out this Contract and shall be entirely responsible for setting the pay and conditions of service for his Staff and for any compensation payments due to them howsoever arising.
- 12.3 If in the opinion of the Client any Staff of the Contractor has behaved inappropriately or is incapable of efficiently performing his duties, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such a person without delay on being required to do so and cause the work to be performed by such other person as may be necessary, in default of which the Client may employ such other person as may be deemed necessary for the purposes of carrying out the work and recover from the Contractor the additional cost thereby incurred.
- 12.4 Any Key Personnel will not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 12.5 Any replacements to the Key Personnel will be subject to the agreement of the Client. Such replacements will be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 12.6 In the event that the Contractor is unable to provide replacement Staff, acceptable to the Client's representative, within reasonable time, then the Client reserves the right to obtain replacement Staff from other sources and pass any additional cost on to the Contractor. The Client reserves the right to terminate this Contract where the failure to provide a replacement has a detrimental effect to the timely provision of the Services in accordance with clause 40.0 (Termination of Contract, Public Sector Standard Conditions of Contract).
- 12.7 The Client shall not unreasonably withhold its agreement under clause 12.5. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

## **13.0 Indemnity**

- 13.1 Neither Party excludes or limits liability to the other Party for:
- i. Death or personal injury caused by its negligence; or
  - ii. Fraud; or
  - iii. Fraudulent misrepresentation; or
  - iv. Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 13.2 Subject to clause 13.3, 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 delay, late or purported supply, of the Services or the performance, non-performance or delay in 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.
- 13.3 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.
- 13.4 Subject always to clause 13.1, 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 10 million pounds (£10,000,000); and
  - ii. the annual aggregate liability under this Contract of either Party for all Defaults (other than a Default governed by clause 13.4(i) shall in no event exceed the greater of one million pounds (£1,000,000) or one hundred per cent (100%) of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises.
- 13.5 Subject always to clause 13.1; 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.
- 13.6 The provisions of clause 13.5 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;
  - v. anticipated savings; and
  - vi. any costs and losses arising from delay in performance.
- 13.7 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.
- 13.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 13.9 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.
- 13.10 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 13.2.

#### **14.0 Professional Indemnity**

- 14.1 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 one million pounds (£1,000,000) 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.

## **15.0 Protection of Information Assurance**

15.1 When handling Information belonging to or supplied by the Client, the Contractor will ensure the security of the data is maintained in line with the protective marking given to that data by the Client, and by adopting the appropriate elements of the Cabinet Office Security Policy Framework and supporting documents and any successors thereof as agreed with the Client and set out in the Tender, Award Letter or Specification.

15.2 The Client reserves the right to inspect the physical location of the Information store or processing, back-up arrangements and review at appropriate intervals to be agreed with the Client any information assurance processes and procedures in place.

## **16.0 Break**

16.1 The Client shall have the right to terminate the Contract in all or part at any time by giving three months' written notice to the Contractor.

16.2 In addition to clause 40.7 of the Public Sector Standard Conditions of Contract, termination of this Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses 5.0 (Payment), 6.0 (Recovery of Sums Due), 13.0 (Liability, Indemnity and Insurance), 14.0 (Professional Indemnity).

## **17.0 Contractor's Premises Security**

17.1 Where the Services are provided from the Contractor's Premises, the Contractor will, at their own cost, comply with all security requirements specified by the Client in writing.

## **18.0 Tax Arrangements of Public Sector Appointees**

18.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") and all other statutes and regulations relating to income tax in respect of that consideration.

18.2 Where the Contractor is liable to National Insurance Contributions ("NICs") in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits

(Northern Ireland) Act 1992 or equivalent and all other statutes and regulations relating to NICs in respect of that consideration.

18.3 The Client may, at any time during the term of this contract, request the Contractor to provide information which demonstrates how the Contractor complies with clauses 18.1 and 18.2 above or why those clauses do not apply to them.

18.4 A request under clause 18.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.

18.5 The Client may terminate this contract if:-

i. in the case of a request mentioned in Clause 18.3 above:-

- the Contractor fails to provide information in response to the request within a reasonable time; or
- the Contractor provides information which is inadequate to demonstrate either how the Contractor complies with clauses 18.1 and 18.2 above or why those Clauses do not apply to them;

ii. in the case of a request mentioned in clause 18.4 above, the Contractor fails to provide the specified information within the specified period; or

iii. it receives information which demonstrates that, at any time when clauses 18.1 and 18.2 apply to the Contractor, the Contractor is not complying with those clauses.

18.6 The Client may supply any information which it receives under clause 18.5(iii) to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

## **19.0 Monitoring of Contract Performance**

19.1 The Contractor shall comply with the monitoring arrangements set out in Schedule 3 (Contract Management/Monitoring) to these Commercial Conditions of Contract including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.

## **20.0 Social Considerations**

20.1 The Contractor shall comply with the obligations set out in Schedule 4 (Social Considerations) to these Commercial Conditions of Contract in connection with social considerations.

## **21.0 Security**



21.1 The Contractor shall comply with the obligations set out in Schedule 5 (Security Schedule) to these Commercial Conditions of Contract in connection with any security requirements.

## **22.0 Licence to Occupy Premises**

22.1 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.

22.2 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.

22.3 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.

22.4 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.

22.5 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.

## **23.0 Intellectual Property Rights**

23.1 All IPRs arising in or relating to the Services provided under this Contract, including but not limited to, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material ("**the IP Materials**"):

- i. furnished to or made available to the Contractor by or on behalf of the Client shall remain vested in the Client and its licensors; and
  - ii. generated by the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall vest and remain vested in the Client and the Contractor hereby assigns the Intellectual Property Rights referred to in this clause 23.1 (ii) to the Client.
- 23.2 The Contractor hereby assigns all IPRs, as legal and beneficial owner, which may subsist in the IP Materials prepared in accordance with clause 23.1(ii). This assignment shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the IPRs produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
- 23.3 The Contractor shall ensure that the third party owner of any IPRs that are or which may be used to perform this Contract 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, reproduce, modify, develop and maintain the IPRs in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.

#### **24.0 Data Protection**

- 24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor unless otherwise specified in the Data Protection Schedule. The only processing that the Contractor is authorised to do is listed in the Data Protection Schedule by the Client and may not be determined by the Contractor.
- 24.2 The Contractor shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.
- 24.3 The Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

24.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with the Data Protection Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures), having taken account of the:
  - i. nature of the data to be protected;
  - ii. harm that might result from a Data Loss Event;
  - iii. state of technological development; and
  - iv. cost of implementing any measures;
- (c) ensure that:
  - i. the Staff do not process Personal Data except in accordance with this Contract (and in particular the Data Protection Schedule);
  - ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Contractor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

24.5 Subject to clause 24.6, the Contractor shall notify the Client immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

24.6 The Contractor's obligation to notify under clause 24.5 shall include the provision of further information to the Client in phases, as details become available.

24.7 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 24.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

- (a) the Client with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Client following any Data Loss Event;
- (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.

24.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 Staff, unless:

- (a) the Client determines that the processing is not occasional;
- (b) the Client determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

24.9 The Contractor shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.

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

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

- (a) notify the Client in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Client;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 24.0 such that they apply to the Sub-processor; and
- (d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.

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

24.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to

processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

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

24.15 Where the Parties include two or more Joint Controllers as identified in the Data Protection Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Joint Controller Agreement Schedule in replacement of Clauses 24.1-24.14 for the Personal Data under Joint Control.

## **SCHEDULE 1 - SPECIFICATION SCHEDULE**

See Separate Document – 'ID 2933249 – Specification'

## **SCHEDULE 2 - PRICING SCHEDULE**

See also separate document entitled “ID 2933249 – Pricing Schedule”

Tenderers are required to upload a completed the Pricing Schedule within eTendersNI. Note the Instructions for completing tab within the Pricing Schedule.

### **Invoicing**

Contractors shall note that many of the buildings listed within the Client Building List are shared with other business areas. Invoicing may therefore be required at Departmental level, Business level or Premises level. At implementation stage the Contractor will be required to accommodate the Client’s varying invoicing requirements as necessary.

The Contractor may be required to have a process to verify the mail items collected at premises. This may in the form of a receipt to evidence mail collected.

### **1. Invoicing Requirements**

Account NI has implemented eInvoicing this provides faster payment to contractors when the following requirements are fulfilled:

- (a) Invoices must be provided in pdf format via email with the relevant purchase order number quoted
  
- (b) Account NI require that invoices are received directly via email from the supplier’s accounting system. The pdf must be structured or ‘tagged’ which means the information on the invoice is split into columns or fields (eg the invoice number will be in a field, the invoice date will be in a field etc). The majority of financial systems will facilitate structure pdf output. If however the accounting system cannot produce a structured/tagged PDF directly, various other suitable methods are acceptable, including, e.g.
  - PDF printer driver software such as CutePDF or Bullzip.



- MS Office has a facility to generate structured/tagged pdfs.
- (c) Invoices and Credit Notes must be emailed directly to Account NI at the following address:- [invoices@accountni.gov.uk](mailto:invoices@accountni.gov.uk)

## 2. Characteristics of a valid Invoice

- Contracting Authority/Client name ('Bill To' addresses – see table below)
- The wording "Purchase Order" or "PO" followed by the 10 digit PO number
- The invoice number
- Payment terms
- Invoice date / tax point
- Contractor name, address, postcode and VAT registration number
- Remittance name and address where this is different to (e) above
- Goods / service details which match the PO details, including quantity billed, item description, unit of measure, unit price and total value
- The agreed charge, including any discounts, handling and freight charges and a breakdown clearly showing each VAT amount and the applicable VAT rate (and where not complete, a breakdown of the relevant work or services as they relate to this charge or an explanation of a difference in expected charge)

Department	Departmental 'Bill To' addresses to quote on your invoices
Department of Agriculture, Environment and Rural Affairs	Account NI – DAERA PO Box 1190 Belfast BT1 9JE Purchase Order Number: 618xxxxxxx
Department of Education	Account NI – DE PO Box 1193 Belfast BT1 9JH Purchase Order Number: 617xxxxxxx

Department for the Economy	Account NI - DFE PO Box 1148 Belfast BT1 9FU Purchase Order Number: 613xxxxxxx
Department of Finance	Account NI - DOF PO Box 1120 Belfast BT1 9FZ Purchase Order Number: 610xxxxxxx
Department of Health	Account NI - DOH PO Box 1173 Belfast BT1 9HQ Purchase Order Number: 614xxxxxxx
Department for Infrastructure	Account NI - DFI PO Box 1207 Belfast BT1 9JW Purchase Order Number: 621xxxxxxx
Department for Communities	Account NI – DFC PO Box 1176 Belfast BT1 9HT Purchase Order Number: 615xxxxxxx
Department of Justice	Account NI – DOJ PO Box 403 Belfast BT1 9PG Purchase Order Number: 623xxxxxxx
Public Prosecution Service	Account NI – PPS PO Box 405 Belfast BT1 9PH Purchase Order Number: 624xxxxxxx
Northern Ireland Office	Account NI – NIO PO Box 2196 Belfast BT1 9YG Purchase Order Number: 625xxxxxxx
The Executive Office	Account NI – TEO PO Box 1119 Belfast BT1 9FY Purchase Order Number: 611xxxxxxx

For Non Account NI Clients invoicing addresses will be provided during the implementation stage.

The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Contract (including where such invoice does not contain the relevant Quotation or Purchase Order number(s)) 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 or delay of payment in writing.

## **SCHEDULE 3 - CONTRACT MANAGEMENT/MONITORING SCHEDULE**

As part of its contract management procedures, the Client will apply the Protocol for Managing Poor Supplier Performance contained in Annex D of [Procurement Guidance Note PGN 01/12 – Contract Management Principles and Procedures](#).

The Protocol sets out a series of five escalating stages to enable the Client to manage poor performance by Contractors.

At Stage 4, as an alternative to terminating the contract, a Notice of Written Warning can be issued to the Contractor.

At Stage 5, as an alternative to terminating the contract, a Notice of Unsatisfactory Performance can be issued to the Contractor.

If a Contractor has received more than one current Notice of Written Warning then CPD at its discretion, can consider the Contractor's exclusion from future procurement competitions, being undertaken on behalf of bodies covered by the Northern Ireland Public Procurement Policy, for a period of 12 months.

If a Contractor is subject to a Notice of Unsatisfactory Performance then CPD, at its discretion, can consider the Contractor's exclusion from future procurement competitions, being undertaken on behalf of bodies covered by the Northern Ireland Public Procurement Policy, for a period of 3 years.

**A central Register of suppliers in receipt of current Notices and Terminations will be maintained by Construction & Procurement Delivery (CPD) and will be publicly available on its website. This Register will cover all procurements by bodies subject to [Northern Ireland Public Procurement Policy](#).**

Contractors not delivering on contract requirements is a serious matter. It means the public purse is not getting what it is paying for. If a contractor fails to reach satisfactory levels of contract performance they will be given a specified time to improve. If, after the specified time, they still fail to reach satisfactory levels of contract performance, the matter will be escalated to senior management in CPD for further action. If this occurs and their performance still does not improve to satisfactory levels within the specified period, it may be regarded as an act of grave professional misconduct and they may be issued with a Certificate of Unsatisfactory Performance and this Contract may be terminated. The issue of a Certificate of Unsatisfactory Performance will result in the contractor being excluded from all procurement competitions being undertaken by Centres of Procurement Expertise on behalf of bodies covered

by the Northern Ireland Procurement Policy for a period of twelve months from the date of issue of the certificate.

Performance monitoring is key to ensure that value for money is achieved. Poor performance will be managed in relation to the specific building or business area or departmental or CoPE. The Contractor will nominate a representative who will be the key account manager who will provide daily contact with the Client's Representatives to coordinate delivery of services and a point of contact for operational queries.

The Contractor is required to implement within the contract a self monitoring system to provide the Client assurance that the Client is receiving a quality service that meets the Specification Schedule and the supporting Management information to. The Contractor will meet each Client Representative (Annex 1 Client Building List) during the implementation of services to agree the frequency for the contract management reviews meeting which can be monthly, quarterly, six monthly etc and the timing for scoring the contract KPIs. The Contractor will provide the Client with management information to demonstrate their performance against the contracts KPIs which will be scored either by building or business area.

Each Client will monitor the performance reports from the Contractor for the duration of the contract, and communicate any concerns relating to performance issues by e-mail /meeting and/or telephone to the Key Account Manager in order to directly resolve the issues. In the event that complaints cannot be resolved between the individual business area and the Contractor, the Business areas representative will escalate this to a Client's (Departmental / CoPE) Representative to resolve. The Contractor shall meet the Client's Representative and provide a report on the complaint and provide a detailed plan on the appropriate action required to resolve issues to ensure compliance with the specification schedule. If the issue remains unresolved the Client's Representative shall contact CPD who will review the complaint and advise how the matter is progressed.

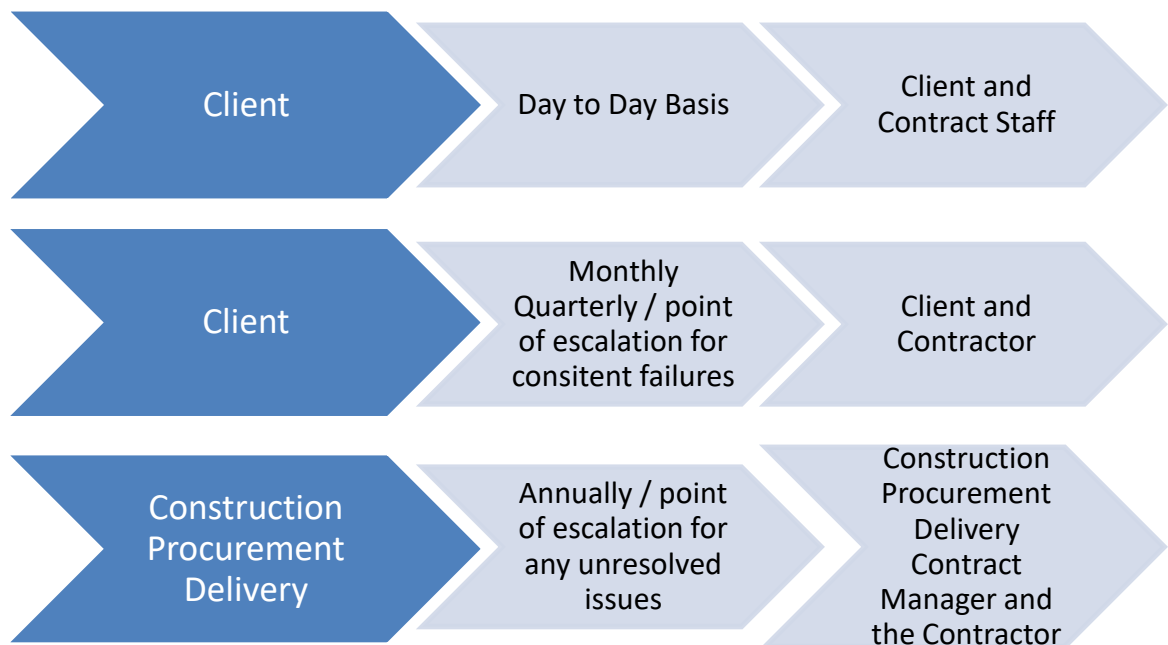
If any issues continue on an ongoing basis then the business area will raise their concerns and escalate to CPD. The Client shall deal solely with the Contractor. Any issues relating to third-parties / sub-contractors must be managed by the Contractor.

## **Contract Management**

Performance Monitoring and Contract Management will be taken forward in three tiers Diagram 1: -

- Daily Operational Management and Monthly Performance Report with the Client's Building Representative;
- Monthly / Quarterly Review Meeting with the Client's Representative depending on the Clients requirements; and
- Annual Contract review meeting with the CPD Contract Manager.

**Diagram 1**



**Daily Operational Management and Monthly Performance Report –**

Using the agreed KPIs, see Schedule 3 Annex A, the Contractor shall: -

- Develop clear operating procedures for staff to ensure service standards are understood, maintained and recorded on a daily basis;
- Establish management information systems to capture and record information in support of performance monitoring and to enable regular robust performance reporting; and
- Provide monthly performance reports to the Client's Building Representative.

The Contractors performance shall be measured on a monthly basis by the Contractor and the Client's representative and recorded against a Monthly Contract Monitoring sheet and scored against the buildings agreed KPIs. **Each KPI depending on its importance to the Client is either Pass or Fail or a Performance Measurement figure of 1, 2 or 3 based** on the following index:-

### **Performance Index Ratings**

- 3 Meets Standard (No Service Deduction applicable)
- 2 Improvement required (No Service Deduction, however if in the subsequent month the Contractor's performance shows no improvement then 5% deduction from the monthly invoice of the relevant building)
- 1 Failure (Service Deduction of 5% of the total monthly invoice amount will apply immediately for that building. This is capped at a maximum of 10% for each building.)

If the Contractor fails in a KPI which has been identified as a Pass/Fail then the Contractor would be deemed to have failed to deliver a level of Service as

specified within the Specification Schedule and therefore a 5% Service Deduction will be applied to the monthly invoice for the relevant building.

Where a KPI is scored against the Performance Index of 1, 2 and 3 and a Contractors performance is deemed to have met the required performance level no service deduction will be applied.

Where a KPI is scored against the Performance Index of 1, 2 and 3 and a Contractors performance is deemed as a 2, no service deduction will be applied however if no improvement is shown in the subsequent month then a 5% deduction will be applied to the monthly invoice of the relevant building.

Where a KPI is scored against the Performance Index of 1, 2 and 3 and a Contractor performance is deemed as a 1, a service Deduction of 5% will be applied to the monthly fixed cost for the building however if no improvement is shown in the subsequent month then a 10% deduction will be applied to the monthly fixed cost for the building.

Where a KPI is scored against the Performance Index of 1, 2 and 3 and a Contractor performance is deemed as a 1, a Service Deduction will be applied to the monthly fixed cost for the building. The Service Deduction will be applied per KPI. An example of how the service deduction will be applied e.g. if the contractor failed two KPI's within a building in a single month of the contract a 10% deduction will be applied to the monthly invoice to maximum value of 20% of the monthly invoice. The Contractor will be required to resolve all service failures with Health and Safety implications immediately. All Service failures must be reported to the client on an incident report form which includes details of the incident, rationale for failure and corrective action taken to ensure compliance with specification schedule. If a contractor continues to register service failures for any of the KPI's within a building on a subsequent month (2<sup>nd</sup> consecutive months) then the Contractor shall escalate to their senior managers to ensure corrective action is taken to the satisfaction of the Client. If a service failure is registered with the building in the subsequent month (3 consecutive months) then this issue shall be escalated to the Client



Representative to seek advice from CPD on what action should be taken. Service deductions shall increase incrementally by 5% i.e. 10% per KPI if the contractor's performance continues to register a KPI failure in the same building. An example of how this will the service deduction will be applied in this scenario is for example, if the contractor fails the same two KPIs in the subsequent month a 20% deduction will be applied to the monthly invoice to maximum value of 30% of the monthly invoice.

The Service Deduction will only be applied to the Contractor's Performance and not to failures outside of his control.

The Contractor shall strive to achieve an expected performance levels. Where awarded figures indicate a level of service that is below the required performance level for the Contract, the Contractor shall perform the remedial actions necessary to bring the services to the required performance level. Where the figure awarded deviates below the acceptable performance level, the Client shall detail that item(s) on the Monthly Contract Monitoring sheet and agree with the Contractor the remedial action(s) required ensuring standards are met and delivered to ensure standards are met. If the Contractor is awarded figures indicating that the performance level of service is below the required level for the Contract in either of the next two subsequent months for the same service(s), this shall be deemed a Default by the Contractor under the Contract and the Client may seek the remedies as specified in the Contract.

The Contractor should note that the contract will be managed by departments and shall be required to implement contract management review meetings as requested by the individual Clients.

**Monthly/Quarterly Review Meeting (or earlier by the Request of the Client)**

Monthly / Quarterly review meetings will be scheduled with the Client's Representative and the Contractor. It is anticipated that **these meetings shall be held at least quarterly**, however they may be requested at more regular intervals in the event of poor performance. The meeting will review the performance across the previous three months and will look at the

summarised management information for this period. The meetings will also be used to investigate the potential for savings or to improve efficiency or performance.

Prior to the quarterly review meetings, the Contractor must provide management information reports to the Client's Representative of all the building Monthly Contract Monitoring sheets detailing their KPIs scores.

The Contractor shall provide quarterly Service Reports at their own cost to support and inform regular review meetings between the Contractor and Client's Representative and /or Client's Building Representative for example Clients such as NICTS will require quarterly review meeting with the Contractor to review performance due to their impact of these essential services on their business. Each Service Report shall detail the following: -

- Delivery of services supplied and performance in the previous six month period;
- Contract variation requests;
- Details and status of all complaints;
- Forthcoming changes in legislation;
- Health, Safety and environmental breaches and recordable accidents, incidents and near misses relating to the utilisation of all premises;
- Training carried out with Contractor Staff;
- Update on security clearance for contract staff;
- Service Deductions made; and
- Copies of credit notes issued during the contract period.

From time to time the contractor will be required to produce management information or data relating to contract delivery and will provide this as requested by the Client's Representative or by CPD.

### **Annual Contract review meeting with the Contract Manager of CPD**

CPD will monitor the Contract and hold an annual Contract review meeting to review the Contractor's performance for the previous twelve months and will look at the summarised management information for this period.

The CM01 form (below) will be used to gather information of Contract performance from Departments on an annual basis.



ID 2933249 -  
CM01.docx

In the first year CPD will carry out an initial 6 month review and throughout the first year meetings may be required at more regular intervals and at any stage in the event of poor performance.

The Contractor shall provide Service Reports to CPD at their own cost to support and inform regular review meetings between the Contractor and Building Representative. Each Service Report shall detail the following: -

- Update on the delivery of services including summary of report on the delivery of KPI performance for each Client ;
- Training carried out with Contractor Staff;
- Update on security clearance for contract staff;
- Service Deductions made;
- Copies of credit notes issued during the contract period:
- Service delivery proposals and contractual issues if any changes have occurred: and
- details and status of all complaints;
- forthcoming changes in legislation;

- Health, Safety and environmental breaches and recordable accidents, incidents and near misses relating to the utilisation of all premises;
- training carried out with Contractor Staff to ensure compliance with specification and adversity / Data Protection training
- verification of consumables in line with the Buying Government Standards;
- service delivery proposals and contractual issues if any changes have occurred (variation to contract) and
- An update on Sustainable aspects of the contract will also be required on an annual basis and should be forwarded with the management information requested above.

The objective will be to detect any deviation from the performance standard detailed in the “Scale of Satisfaction” box on the CM01 Form at formal review and to take corrective action by:

- Providing a channel of communication between the Client and Contractor.
- Monitoring the standards of service to ensure compliance with contract requirements.
- Keeping records of periodic inspections using the process of formalised visual inspections and statistical control.

The meetings will also be used to investigate the potential for savings or to improve efficiency or performance.

### **Escalation Procedures**

In the event that complaints cannot be resolved between the Client’s Building Representative and the Contractor, the Client’s Building Representative will escalate this to a Client’s Representative to resolve. The Contractor shall meet the Client’s Representative and provide a report on the complaint and provide a detailed plan on the appropriate action required to resolve issues to ensure compliance with the specification schedule. If the issue remains unresolved the Client’s Departmental Representative shall contact CPD who will review the complaint and advise how the matter is progressed.

**ANNEX A – KEY PERFORMANCE INDICATORS**

<b>KPI No</b>	<b>Area</b>	<b>Key Performance Indicator</b>	<b>Measurement</b>	<b>Pass / Fail</b>  <b>OR</b>  <b>Scored 1, 2 or 3</b>
1.	Service Provision	Collections and deliveries must be made in accordance with the schedule of requirements.	Monthly MI submitted with invoicing  Monthly Performance Report from Contractor and Clients Representative	<b>Scored 1, 2 or 3</b>
2.	Incident Reporting	The Service Provider must ensure that any loss or damage to consignments either in transit or on the premises must be reported immediately (within 1 hour) by email or phone to the relevant client contact. The Service Provider will undertake an immediate investigation and will provide feedback on findings, including corrective actions to the Client within 24 hours of the incident being reported.	Monthly Performance Report from Contractor to Clients Representative	<b>Scored 1, 2 or 3</b>
3.	Management Information	Client MI is delivered in line with the specification and is accurate.	Monthly Performance Report from Contractor to Clients Representative	<b>Scored 1, 2 or 3</b>
4.	Security Clearance	All Contract staff to have the correct level of security Clearance for the Premises they work in.ie CTC, enhanced and Counter Terrorism Check.	Monthly Performance Report from Contractor and Client.  Client to check contractor vetting database to ensure that contractor staff are cleared.	<b>Pass / Fail</b>

KPI No	Area	Key Performance Indicator	Measurement	Pass / Fail OR Scored 1, 2 or 3
5.	Social Sustainability (Work placement, Employment opportunities and Promotion of essential skills)	Delivery of the Social sustainable clauses as detailed in Schedule 4 – Social Considerations Schedule.	Contractor to provide a six month reporting to CPD.	Scored 1, 2 or 3
6.	Invoicing	Invoices submitted within agreed format, timeframe, accurate and fully supported with agreed paperwork.	Monthly Performance Report from Contractor and Client.	Scored 1, 2 or 3
7.	Contract Variations	Contract Variations agreed and signed off by the authorised person as per Specification Schedule	Monthly Performance Report from Contractor and Client.	Scored 1, 2 or 3

**Note 1** - The Customer reserves the right to add or remove Service levels during the contract Period.

**Note 2** - Were a service credit has been applied the Contractor shall provide an incident report with recommendation to ensure issue resolved and corrective measures taken to ensure no repeat of the incident.

## **SCHEDULE 4 - SOCIAL CONSIDERATIONS SCHEDULE**

### **PGN 01/13 Integrating Social Considerations into Contracts**

The Northern Ireland Civil Service and its associated agencies are committed to the promotion of social inclusion and equal opportunities as key objectives in the Sustainable Development Strategy for Northern Ireland. They are also committed to maximising the progression into the workforce of people who are long term unemployed and those leaving education and training, both as a way of maximising value for money from its investment in these services and to provide a skilled and productive workforce that can deliver future Government investment and help attract inward investment. To help achieve these objectives it is required that the contractor will, as a condition of contract, deliver measurable recruitment and training outcomes.

#### **Economic**

The Contractor is required to work with small contractors (i.e. less than 50 employees); micro contractors (i.e. less than 10 employees) or Social Economic Enterprises throughout their supply chain. Payment to sub-contractors must be made within 30 days of receipt of a valid invoice. The Contractor will be required to demonstrate evidence at the 6 month contract management review with Clients and the Client.

#### **Environmental**

The Client recognises that good energy management helps to protect the environment by conserving natural resources and reducing harmful emissions and the Contractor shall ensure that there is efficient use of energy throughout its operations. Contractors are required to have in place or be working towards an external accreditation for their Environmental Management System, where a Contractor has not achieved external accreditation prior to the Commencement of contract; they must have one in place within six months of the contract commencement date.

Environmental considerations for the Contractor to implement within this

contract when established as a minimum but is not limited to:-

- Use the most efficient routes in delivery of the services;
- Route optimisation for low volume sites to ensure efficiencies
- Switching engines off when vehicles are stationary
- maximise the use of fuel efficient vehicles, e.g. LPG. Bio-diesel

## **SOCIAL CONSIDERATIONS**

### **Background**

The Northern Ireland Civil Service and its associated agencies are committed to the promotion of social inclusion and equal opportunities as key objectives in the Sustainable Development Strategy for Northern Ireland. They want to promote a fair and inclusive jobs market in which every individual can participate to achieve their full potential, both as a way of maximising value for money from its investment in these services and to get more people working in better jobs, who can deliver future Government investment and help attract inward investment.

In support of the Draft Programme for Government 2016-21 and the NICS People Strategy, the NICS wants people and communities in Northern Ireland to fulfil their potential and is committed to enabling, encouraging and promoting diversity and participation in society in order to improve the wellbeing of people in Northern Ireland.

To help achieve these objectives and address the strategic aims, it is required that the successful Contractor will, as a condition of contract, deliver measureable social value outcomes as set out below.

### **Targeted Recruitment & Training**

Targeted Recruitment and Training is the delivery of paid employment for New Entrant Trainees who:

- are individuals who meet the conditions of the Contracting Authority's Priority Groups, as set out at clause 3.0 ,
- that meet the New Entrant Trainee eligibility as set out at clause 2.2.



New Entrant Trainees have an employment contract with the Contractor or its Sub-contractors, where the definition of a person-week is the equivalent of one person working for 5 days either onsite or through a mix of work and training

### **Targeted Recruitment & Training Requirement**

The employment of New Entrant Trainees should comprise a minimum of 40% of new personnel engaged on the contract (be it through the contractor or a sub-contractor). The Contractor shall recruit 10% of New Entrant Trainees as people who meet the conditions of the Client's Priority Groups, as set out at clause 3.0, be it through the contractor or a sub-contractor.

### **New Entrant Trainee eligibility**

For a person to qualify as a New Entrant Trainee, the Contractor must ensure that they satisfy one of the following categories:

- a person aged under 25 that has been unemployed for more than 26 weeks and is seeking employment; or
- a person aged 25 or over that has been unemployed for more than 52 weeks and is seeking employment; or
- a person who is unemployed as a direct result of the Covid-19 crisis and is seeking employment;
- a person who is leaving, or has within the last 12 months, left an educational establishment or a training provider (including paid student work placements) and is seeking employment; or
- a person who is an existing New Entrant Trainee known to the Contractor that is seeking a new position to complete their New Entrant period, or another person accepted as a New Entrant Trainee by the Authority, at the Authority's discretion.

### **New Entrant Trainee Training**

Each New Entrant Trainee must be:

- provided with the opportunity to obtain training and accreditation relevant to the tasks they are expected to perform;
- asked if they would like to receive support with numeracy, literacy and information technology, and those that do must be signposted to sources of training and accreditation for these Essential Skills; and
- supported in undertaking training e.g. through flexible working arrangements, where practicable.

The costs of training and accreditation/registration must be covered by the Contractor either directly or through public or industry sources that they identify.

### **Contracting Authority's Priority Groups**

For a person to qualify as a member of the Client's Priority Groups, the Contractor must ensure that they satisfy one of the following categories:

- a person who has a disability; or,
- a person who is a Looked After Child/care leaver.

### **Health and Wellbeing for existing employees**

The contractor is required to develop and implement a policy and procedures to promote and support the health and wellbeing of employees engaged on this Contract. This should be provided within 60 days of contract award and at a minimum should include:

- measures to enhance employee engagement levels;
- measures to promote and support physical health of employees;
- measures to promote and support mental wellbeing of employees;
- measures to promote the continuous professional development of employees engaged on the Contract; and
- measures to promote equality, diversity and inclusion.

The Contractor shall submit an annual progress report to the Client. The report shall be in writing and shall detail the steps taken by the Contractor and its subcontractors (if any) to implement the health and wellbeing policy and procedures on the Contract.

## **Use of social enterprises in the supply chain**

The Contractor will endeavour to use at least one social enterprise in the supply chain in relation to any sub-contracting or other business opportunities available as a result of this contract. The Contractor should ensure this is a meaningful opportunity for the social enterprise. A directory of social enterprises can be found at [www.buysocialni.org.uk/directory](http://www.buysocialni.org.uk/directory).

Any action taken by the Authority or their agents to broker relationships between the Contractor and local individuals/firms/agencies does not imply and should not be deemed to imply that they or their agents consider the individual/firm/agency as suitable for engagement by the Contractor.

## **General Requirements**

### **Maximising employment opportunities**

All employment vacancies on the contract are to be notified by the Contractor to [www.jobcentreonline.com](http://www.jobcentreonline.com) and one or more organisations registered on the Buy Social website ([www.buysocialni.org/contractors/find-a-broker/](http://www.buysocialni.org/contractors/find-a-broker/)) and/or other agencies named by or agreed with the Authority for this purpose. Sufficient time must be allowed for information on vacancies to be made available and applications submitted.

### **Security clearance**

The Contractor shall obtain security clearance for all New Entrant Trainees and persons visiting the workplace in relation to work experience or business and education initiatives to the same standard as all other personnel involved in the contract in accordance with the Contract Information.

### **Data Protection**

A Data Protection Consent Form (as provided) must be completed by each New Entrant Trainee in the Contractor's Buy Social Monitoring Report and therefore counted towards the Contractor's Targeted Recruitment and Training target. Consent shall be provided on a voluntary basis and can be withdrawn by the New Entrant Trainee at any time (as noted within the Data Protection Consent Form). Completed Consent Forms must be sent to the Strategic Investment Board. Notwithstanding the above, the Contractor shall ensure it satisfies itself in respect of its obligations under the Data Protection Act 2018 (as may be amended from time to time) and the General Data Protection Regulation (GDPR) (Regulation (EU 2016/679)).

The Contractor, at contract award, shall enter into a Data Processing Agreement with the Strategic Investment Board. This is to enable the sharing of personal information (provided in the Buy Social Monitoring Report) from New Entrant Trainees, for the purposes of checking and verification.

The Contractor must only engage a Sub-processor, in relation to the Buy Social requirements, with the prior consent of the Strategic Investment Board and must enter into a Data Processing Agreement with any Sub-processor with whom the information in the Contractor's Buy Social Monitoring Report is shared.

## **Health and Safety**

It is the responsibility of the Contractor to ensure that persons recruited or otherwise visiting the worksite in relation to the social consideration requirements has or is supported to obtain the necessary health and safety accreditation or other appropriate measures and appropriate personal protective equipment if necessary.

## **Costs**

The Contractor shall deliver the social considerations within their tender sum and by supervision and support of trainees so that they contribute positively to the contract.

## **The Authority's Support Activities**

In the spirit of partnership the Authority may seek to ensure that there is appropriate training and job-matching services available to contractors carrying out services on its behalf. However, this action does not comprise or imply any promise on the part of the Authority or their agents to provide suitable services. Responsibility for sourcing New Entrant Trainees and other social consideration beneficiaries remains with the Contractor.

Organisations delivering employability, education and skills training are listed on the Buy Social website ([www.buysocialni.org/contractors/find-a-broker/](http://www.buysocialni.org/contractors/find-a-broker/)) established for the purpose of helping contractors identify New Entrant Trainees and other social consideration participants.

Any action taken by the Authority or their agents to broker relationships between the Contractor and local individuals/firms/agencies does not imply and should not be deemed to imply that they or their agents consider the individual/firm/agency as suitable for engagement by the Contractor.

## **Sub-contractors**

It is the contractor's responsibility to develop a working method and where necessary secure sub-contractor co-operation in order to achieve the Authority's social consideration requirements.

## **Monitoring Information**

The Contractor provides a completed Buy Social Monitoring Report every month.

This Report will include, subject to Data Protection:

- the number of people recruited during the period and the percentage of these that are New Entrant Trainees
- a listing of all of the New Entrant Trainees that have been engaged on the contract, their status (apprentice, student/professional trainee or

other trainee), and the number of weeks they have delivered in the period reported on and the period since their employment/engagement

- confirmation that a Health and Well-being policy has been submitted
- confirmation that an Environmental policy has been submitted
- details of any social enterprise used in the supply chain; and
- information on any special factors that have influenced the delivery of the social considerations and actions being undertaken to address any problems identified.

The Contractor shall provide all information necessary, including obtaining it from sub-contractors and agencies, and cooperate with the Authority's Contract Manager to review progress on delivering the social considerations.

## **SCHEDULE 5 - SECURITY SCHEDULE**

- 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 Contract 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.
- 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 ; 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 Contract, 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 Contract or as otherwise notified by the Client to the Contractor during the Contract Period);
- 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:
  - a request from a Data Subject to have access to that person's Personal Data; or
  - a complaint or request relating to the Client's obligations under the GDPR;
- i. provide the Client with full cooperation and assistance in relation to any complaint or request made, including by:
  - providing the Client with full details of the complaint or request;
  - complying with a data access request within the relevant timescales set out in the GDPR and in accordance with the Client's instructions;



- j. providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and
- k. providing the Client with any information requested by the Client;
- l. permit the Client or its authorised representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 28.0 (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 Contract;
- m. 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
- n. 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:
  - the obligations of a Data Controller under GDPR by providing an adequate level of protection to any Personal Data that is transferred; and
  - any reasonable instructions notified to it by the Client.

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

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 Variation in accordance with clause 11 of the Public Sector Standard Conditions of Contract. 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.

## **Malicious Software**

The Contractor shall, as an enduring obligation throughout the Contract Period, 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).

## SCHEDULE 6 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Client, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Client at its absolute discretion

1. The contact details of the Client's Data Protection Officer are: To be confirmed by Client.
2. The contact details of the Contractor's Data Protection Officer are: To be confirmed on Award of Contract.
3. The Contractor shall comply with any further written instructions with respect to processing by the Client.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Client and Contractor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor in accordance with Clause 24.1.
Subject matter of the processing	The Contract is for the provision of Postal services providing a collection and delivery service for Clients mail items. Processing of personal data takes place for the purposes set out below.
Consent to processing	The purposes of the processing is based on the provision of a postal service, to ensure delivery of mail items. The mail items (with name and address on the front) are provided by the relevant Client.
Duration of the processing	The Contract duration is for an initial 3 years with an optional extension up to 24 months. Unsorted mail - Address may be read in order to sort the mail to the correct geographical location: No storage of the mail items address other than processing time for the machine to sort the mail item (less than 2 seconds) Invoicing: Image of the front of the envelope stored for 90 days to assist with delivery and invoicing queries.
Nature and purposes of the processing	The nature of the data is storage and use of contact names and work telephone numbers of Clients.

	<p>These items should be stored securely and not disclosed or transmitted to any third party.</p> <p>The postcode in the address of each unsorted mail item is read by a sorting machine in order to sort it to the Standard Selection Code (SSC) (i.e. the geographical area in which the item will be delivered). The data must be automatically deleted once it has been read and the mail item moved to the sorting machine outlet for that SSC.</p> <p>An image of the front of the unsorted mail item is taken by the sorting machine and is stored for 90 days to assist with invoicing and delivery queries relating to that item. At the end of that period, the image must be automatically deleted.</p>
Type of Personal Data	<p>The personal data supplied is work contact details and names of contacts in various buildings.</p> <p>Name and address displayed on the front of the envelope for unsorted mail items.</p>
Categories of Data Subject	<p>The supplied data consists of addresses and locations of buildings and agencies throughout the NICS. Names of staff contacts at the premises and work telephone contact numbers.</p> <p>Individual recipients name and address detailed on the front of an envelope originating from the Client.</p>
3rd party sharing	No consent to 3rd party sharing
Transfer of personal data to other countries	No consent to transfer personal data to other countries
Data subject automated decision making or profiling	No consent for Data subject automated decision making or profiling
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>All personal data must be automatically deleted within the timeframes set out above.</p> <p>All data and contact details must be returned within one month of the end of the contract period. Any information stored electronically should be deleted / destroyed and a certificate stating this to be the case supplied to the Client confirming this to be the case.</p>