

(Mar 97)

Ref: PURCHASE ORDER NO
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## CABINET OFFICE

Name and Address of Contractor: [To be inserted]

Date of Contract: [To be inserted]

### SCHEDULE

GOVERNING THE PROVISION OF *(Insert Details of Services Required)*

### REQUIREMENTS

<u>Item</u>	<u>Specification</u>	<u>Description</u>	<u>Firm Price</u>
	Cabinet Office specification attached to Cabinet Office invitation to tender dated ..... as amended by ..... 's tender dated .....	Provision of <i>(insert details)</i> in accordance with the Specification	

**CONDITIONS OF CONTRACT**

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**CONDITIONS OF CONTRACT**

**1. DEFINITIONS**

In these conditions:

1.1 "The Client" means the Cabinet Office, (address)

1.2 "The Contract" means the agreement concluded between the Client and the Contractor including all these conditions, specifications, plans, drawings and other documents which are relevant to the Contract. In the case of any discrepancy among these documents these conditions shall prevail.

1.3 "The Contractor" means ..... who by the contract undertakes to render such Services for the Client as is provided by the Contract.

1.4 "The Contract Price" as described in the Schedule of Requirement means the price exclusive of Value Added Tax, payable to the Contractor by the Client under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract.

1.5 "Issued Property" means all government property issued in connection with the Contract.

1.6 "Loss" includes destruction.

1.7 "Loss of Property" includes damage to property, loss of profits and loss of use.

1.8 "Month" means calendar month unless otherwise defined.

1.9 "Personal Injury" includes sickness and death.

1.10 "Servant of the Crown" includes persons (and the personal representative of any person) who are Servants of the Crown when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and, where they have ceased to be such by reason of their deaths, include their personal representative.

1.11 "The Services" means all Services which the Contractor is required to carry out under the Contract.

1.12 "The Specification" means the description and specification of the Services as detailed in the Schedule of Requirements.

1.13 "Sub-Contractor" means any person, firm or company under the Contract to the Contractor to perform work or provide professional services and/or supply goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.

1.14 "Government Provision" means any Statutory Provision, warrant, order, scheme, regulations or conditions of service applicable to a Servant of the Client providing for continuance of pay or the payment of sick pay, or any allowance to or for the benefit of Servants of the Client, or their families or dependants, during or in respect of sickness, injury or disablement suffered by such Servants.

1.15 The headings of these Conditions shall not affect the interpretation thereof.

1.16 Any notice or other communication whatsoever which the Client is required or authorised by the Contract to give or make to the Contractor shall, without prejudice to any other method of giving or making it, be sufficiently given or made if it is sent by post in a prepaid letter addressed to the Contractor by name at the last known place of abode or business of the Contractor and if the letter is not returned through the post undelivered that notice or communication shall be deemed for the purposes of the

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Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered.

1.17 The masculine includes the feminine.

1.18 The singular includes the plural and vice versa.

1.19 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

### **2. LAW**

2.1 The Contract shall be considered as a contract made in England and Wales and subject to the law of England and Wales.

### **3. SERVICE**

3.1 Subject to the provisions of the Contract the Contractor agrees to provide the Services in consideration of the Contract Price.

### **4. DURATION OF CONTRACT**

4.1 The Services shall be provided during the period ..... to ..... subject to the Client's rights of earlier termination under the Conditions of this Contract.

### **5. DUTY OF CARE**

5.1 The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

### **6. VARIATION OF CONTRACT**

6.1 Any variation of any provision of this Contract must be effected in writing issued by the Client, and no purported variation by any other means shall bind the Client.

### **7. VARIATION OF REQUIREMENT**

7.1 The Client reserves the right to vary the requirements of the Contract, as detailed in the Specification, should this at any time become necessary. In the event of any variation of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between the Client and the Contractor.

### **8. CONTRACTOR'S ORGANISATION**

8.1 All personnel deployed on the work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to the Client. Where so required, full particulars of all personnel to be so employed shall be forwarded in advance to the Client for confirmation of acceptability.

8.2 The key personnel offered by the Contractor and accepted by the Client to work on the Contract are as follows:

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8.3 The Contractor shall take all reasonable steps to avoid changes of personnel assigned to and accepted for the work under the Contract except whenever changes are unavoidable or of a temporary nature caused by sickness etc. The Contractor shall give at least one month's notice to the Client of proposals to change key personnel and Condition 8.1 and 8.2 shall apply to the replacement personnel.

8.4 The decision of the Client as to whether any person is to be admitted to or is to be removed from involvement in the Services or as to the designation or approval of key personnel and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

8.5 The Contractor shall bear the cost of any notice, instruction or decision of the Client under this Condition.

### **9. PRICE**

9.1 Subject to clause 7, the Contract Price described in the Schedule of Requirements is firm, ie not subject to escalation.

### **10. PAYMENT**

10.1 Unless otherwise stated in this Contract payments shall be claimed on completion of the work **OR** once a month in arrears. Itemised claims, accompanied by all necessary documentation, shall be submitted to the Client for scrutiny and approval. Payment shall be made within 30 days of receipt and agreement of invoices for work completed to the satisfaction of the Client. Payments may be withheld or reduced by the Client in the event of unsatisfactory performance without prejudice to the other rights of the Client under the Contract.

10.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

### **11. VALUE ADDED TAX**

11.1 The Client shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the supply of goods and services provided in accordance with the Contract.

11.2 Any invoice or other request for payment of moneys due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.

11.3 The Contractor shall, if so requested by the Client, furnish such information as may reasonably be required by the Client as to the amount of Value Added Tax chargeable on the value of goods and services supplied in accordance with the Contract and payable by the Client to the Contractor in addition to the Contract Price. Any overpayment by the Client to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of (Condition 12 - Recovery of Sums Due).

### **12. RECOVERY OF SUMS DUE**

12.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may

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become due, to the Contractor under the Contract or under any other Contract with the Client or with any Department or office of Her Majesty's Government.

### 13. PAYMENT OF SUB-CONTRACTORS

13.1 Where the Contractor enters a sub-contract with a supplier or Contractor for the purpose of performing the contract, he shall cause a term to be included in such Sub-contract which requires payment to be made to the supplier or Contractor within 30 days from receipt of the valid invoice as defined by the sub-contract requirements.

### 14. INDEMNITIES & INSURANCE

14.1 The Contractor shall effect and maintain insurance necessary to cover jointly the Client and the Contractor for the risks faced under these Conditions with regard to fire damage, injury to persons and loss of or damage to property, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect), provided that any such limit made under this Condition shall in any event be at least £500,000.

14.2 The Contractor shall indemnify and keep indemnified the Client, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client or the Crown, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or wrongful act of the Contractor, his servants or agents.

14.3 The Contractor (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Contractor by reason of this Contract.

14.4 The Contractor shall, whenever required by the Client, produce to the Client certificates signed on behalf of the Contractor's insurers stating that insurance complying with the requirements set out in Condition 14.1 is in force and the period for which it has been taken out.

14.5 If, for whatever reason, the Contractor fails to comply with this Condition, or without the approval of the Client obtains a different policy of insurance from that which he notified to the Client at the time when he submitted his tender, the Client may make alternative arrangements necessary to protect his interests and recover loss and damages from the Contractor.

14.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

### 15. UNSATISFACTORY PERFORMANCE

15.1 Should the Services or any portion thereof not be completed to the satisfaction of the Client within the time or times specified in the Contract, or if in the opinion of the Client progress made in the execution of the Service is unsatisfactory and unlikely to lead to such completion, the Client may without prejudice to any other remedies by notice in writing to the Contractor determine the Contract either as respects the Services which have not been carried out in accordance with the Contract at the time of such determination or as respects all the Services to which the Contract relates other than those carried out in accordance with the Contract before that time, hereinafter called a relevant determination, and in such case the Contractor shall not be entitled under the Contract to payment of any amount by way of compensation.

15.2 Where the Client has determined the Contract under Condition 15.1 hereof and without prejudice as aforesaid the Client may obtain all or any of the Services as respects which the Contract is so determined by arranging for those services to be carried out by alternative means and there shall be recoverable from the Contractor the amount by which the aggregate of the cost of obtaining the Services

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in this way, exceeds the amount which would have been payable to the Contractor in respect of all the Services so replaced if they had been carried out in accordance with the Contract.

15.3 In the event of the Contractor failing to carry out any Services in accordance with these Conditions, the Client shall (without prejudice to any other remedy available) be entitled:

- a. to deduct from any account rendered by the Contractor in respect of unsatisfactory Services such sum as the Client considers appropriate;
- b. to have such Services carried out satisfactorily by other persons and in the meantime to debar the Contractor, his servants and agents from the Premises.

15.4 On the occurrence of a relevant determination the Contractor shall, notwithstanding such determination, cooperate in the transfer of the Services, to which the relevant determination relates to any alternative organisation under Condition 15.2 hereof in accordance with arrangements to be notified to him by the Client.

## 16. TERMINATION

16.1 The Client shall in addition to his powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Contractor written notice, to expire at the end of (***Insert period of notice***) and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination. but subject to the operation of the following provisions of this Condition.

16.2 In the event of such notice being given the Client shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as he considers expedient:

- a. to direct the Contractor, where work has not been commenced, to refrain from commencing work;
- b. to direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid for at a fair and reasonable price.

## 17. TERMINATION ON CHANGE OF CONTROL OR BANKRUPTCY

The Client may terminate the Contract by written notice having immediate effect if:

- a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
- b) where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- c) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

17.2 The Client may only exercise its right under Condition 17.1(a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Client immediately when any change of control occurs.

## **18. INTELLECTUAL PROPERTY RIGHTS**

18.1 Subject to the rights of third parties and to any rights of the Contractor and the Crown arising otherwise than by virtue of the Contract, all rights in the results of work undertaken by or on behalf of the Contractor for the purposes of the Contract, including any data, reports, servicing schedules, drawings, specifications, designs, inventions or other material produced or acquired in the course of such work and copyright therein shall vest in and be the property of the Client, who reserves the right to determine whether the result of the work shall be published and, if so, on what conditions; and the Contractor shall ensure where necessary that he secures the right to effect such vesting.

## **19. PATENTS**

19.1 All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Contract Price. The Contractor shall indemnify the Client from and against all claims and proceedings, which may be made or brought against the Client, and any damages, cost and expenses incurred by the Client in respect of such supply or use.

## **20. OFFICIAL SECRETS ACTS AND CONFIDENTIALITY**

20.1 The Contractor's attention is drawn to the provisions of the Official Secrets Acts, 1911 to 1989. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the completion or earlier determination of the Contract.

20.2 The Contractor shall not remove from the Client's premises any classified or privacy marked material without the Client's express agreement. The Contractor must keep any such material so removed under conditions approved by the Client for the housing of such classified or privacy marked material.

20.3 A basic guide to the Official Secrets Act 1989 is available on request from the Client.

## **21. PROVISION OF EQUIPMENT**

21.1 Any equipment provided by the Client for the purpose of the Contract shall remain the property of the Client and shall only be used for the purpose of carrying out this Contract; to be returned promptly to the Client on expiry or termination of the Contract. The Contractor will reimburse the Client for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the actions of the employee or agent of the Contractor. Equipment supplied by the Client shall be deemed to be in good condition when received by or on behalf of the Contractor, unless the Client is notified otherwise in writing within seven days.

## **22. OCCUPATION OF GOVERNMENT PREMISES**

22.1 Any land or premises (including temporary buildings) made available to the Contractor by the Client in connection with the Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Contract. Any utilities required by the Contractor shall be subject to the charges set out elsewhere in the Contract.

## **23. TRANSFER, SUB-LETTING AND SUBCONTRACTING**

**RESTRICTED - CONTRACT**

23.1 The Contractor shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous consent in writing of the Client.

**24. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

24.1 The Contractor shall not:

- a. offer to give or agree to any person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for Her Majesty's Service or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for Her Majesty's Service;
- b. enter into this or any other contract with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the representative of the Client.

24.2 Any:

- a. breach by the Contractor of the condition contained in Condition 24.1 or
- b. commission of an offence by the Contractor under the Prevention of Corruption Acts 1889 to 1910 in relation to this or any other contract for Her Majesty's Service

shall entitle the Client to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination and/or to recover from the Contractor the amount of value of any such gift, consideration, or commission.

24.3 In Condition 24.2, references to the Contractor include anyone employed by him or acting on his behalf (whether with or without his knowledge).

24.4 Where the Contract has been determined under Condition 24.2 the powers given by Condition 15 - Unsatisfactory Performance shall apply as if there has been a failure in performance.

24.5 In any dispute, difference or question arising in respect of:

- a. the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under Condition 24.2 in respect of any loss resulting from such determination of the Contract); or
- b. the right of the Client to determine the Contract; or
- c. the amount of value of any such gift, consideration or commission;

the decision of the Client shall be final and conclusive.

**25. DISCRIMINATION**

25.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, or the Sex Discrimination Act 1975, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

**26. USE OF MATERIALS**

26.1 The Client is committed to supporting the Government's initiative on the environment. The Contractor must give due regard to environmental considerations throughout the carrying out of the Contract, including the use of materials that are or can be recycled and materials that are proven to be environmentally safe.

**27. ARBITRATION**

27.1 All disputes differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Client is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons, one to be appointed by the Client and one by the Contractor, or their umpire, in accordance with the provisions of the Arbitration Acts 1950, 1975 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

**28. CONTRACTOR'S PROPERTY**

28.1 All property of the Contractor while at the Premises shall be at the risk of the Contractor and the Client shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any Servant of the Crown at the Premises acting in the course of his employment. The Client shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

**29. PERSONAL INJURY AND LOSS OF PROPERTY**

29.1 This Condition applies to any Personal Injury or Loss of Property which arises in any way in connection with the performance or purported performance of the Contractor.

29.2 Subject to the following provisions of this Condition, the Contractor shall:

- a. compensate the Client for any such Loss of Property suffered by the Client;
- b. indemnify the Crown and servants of the Crown against all claims and proceedings made or brought against the Crown or servants of the Crown in respect of Personal Injury or Loss of Property to which this Condition applies and against all costs and expenses reasonably incurred in connection therewith;
- c. indemnify the Crown against any payment made by the Crown to indemnify, in whole or in part, a Servant of the Crown against any such claim, proceedings, costs or expenses; and
- d. indemnify the Crown against any payment by the Crown to a Crown servant in respect of loss of Property to which this Condition applies suffered by that Servant of the Crown and against any payment made under any Government Provision in connection with any Personal Injury to which this Condition applies suffered by any Servant of the Crown.

29.3 If the Contractor shows that any such Personal Injury or Loss of Property:

- a. was not caused nor contributed to by his neglect or default or by that of his servants, agents or Sub-contractors or by any circumstances within his or their control, he shall be under no liability under this Condition;
- b. that the neglect or default of any person (not being his servant, agent or Sub-contractor) was in part responsible, the Contractor's liability under this Condition shall not extend to the share in the responsibility attributed to the neglect or default of that person.

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29.4 The Client shall notify the Contractor of any claim or proceedings made or brought in respect of any such Personal Injury or Loss of Property.

29.5 If the Contractor admits that he is liable wholly to indemnify the Crown in respect of any such claim or proceeding he or, if he so wishes, his insurers, shall, subject to Condition 29.6 and 29.7 of this Condition be responsible for dealing with or settling that claim or proceeding.

29.6 The Client shall in any event deal with any such claim which involves a Government Provision or which is made by or against a Servant of the Client, and Condition 29.5 shall not apply to any such claim.

29.7 If, when the Contractor or his insurers are dealing with any such claim or proceeding, any matter or issue arises which involves, or may involve, any privilege or special right of the Crown (including a matter relating to the discovery or production of documents) the Contractor or his insurers shall consult the Client before taking any further action on the matter and shall act in relation thereto as may be required by the Client; and if either the Contractor or his insurers fail to comply with this Condition, Condition 29.5 shall cease to apply.

29.8 Where any claim or proceeding in respect of any liability referred to in Condition 29.2 above, is settled otherwise than by the Contractor or his insurers, he shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.

29.9 For the purpose of this Condition "an expected claim" means a claim or proceeding in respect of a matter failing to be dealt with under a Government Provision, or a claim or proceeding made or brought by or against a Servant of the Crown.

### **30. DISCLOSURE OF INFORMATION**

30.1 The Contractor shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the Client to whom any press or other enquiry or any such matter should be referred.

30.2 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Client.

30.3 The Contractor shall ensure that it is registered under the Data Protection Act 1998. The Client and the Contractor agree to duly observe all their obligations under the DPA that arise in connection with this Agreement.

30.4 Where the Contractor processes personal data as a data processor (both as defined by the Data Protection Act 1998) for the Client, it shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to that Act and

a. provide the Client with such information as the Client may reasonably require to satisfy itself that the Contractor is complying with its obligations under the that Act,

b. promptly notify the Client of any breach of the security measures required to be put in place pursuant to this Clause, and

c. ensure that it does nothing knowingly or negligently which places the Client in breach of the Client's obligations under that Act.

30.5 The Contractor shall fully indemnify the Client, his Servants or Agents against the costs of dealing with any claims made in respect of any information subject to the Data Protection Act 1984, which

**RESTRICTED - CONTRACT**

claims would not have arisen but for some act, omission or negligence on the part of the Contractor, his Sub-contractors, agents or staff.

**31. USE OF DOCUMENTS, INFORMATION ETC**

31.1 Except with the consent in writing of the Client, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.

31.2 Except with the consent in writing of the Client the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Client otherwise than for the purpose of the Contract.

31.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Client for the purposes of the Contract remain the property of the Client and must be returned on completion of the Contract.

31.4 In the event of any inconsistency or conflict between this Condition and Condition 20 - Official Secrets Act the provisions of Condition 20 shall prevail.

**32. CONFIDENTIALITY AND FREEDOM OF INFORMATION ACT**

**Relevant Definitions**

“Commercially Sensitive Information” means the subset of Confidential Information listed in schedule [ ] comprised of information:

(a) which is provided by the Contractor to the Client in confidence for the period set out in that schedule; and/or

(b) that constitutes a trade secret;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, [Goods/Services], developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information;

“Contracting Authority” means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) Regulations 2000 other than the Authority;

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

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

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000;

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations.

*Applicable when the Contractor is not a Public Authority*

Confidentiality

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1.1 Each Party:-

shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

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

is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

1.3 [Where it is considered necessary in the opinion of the Client, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.] [The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's Confidentiality obligations under this Contract.]

1.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.

1.5 The provisions of Clauses 1.1 to 1.4 shall not apply to any Confidential Information received by one Party from the other:-

- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Clause 28.7 (Freedom of Information).

1.6 Nothing in this Condition shall prevent the Client:-

disclosing any Confidential Information for the purpose of:-

the examination and certification of the Client's accounts; or

- (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources; or

(b) disclosing any Confidential Information obtained from the Contractor:-

to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments

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or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

to any person engaged in providing any services to the Client for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (b) the Client discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 1.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 1.8 In the event that the Contractor fails to comply with this Condition 1, the Client reserves the right to terminate the Contract by notice in writing with immediate effect.
- 1.9 The provisions under this Condition 1 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

### Freedom of Information

- 2.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client (at the Contractor's expense) to enable the Client to comply with these Information disclosure requirements.

The Contractor shall and shall procure that its sub-contractors shall:

transfer the Request for Information to the Client as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

provide the Client with a copy of all Information in its possession or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client requesting that Information; and

provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

- 2.3 The Client shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

is to be disclosed in response to a Request for Information, and

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

- 2.4 The Contractor acknowledges that the Client may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:-

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without consulting with the Contractor, or

following consultation with the Contractor and having taken its views into account.

- 2.5 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.
- 2.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Client may nevertheless be obliged to disclose Confidential Information in accordance with Clause 2.4.

### Applicable when the Contractor is also a Public Authority

#### **Confidentiality**

- 1.1 Each Party acknowledges that section 81 of the FOIA applies where both Parties are government departments within the meaning of section 84 of the FOIA.
- 1.2 Each Party:-
- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;
  - (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 1.3 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Client under or in connection with the Contract:-
- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
  - (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.
- 1.4 [Where it is considered necessary in the opinion of the Client, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.] [The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's Confidentiality obligations under this Contract.]
- 1.5 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.
- 1.6 The provisions of Clauses 1.2 to 1.5 shall not apply to any Confidential Information received by one Party from the other:-
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
  - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

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

1.7 Nothing in this Condition shall prevent the Client:-

- (a) disclosing any Confidential Information for the purpose of:-
  - (i) the examination and certification of the Client's accounts; or
  - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
  - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
  - (ii) to any person engaged in providing any services to the Client for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (b) the Client discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

1.8 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

1.9 In the event that the Contractor fails to comply with this Condition, the Client reserves the right to terminate the Contract by notice in writing with immediate effect.

**Freedom of Information**

2.1 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each Party shall assist and cooperate with the other (at their own expense) to enable the other Party to comply with these Information disclosure obligations.

2.2 Where a Party receives a Request for Information in relation to Information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors shall):-

transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

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provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires within five Working Days (or such other period as the Client may specify) of the Client's requesting that Information; and

provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

- 2.3 Where a Party receives a Request for Information which relates to the Contract, it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information.
- 2.4 If either Party determines that Information (including Confidential Information) must be disclosed pursuant to Clause 2.3, it shall notify the other Party of that decision at least two Working Days before disclosure.
- 2.5 Each Party shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:-  
is exempt from disclosure under the FOIA or the Environmental Information Regulations;  
is to be disclosed in response to a Request for Information.
- 2.6 Each Party acknowledges that the other Party may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000", be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-  
without consulting with the other Party, or  
(b) following consultation with the other Party and having taken its views into account.
- 2.7 Each Party acknowledges that any lists or schedules provided by it outlining Confidential Information, are of indicative value only and that the other Party may nevertheless be obliged to disclose Confidential Information in accordance with Clause 2.6.

**THIS CONTRACT IS WITNESSED AND AUTHORISED BY:**

Signed by: \_\_\_\_\_

Signed by: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

**On Behalf Of the Minister for the Civil Service**

**On Behalf Of (Insert Contractor's details)**

Date: \_\_\_\_\_

Date: \_\_\_\_\_