



Newcastle Science Company Ltd

GENERAL CONDITIONS OF CONTRACT FOR SERVICES

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1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

1.1.1 NSC Ltd means Newcastle Science Company Ltd, Citywall, Citygate, St James Boulevard, Newcastle upon Tyne, NE1 4JH.

1.1.2 "Award Date" means the date of the award of the Contract by NSC Ltd to the Contractor;

1.1.3 "Conditions" means these general conditions of contract for services;

1.1.4 "Contract" means the documents listed in the NSC Ltd's acceptance letter, including these Conditions and the Specification. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing;

1.1.5 "Contract Manager" means the official of NSC Ltd, or other person employed in that capacity, appointed by NSC Ltd to act on its behalf for the purpose of managing the Contract;

1.1.6 "Contract Price" means the price or prices payable to the Contractor by NSC Ltd under the Contract for the full and proper performance by the Contractor of the Services;

1.1.7 "Contractor" means the person appointed by NSC Ltd for the performance of the Services (including any approved successors or assignees);

1.1.8 "Force Majeure" means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, an act of God, war or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, explosion, flood, storm or default or delays of suppliers or subcontractors;

1.1.9 "Intellectual Property" means any patent, patent application, know how, trade mark, service mark, trade name, registered design, copyright, moral right, design right, database right, semi conductor topography right or any other industrial or commercial right including any application for registration or protection of any of the same anywhere in the world;

1.1.10 "Key Personnel" means any person who, in NSC Ltd's opinion, is fundamental to the performance of the Contract;

- 1.1.11 "Month" means calendar month, unless otherwise defined;
- 1.1.12 "Personal Injury" includes without limitation sickness, injury and death;
- 1.1.13 "Person" means as the context may require, any individual, firm, company, corporation, Government Agency, NSC Ltd or any association or partnership (whether or not having a separate legal personality);
- 1.1.14 "Premises" means the premises occupied, owned or leased by NSC Ltd or any other servant of NSC Ltd, or as described in the Contract;
- 1.1.15 "Programme" means any programme or timetable agreed by the parties to the Contract which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;
- 1.1.16 "Service(s)" means all services detailed in the Specification and any other services which the Contractor is required to carry out by NSC Ltd under the Contract;
- 1.1.17 "Specification" means the description of Services to be performed under the Contract contained in the Specification and Agency's Invitation to Tender;
- 1.1.18 "Sub-Contractor" means any person firm or company under contract to the Contractor to perform work or provide professional services and/or supply goods including a barrister or consultant;
- 1.1.19 "Term" means the term of the Contract set out in the Invitation to Tender.
- 1.1.20 "Commercially Sensitive Information" means the subset of Confidential Information listed in a Schedule comprised of information:
- (a) which is provided by the Contractor to NSC Ltd in confidence for the period set out in that Schedule; and/or
 - (b) that constitutes a trade secret;
- 1.1.21 "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, developments, trade secrets, Intellectual Property, 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 any Commercially Sensitive

Information;

- 1.1.22 "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;
 - 1.1.23 "EIR" means the Environmental Information Regulations 2004;
 - 1.1.24 "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
 - 1.1.25 "Information" has the meaning given under section 84 of the Freedom of Information Act 2000;
 - 1.1.26 "Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
 - 1.1.27 "Schedule" means any schedule attached to any document supplied by either party to the other listing Commercially Sensitive Information and clearly identified as doing so.
- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
 - 1.3 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.
 - 1.4 Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to or enactment of them.

2 LAW

- 2.1 The Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.

3 DURATION OF THE CONTRACT

- 3.1 Subject to NSC Ltd's rights of termination under these conditions, the Contract commences on the Award Date and the Services shall be provided throughout the Term or until the Contract is terminated in accordance with the Conditions.
- 3.2 NSC Ltd reserves the right to extend the Contract for a period of not more than

twelve months beyond the Term. The Contract Price shall continue to apply during any extension.

4 ALTERATION OF REQUIREMENT

- 4.1 NSC Ltd reserves the right to alter the requirements of the Contract as detailed in the Specification, should this at any time become necessary.

5 DUTY OF CARE

- 5.1 The Contractor shall perform the Services with all reasonable skill, care and diligence and in accordance with the Contract and any legislative and statutory requirements.

6 CONTRACTOR'S PERFORMANCE

- 6.1 The Contractor shall provide the Services in consideration of the payment by NSC Ltd of the Contract Price and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

- 6.2 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services. All personnel deployed on work relating to the Contract shall have appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to NSC Ltd. If NSC Ltd gives the Contractor notice that any person is to be removed from involvement in the Services, the Contractor shall take immediate steps to comply with such notice. The decision of NSC Ltd regarding the Contractor's personnel shall be final and conclusive.

- 6.3 The Contractor shall:

6.3.1 give NSC Ltd, if so requested, full particulars of all persons who are or may be at any time employed on the Contract;

6.3.2 comply with any rules, regulations and any safety and security instructions from NSC Ltd, including completion of any additional clearance procedures required by NSC Ltd, and return of any passes as required.

- 6.4 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposals to change Key Personnel and Condition 6.2 shall apply to the proposed replacement personnel.

- 6.5 Time of performance of the Contractor's obligations in respect of the provision of the Services in accordance with the timescales notified to the Contractor by NSC Ltd shall be of the essence of the Contract. Accordingly, in the event that any

stage in the performance of the Services is not performed in accordance with such timescales, then NSC Ltd shall be entitled to terminate the Contract forthwith and the provisions of Condition 16 shall apply.

- 6.6 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between NSC Ltd and the Contractor.
- 6.7 The Contractor shall maintain such records in respect of the Contract as NSC Ltd may reasonably require, and shall on request produce them for inspection by NSC Ltd. The Contractor shall make available such records for the use of NSC Ltd when required. They shall not be released, published or disposed of without the prior written approval of NSC Ltd.

7 MEETINGS AND REPORTS

- 7.1 The Contractor shall attend all meetings arranged by NSC Ltd for the discussion of or making any presentation in relation to matters connected with the performance of the Services.
- 7.2 Without prejudice to the submission of any reports as specified under the Contract, the Contractor shall render any additional reports as to the progress of the Services at such time or times, and in such form as the Contract Manager may reasonably require.

8 INSPECTION

- 8.1 During the course of the Contract NSC Ltd shall have the power to inspect and examine any aspect of the provision of the Services at any reasonable time. Where the Services are being performed on the premises of the Contractor NSC Ltd shall on giving reasonable notice to the Contractor be entitled to visit the Contractor's premises and the Contractor shall provide free of charge all such facilities as NSC Ltd may reasonably require for such inspection and examination.

9 INVOICES AND PAYMENT

- 9.1 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all incidental costs including all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Contractor in discharging his obligations under the Contract.
- 9.2 To facilitate payment of the Contract Price the Contractor shall provide the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format NSC Ltd may require.
- 9.3 The Contractor shall submit an invoice to NSC Ltd only as specified in the Contract.

- 9.4 The Contractor shall submit with the invoice, such records or details as NSC Ltd may reasonably require including, but not limited to time records, expenses incurred, invoices paid or any other documents which would enable NSC Ltd to verify the information and the amounts referred to in that invoice.
- 9.5 NSC Ltd is committed to Prompt Payment and shall pay the Contractor within 30 days of the receipt of a valid invoice, provided that NSC Ltd is satisfied that the Services for which the invoice relates have been performed fully in accordance with the Contract.

10 VALUE ADDED TAX

- 10.1 NSC Ltd shall pay to the Contractor in addition to the Contract Price the amount of any VAT chargeable thereupon.
- 10.2 Any invoice or other request for payment of monies 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 VAT invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

11 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 11.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or any other contract with NSC Ltd.

- 11.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 11.1.

- 11.3 Any,

11.3.1 breach by the Contractor of this Condition; or

11.3.2 commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract for Her Majesty's Service;

shall entitle NSC Ltd to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

- 11.4 The decision of NSC Ltd in relation to this Condition shall be final and conclusive.

12 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

12.1 Each party:

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

12.1.2 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.

12.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from NSC Ltd under or in connection with the Contract:

12.2.1 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;

12.2.2 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.

12.3 The Contractor shall ensure that staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Contract.

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

12.5 The provisions of Clauses 12.1 to 12.4 shall not apply to any Confidential Information received by one party from the other:

12.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

12.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

12.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

12.5.4 is independently developed without access to the Confidential Information; or

12.5.5 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 EIR pursuant to Condition 12.7.

12.6 Nothing in this Condition shall prevent NSC Ltd:

12.6.1 disclosing any Confidential Information for the purpose of:-

12.6.1.1. the examination and certification of NSC Ltd's accounts; or

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

12.6.2 disclosing any Confidential Information obtained from the Contractor:

12.6.2.1. 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

12.6.2.2. to any person engaged in providing any services to NSC Ltd for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph 12.6.2 NSC Ltd discloses only the information which is necessary for the purpose concerned.

12.6.3 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.

12.6.4 In the event that the Contractor fails to comply with this Condition 1, NSC Ltd reserves the right to terminate the Contract by notice in writing with immediate effect.

12.6.5 The provisions under this Condition 1 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

12.7 The Contractor acknowledges that NSC Ltd is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with NSC Ltd (at the Contractor's expense) to enable NSC Ltd to comply with these Information disclosure requirements.

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

- 12.8.1 transfer the Request for Information to NSC Ltd as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 12.8.2 provide NSC Ltd with a copy of all Information in its possession or power in the form that NSC Ltd requires within five Working Days (or such other period as NSC Ltd may specify) of NSC Ltd requesting that Information; and
 - 12.8.3 provide all necessary assistance as reasonably requested by NSC Ltd to enable NSC Ltd 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.
- 12.9 NSC Ltd shall be responsible for determining at its absolute discretion whether any Commercially Sensitive Information and/or any other Information:
- 12.9.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
 - 12.9.2 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 NSC Ltd.
- 12.10 The Contractor acknowledges that NSC Ltd 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, the FOIA or the EIR to disclose Information:-
- 12.10.1 without consulting with the Contractor, or
 - 12.10.2 following consultation with the Contractor and having taken its views into account.
- 12.11 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 NSC Ltd to inspect such records as requested from time to time.
- 12.12 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that NSC Ltd may nevertheless be obliged to disclose Confidential Information in accordance with Clause 12.10.
- 12.13 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 NSC Ltd, to whom any press or other enquiry or any such matter should be referred.

12.14 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 NSC Ltd.

13 DISCRIMINATION

13.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986 and the Disability Discrimination Act 1995 and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all Sub-Contractors do not unlawfully discriminate. This condition shall not in any way relieve the Contractor of his general obligations to comply with any legislative and statutory requirements as provided in Condition 35.

14 MERGER, TAKE-OVER OR CHANGE OF CONTROL

14.1 The Contractor shall forthwith inform NSC Ltd in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, of the Contractor or the Contractor (being a company as defined in the Companies Act 1985) shall inform NSC Ltd of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. A change of control shall mean in the case of a partnership if as a result of the proposal more than 50% of the partners in any firm shall cease to be partners or those partners who were partners in the firm prior to the change will cease to be 50% or more of the partners in the firm. The Contractor shall comply with any request by NSC Ltd for information arising from this condition.

15 UNSATISFACTORY PERFORMANCE

15.1 If, during the currency of the Contract, the Contractor in the reasonable opinion of NSC Ltd fails to perform the whole or any part of the Services, with the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise, or in accordance with the Contract, NSC Ltd may give the Contractor a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

15.2 Where the Contractor has been notified of a failure in accordance with Condition 15.1, and has failed to remedy it to the satisfaction of NSC Ltd, NSC Ltd may:

15.2.1 request that the Contractor at its own expense and as specified by NSC Ltd, re-schedules and performs the Services to NSC Ltd's satisfaction within such period as may be specified by NSC Ltd in the notice, including where necessary, the correction or re-execution of any Services already carried out; and/or

15.2.2 withhold or reduce payments to the Contractor, in such amount as NSC Ltd deems appropriate in each particular case; and/or

15.2.3 hold the Contractor liable to compensate NSC Ltd for all reasonable loss and damage in accordance with Condition 21;

15.2.4 terminate the Contract in accordance with Condition 16.

16 TERMINATION OF THE CONTRACT

16.1 Without prejudice to any other power of termination, NSC Ltd may terminate the Contract without notice, for any of the following reasons:

16.1.1 the breach by the Contractor of any of Conditions 11 (Corrupt Gifts & Payments of Commission), 12 (Disclosure of Information) 6 (Contractor's Performance), or any other material breach of contract;

16.1.2 the failure by the Contractor to comply with a notice given under Condition 15 (Unsatisfactory Performance);

16.1.3 the Contractor ceases or proposes to cease to carry on his business;

16.1.4 there is a change of control of the type referred to in Condition 14 (Merger, Take-over or Change of Control), and NSC Ltd has not agreed in advance in writing to the particular change of control, save that in this event NSC Ltd shall give one month's notice in writing to the Contractor;

16.1.5 the Contractor is insolvent as defined in clause 24.

17 BREAK

17.1 NSC Ltd 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 one month's written notice. Upon the expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

18 CONSEQUENCES OF TERMINATION AND BREAK

18.1 Where the Contract is terminated under Condition 16 (Termination of the Contract), the following provisions shall apply:

18.1.1 a sum due or accruing from NSC Ltd to the Contractor may be withheld or reduced by such amount as NSC Ltd considers reasonable and appropriate in the circumstances to reflect any loss, damage or additional cost suffered by NSC Ltd as a result of such termination;

18.1.2 NSC Ltd may make all arrangements which are in its view necessary to

procure the orderly completion of the Services including the letting of another contract.

18.2 Where the Contract is terminated under Condition 16.1.4 or Condition 17 (Break) the provisions of Condition 18.1.1 shall not apply.

18.3 Where the Contract is terminated under Condition 16 (Termination of the Contract) or Condition 17 (Break), NSC Ltd may, during any notice period:

18.3.1 direct the Contractor, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately;

18.3.2 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 at the Contract Price.

19 ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS

19.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it or the benefit or advantage of it otherwise than as provided in the Contract without the prior written consent of NSC Ltd.

19.2 The Contractor shall ensure that any Sub-Contractor complies with the terms and Conditions so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under the Contract.

19.3 Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or Sub-Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Contract requirements.

20 INSURANCE

20.1 The Contractor shall effect and maintain insurance necessary to cover the Contractor and all his Sub-Contractors for the risks under the Contract and for the avoidance of doubt all the risks as defined in Condition 21 (Loss or Damage).

20.2 Where, in compliance with Condition 20.1 above the Contractor takes out and maintains professional indemnity insurance, the Contractor shall:

20.2.1 take out and maintain appropriate professional indemnity insurance in respect of its businesses generally throughout the period from the date of commencement of his Services under the Contract and for a period of 6 years from the date of expiry or termination of the Contract, and

20.2.2 ensure that any Sub Contractor commissioned as a consultant by it takes

out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their Services under the Contract or commission and in addition for a period of 6 years from the date of completion as specified in the Contract.

- 20.3 The Contractor shall, whenever required by NSC Ltd, produce to NSC Ltd certificates signed on behalf of the Contractor and its Sub-Contractor's insurers stating that insurance complying with the requirements set out in Conditions 20.1 and 20.2 above (where applicable) is in force and the period for which it has been taken out.
- 20.4 If, for whatever reason, the Contractor fails to maintain the insurance described in this Condition or without the approval of NSC Ltd obtains a different policy of insurance from that which he notified to NSC Ltd at the time when he submitted his tender, NSC Ltd may make alternative arrangements necessary to protect his interests and recover the cost from the Contractor.
- 20.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

21 LOSS OR DAMAGE

- 21.1 NSC Ltd will be relying upon the Contractor's skill, expertise and experience in providing the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the provision of the Services and the validity of any Intellectual Property Rights conceived, originated made or developed by the Contractor in connection with the provision of the Services and the Contractor hereby agrees to indemnify NSC Ltd against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by NSC Ltd whether direct or consequential (including but without limitation any economic loss or other loss of turnover profits, business or goodwill) as a result of such reliance.
- 21.2 In addition to the indemnity referred to in Condition 21.1 the Contractor shall indemnify NSC Ltd against any loss of property, and Personal Injury and any other loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by NSC Ltd whether direct or consequential (including but without limitation any economic loss or other loss of turnover profits business or goodwill) as a result of:
- 21.2.1 any breach by the Contractor of its contractual obligations arising under the Contract; and
- 21.2.2 any representation or tortious act or omission including negligence arising under or in connection with the Contract.
- 21.3 NSC Ltd shall notify the Contractor as soon as possible of any claim made, or

proceedings brought against NSC Ltd in respect of any loss or damage.

21.4 In this condition loss or damage includes:

21.4.1 loss or damage to property;

21.4.2 Personal Injury;

21.4.3 loss of profit or loss of use;

21.4.4 any other loss.

22 RECOVERY OF SUMS DUE

22.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor to NSC Ltd, the same may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with NSC Ltd.

23 DATA PROTECTION

23.1 The Contractor shall comply fully with all data protection legislation from time to time in force.

23.2 The Contractor shall indemnify NSC Ltd against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against NSC Ltd by any person in respect of information subject to the Data Protection Acts of 1984 and 1998 which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or its Sub-Contractors.

24 INSOLVENCY OF THE CONTRACTOR

24.1 The Contractor shall inform NSC Ltd:

24.1.1 if being an individual, or where the Contractor is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made under any bankruptcy Act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or

24.1.2 if being a company, he passes a resolution, or the Court makes an order, that the company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of

a creditor shall be appointed, or if circumstances shall arise which entitle the Court otherwise than for the purposes of amalgamation or reconstruction to make a winding-up order.

- 24.2 If any of the events in the conditions 24.1.1 or 24.1.2 occur (whether or not the Contractor has informed NSC Ltd) NSC Ltd may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to NSC Ltd.

25 DRAWINGS, SPECIFICATION, SOFTWARE, DESIGNS AND INTELLECTUAL PROPERTY

- 25.1 Any drawings, specification, software, designs or other data (including working documents, maps and photographs) completed or provided in connection with the Contract shall become or, as the case may be, remain the property of NSC Ltd and be delivered up to NSC Ltd on completion or termination of the Contract. Where NSC Ltd has agreed to accept modern storage media, drawings and other documents shall be supplied by the Contractor in the agreed form.
- 25.2 All Intellectual Property Rights arising from the Services shall vest in and be the absolute property of NSC Ltd, and accordingly, in consideration of the mutual undertakings under the Contract, the Contractor hereby assigns to NSC Ltd all such Intellectual Property Rights therein and all for the full term during which the said rights and any renewals of extensions shall subsist.
- 25.3 For the avoidance of doubt, NSC Ltd shall be entitled to use the resulting Intellectual Property Rights or any part thereof for any purpose whatsoever without limitation or licence.
- 25.4 The contractor agrees to execute any documents necessary to assign to NSC Ltd all right, title and interest in the Intellectual Property Rights referred to above and to do all such acts and things as NSC Ltd may determine are necessary or desirable in connection with any such assignment.
- 25.5 The Contractor shall indemnify and hold harmless NSC Ltd against any damages (including costs) that may be awarded to agreed to be paid to any third party in respect of any claim or action that the Intellectual Property Rights referred to above infringe the intellectual property rights of any third party (an "Intellectual Property Infringement").
- 25.6 In the event of an Intellectual Property Infringement the Contractor shall forthwith make without charge to NSC Ltd such alterations, modifications, or adjustments to the Intellectual Property as shall be necessary to make them non-infringing.

26 RETENTION OF DOCUMENTATION

26.1 The Contractor shall retain and produce when required such accounts, documents (including working documents) and records as NSC Ltd, or the Contract Manager, may request, (and explain these as necessary) in connection with the Contract, at any time during the Contract and for a period of 2 years from the date of expiry or termination or such longer period as may be agreed between NSC Ltd and the Contractor in writing and afford such facilities as NSC Ltd may reasonably require for his representatives to visit the Contractor's premises and examine the records under this Condition.

27 TRANSFER OF RESPONSIBILITY

27.1 In the event that a different organisation is required to take over the Services at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer, under arrangements to be notified to him by NSC Ltd.

27.2 The transfer shall be arranged between NSC Ltd and the Contractor so as to reduce to a minimum any interruption in the Services.

28 SERVING OF NOTICES

28.1 Any notice required to be given or served under the Contract by NSC Ltd shall be sufficiently given or made if it is in writing and sent by first-class post to the Contractor's last known place of business or registered office, when it shall be deemed to be served on the day when, in the ordinary course of the post it would have been delivered.

29 CONTRACT DOCUMENTS

29.1 In any case of discrepancy between these Conditions and other documents forming part of the Contract these Conditions shall prevail unless the inconsistent provision of such other document is expressed to be, or if the context indicates it to be, an amendment of these Conditions and the same have been effected in accordance with Condition 29.2.

29.2 Any variation of any provision of this Contract must be effected in writing signed by the Chief Executive or the Contract Manager, and no purported variation by any other means shall bind NSC Ltd.

30 ROYALTIES AND LICENCE FEES

30.1 The Contractor shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract, have been paid and are included within the Contract Price. The Contractor shall indemnify NSC Ltd from and against all claims and proceedings, which may be made or brought against NSC Ltd and any damages, costs and expenses incurred by NSC Ltd in respect of such supply or use.

31 CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TUPE

- 31.1 Where requested to do so the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE), as NSC Ltd may require, to NSC Ltd and/or to any other person authorised by NSC Ltd who is to be invited to submit a tender in relation to the provision of similar Services, within 10 days of the request.
- 31.2 During the 8 month period preceding the expiry of this Contract or within any period of notice of Termination or notice of Break, the Contractor shall not without the prior written agreement of NSC Ltd, which shall not be unreasonably withheld or delayed:
- 31.2.1 materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
 - 31.2.2 materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.
- 31.3 The Contractor shall not knowingly do or omit to do anything which may adversely affect an orderly transfer of responsibility for provision of the Services. The Contractor agrees to indemnify NSC Ltd fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of TUPE related information.

32 SEVERABILITY

- 32.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, NSC Ltd and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

33 WAIVER

- 33.1 The failure of NSC Ltd or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 33.2 No waiver shall be effective unless it is communicated to either NSC Ltd or the Contractor in writing.

33.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

34 AUDIT AND PROJECT MONITORING

34.1 For the purpose of:

34.1.1 the examination and certification of NSC Ltd accounts, or

34.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficient and effectiveness with which NSC Ltd has used its resources,

34.1.3 any examination required by ONE NorthEast in controlling and monitoring Single Programme and ERDF funding

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned held otherwise within the control of the Contractor and may require the Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1993 or any re-enactment thereof in relation to the Contractor is not a function exercisable under the Contract.

35 STATUTORY OBLIGATIONS

35.1 The Contractor shall comply with all legislation relating directly or indirectly to the provision of the Services.

35.2 In particular, the Contractor will note NSC Ltd's current and future obligations under the Data Protection Act 1998, Freedom of Information Act 2000, Human Rights Act 1998, Disability Discrimination Act 1995, Sex Discrimination Act 1975, Health and Safety at Work etc. Act 1974 and Race Relations Act 1976 (all as amended from time to time) and any codes of practice and best practice guidance issues by the Government and the appropriate enforcement agencies.

35.3 The Contractor will comply with the above legislation in so far as it places obligations upon NSC Ltd in the performance of its obligations under the Contract.

35.4 The Contractor will facilitate NSC Ltd's compliance with NSC Ltd's obligations under these provisions and comply with any reasonable request from NSC Ltd for that purpose.

35.5 The Contractor will act in respect of any person who receives or requests services under the Contract as if NSC Ltd were a public authority for the purpose of the Human Rights Act 1998.

35.6 The Contractor notes particularly that NSC Ltd may be required to provide information relating to the Contract or the Contractor to a person in order to comply with its obligations under these provisions.

36 FORCE MAJEURE

36.1 Neither party to this Contract will be deemed to be in breach of this Contract or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in Condition 36.2.

36.2 If a party's performance of its obligations under the Contract is affected by Force Majeure:-

36.2.1 it will give written notice to the other party, specifying the nature and extent of the Force Majeure, immediately upon becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end, and whilst the Force Majeure is continuing, mitigate its severity;

36.2.2 subject to the provisions of Condition 36.3, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and

36.2.3 it will not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

36.3 If the Force Majeure in question continues for more than [three] months or [one quarter] of the Term, whichever is shorter, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than [15] days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

36.4 If the Contract is terminated in accordance with Condition 36.3, then neither party will have any liability to the other except that rights and liabilities which accrued prior to such termination will continue to exist.

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