

**HSC BUSINESS SERVICES ORGANISATION
PROCUREMENT AND LOGISTICS SERVICE**

**CONDITIONS OF CONTRACT
FOR THE
SUPPLY OF SERVICES**

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Interpretation

1 In these conditions of contract the following definitions shall apply:

The authority means the HSC Business Services Organisation, an Organisation of the Department of Health, Social Services and Public Safety, or the health authority placing the contract. *Health authority* means a Health and Social Services Board, Organisation or Health and Personal Social Services Trust, as the case may be.

The contract means the agreement concluded between the authority and the contractor, including all specifications, patterns, contractor's samples, plans, drawings and other documents incorporated or referred to therein.

The contractor means the person who by the contract undertakes to supply the services to the authority as provided for in the contract. Where the contractor is an individual or partnership the expression shall include the personal representatives of that individual or of the partners.

The contract price means the price exclusive of value added tax that is payable to the contractor by the authority under the contract for the full and proper performance by the contractor of its part of the contract.

The services mean the services and the goods that the contractor is required to supply under the contract.

Personal data has the same meaning as in section 1(3) of the Data Protection Act 1984 and subsequent amendments and orders to this act.

Unless the context otherwise requires it, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.

2 The heading to these conditions shall not affect their interpretation.

Reassignment of Contracts – Review of Public Administration

This contract will be awarded to the successful tenderer(s) on the understanding that at a time within the duration of the contract, there may be a need for reassignment from the contracting authority to an alternatively named body within the Northern Ireland Health and Personal social Services. The name of the alternative body will be that as defined under the current Review of Public Administration and any subsequent enabling legislation. It is understood that without prejudice the successful tenderer(s) will accept any reassignment of this contract. The contracting authority will not be liable to pay any compensation whatsoever in connection therewith.

Organisation

3 Subject to condition 4, where the HSC Business Services Organisation has negotiated the contract with the contractor such negotiation has been undertaken by the Organisation in its capacity as agent for the authority, so that it incurs no personal liability on the contract or on any other contract resulting from such negotiation.

4 Where exceptionally the HSC Business Services Organisation makes it clear in its official order that it is placing the order on its own account as principal, condition 3 shall not apply and the HSC Business Services Organisation shall be the authority with all the rights and liabilities of the authority under the contract.

Variation of conditions

5 The services shall be supplied solely in accordance with these conditions. All other contractual terms which in any way add to, vary or contradict these conditions upon which the contractor may seek to rely or otherwise impose on the authority shall be excluded and shall not form part of the contract (whether or not such other contractual terms post-date these conditions) unless the authority has specifically agreed in writing to be bound by any of such other contractual terms.

No later version shall be binding unless it has been agreed in writing and signed by an authorised representative of the authority.

Performance

6 The contractor shall carry out the services to the satisfaction of the authority in accordance with

the service specification.

Timing

7 Time shall be of the essence with regard to the obligations of the contractor under the contract.

Staff

8 The contractor must employ sufficient staff to ensure that the services are provided at all times and in all respects in accordance with the service specification. The contractor must ensure that a sufficient reserve of staff is available to meet the service specification during holidays or absences.

9 The contractor must employ for the purposes of this contract only such persons as are careful, skilled and experienced in the duties required of them and must ensure that every such person is properly and sufficiently trained and instructed and carries out the services with regard to:

- the task that person has to perform
- all relevant provisions of the contract
- all relevant rules, policies, procedures and standards of the authority
- fire risks and fire precautions
- the need for those working in the National Health Service to observe the highest standards of hygiene, courtesy and consideration
- the requirements of the Health and Safety at Work Act 1974, and/or Health and Safety at Work (NI) Order 1978 any associated amending orders and other relevant legislation and codes of practice.

10 The contractor shall provide its staff with a form of identification that is acceptable to the authority and which staff shall display on their clothing at all times when they are on the authority's premises.

11 The contractor shall instruct its staff not to smoke on the premises except where it is expressly permitted to do so.

12 The contractor shall remove from the premises any of its staff where the authority requests this on grounds of efficiency or public interest.

Termination

13 The Authority may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor in any of the following events:

13.1 If the Contractor 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, administration order or interim order made against him, or shall make any composition or scheme of 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 for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors.

13.2 If the Contractor being a company shall pass a resolution, or the courts shall make an order, that the company shall be wound up (except for the purposes of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the courts shall make an administration order, or if circumstances shall arise that entitle the courts or a creditor to appoint an administrative receiver, or which entitle the courts to make a winding-up order or administration order provided always that such termination shall not prejudice or affect any right of action or remedy that shall have accrued or shall accrue thereafter to the Authority.

13.3 The Authority may terminate this Contract forthwith by notice in writing to the Contractor if the Contractor is in breach of this Contract and shall have failed to remedy the breach within (30) days of receipt of a request in writing from the Authority to remedy the breach such request indicating that failure to remedy the breach may result in termination of this Contract.

13.4 The Contractor may terminate this Contract forthwith by notice in writing to the Authority if the act or omission of any health care establishment would amount to a breach of this Contract by the Authority if it had been committed or omitted by the Authority and that health care establishment shall have failed to remedy such act or omission within 30 days of receipt of a request in writing from the Contractor to remedy the same such a request indicating that failure to remedy the same may result in termination of this Contract. The Contractor undertakes to provide a copy of such request to the Authority at the same time it is received by the other health care establishment in question.

13.5 The termination of the Contract (in whole or in part) under clauses 13.1 – 13.4 shall be without prejudice to:

13.6 (where the Contract is terminated in part only) the continuance and validity of the part or parts of the Contract not terminated by the notice under clauses 13.1 – 13.4;

13.7 the rights or obligations of either party, which have accrued prior to the date of termination.

13.8 In addition to its rights under any other provision of the contract the authority may terminate the contract at any time by giving the contractor three months' written notice. Upon the expiration of the notice the contract shall terminate without prejudice to the rights of the parties accrued to the date of termination.

Default by contractor

14 Without prejudice to any other right or remedy, if the contractor does not provide the services in accordance with the specification or at the times specified in the contract the authority may:

- require the contractor to remedy the default within such time as the authority may specify by providing or providing again (as the case may be) without further charge to the authority such part of the services to the service specification
- without terminating the whole of the contract terminate the contract in respect of part of the services only and thereafter provide or procure the provision of such part of the services itself
- itself provide or procure the provision of the services until it is satisfied that the contractor is able to carry out the services in accordance with these conditions
- terminate the contract.

15 If the cost to the authority of executing or procuring such services or part of them exceeds the amount that would have been payable to the contractor for executing or procuring such services, such excess shall be paid by the contractor to the authority in addition to any other sums payable by the contractor to the authority in respect of the breach of contract.

16 All or any of the remedies in conditions 14 and 15 may be exercised by the authority in respect of any default by the contractor.

Price and payment

17 The contract price for the services shall be net, i.e. after the deduction of all agreed discounts. The amount of any early settlement discounts shall be shown separately in the contract. The only sums payable by the Trust for the provisions of the service shall be the sums as specified in Schedule II plus Value Added Tax, as may properly be chargeable by the contractor. All other costs will be paid by the contractor.

18 Invoices should be quoted in Sterling (GBP) and forwarded to the address as indicated on the purchase order or as advised by the Authority and/or Organisation. An invoice shall be rendered on the Contractor's own invoice form to the Authority, clearly marked with the Authority's order number and quoting the Contract Reference. Where the invoice submitted by the Contractor contains an error such that the invoice cannot be processed by the Authority for payment, the Authority will reject the invoice and return it to the Contractor for correction. In such a case, time for payment of the rejected invoice will not start to run until a fully corrected valid invoice is received by the Authority.

19 Invoices shall show the period and the amount of the services for which payment is claimed together with the agreed charging rates and any other details the authority may determine as being part of the service specification.

20 Payment shall be made by the Authority in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended by the 2013 Regulations) no later than 30 days after the Authority completes its procedure for verification and acceptance of the services provided that a valid Contractor's invoice is received by the Authority on or before the completion of its verification or acceptance procedure. The said procedure for verification or acceptance of the goods shall (unless otherwise expressly agreed in writing between the parties) be completed within 30 days from the date of delivery of the goods. The authority shall pay the contract price to the contractor, by BACS (Bank Account Clearing System) if the authority so chooses.

21 Whenever under the contract any sum 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 become due to the contractor under the contract or under any other contract with the authority.

22 If for any reason the contract comes to an end otherwise than at the end of a completed calendar month the authority must pay in respect of the partly completed calendar month 1/365th of the annual contract price for each completed day worked by the contractor in the partly completed calendar month.

Indemnity

23 Without prejudice to its liability for breach of its obligations under the contract the Contractor shall be liable and shall indemnify the Authority, any Health Authority and the Minister for Health Social Services and Public Safety against any loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:

- Any loss of or damage to property (whether real or personal)
- any injury to any person, including injury resulting in death

in consequence of or in any way arising out of the provision of the services or the use of the Authority's premises by the Contractor, its employees or agents except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Authority, its employees or agents.

Insurance

24 The contractor shall insure against its liability under condition 23 with a minimum limit of indemnity of £10 million in any insurance year or such other sum as may be agreed between the contractor and the authority.

Employment, Equality and Discrimination Legislation

25 The Contractor shall comply with all current employment legislation including anti-discrimination legislation as enacted in Northern Ireland and shall take all reasonable steps to secure the observance of this condition by all its staff or agents employed in the performance of the contract.

Severability

26 If any provision of the contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of its other provisions.

Waiver

27 The failure of either party to seek redress for breaches or to insist on strict performance of any provision of the contract or the failure of either party to exercise any right or remedy to which it is entitled under the contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under the contract.

28 No waiver of any provision of the contract shall be effective unless it is agreed to by both parties in writing.

29 No waiver of any default shall constitute a waiver of any subsequent default.

Accrued rights and remedies

30 Neither the expiration nor the termination of the contract shall prejudice or affect any right of action or remedy, which shall have accrued or shall thereafter accrue either to the authority or to the contractor.

Variation of services

31 The authority may at any time vary or add to the service specification in accordance with this condition and no such variation or addition shall affect the continuation of the contract.

32 The authority shall give the contractor at least one month's written notice of any variation or addition. The notice shall give details of the variation or addition and the date on which it is to take effect.

TRANSFER AND SUB-CONTRACTING

33.1 Neither party shall assign the whole or any part of the contract without the previous consent in writing of the authority, such consent not to be unreasonably withheld. The Contractor(s) shall not sub-contract the supply of any services without the previous consent in writing of the authority, such consent not to be unreasonably withheld.

33.2 Further to 33.1 (and subsequent to the date of implementation of the contract) should the Contractor(s) transfer ownership, either partly or whole to another company, as a going concern or otherwise, such Contractor(s) shall provide the Organisation with a minimum of 4 weeks advance notice in writing.

As a minimum precondition, and without prejudice, the Transferee shall comply with the short-listing requirements as met by the Transferor such as financial standing, technical ability, quality standards, service support etc.

The decision as to whether this contract may transfer, with or as part of any transfer of ownership of the Contractor(s), shall remain that of the Organisation and the contracting authorities and shall be notified, in writing, to a minimum of two weeks prior to the transfer. The Organisation in conjunction with the contracting authorities exclusively reserve the right to accept that termination of the whole or part of the contract has taken place by reason of transfer of ownership of the company, and if so the Organisation and/or the contracting authorities shall not be liable for any compensation arising there from.

Patents etc

34 The contract price shall include all payments made or to be made to any third party in respect of any right, patent, design, trademark or copyright used for the purpose of performing the contract.

35 The contractor shall indemnify the authority against any costs or claims arising from any infringement of any right, patent, design, trademark or copyright.

Confidentiality

36 The contractor and its staff must not disclose to any person (other than a person authorised by the authority) any information acquired by them in connection with the contract.

37 Without prejudice to the generality of condition 36, the contractor and its staff must not disclose to any person (other than a person authorised by the authority) any information acquired by them in connection with the provision of the services which concerns:

- the authority, its staff or its procedures
- the identity of any patient at any of the authority's hospitals or other establishments
- the medical condition of or the treatment received by any patient.

Commitment to openness and access to information.

The supplier/tenderer will be expected to acknowledge the HSC Business Services Organisation, Procurement and Logistics Service's commitment to openness and public access to information. The Freedom of Information Act 2000 applies to all NHS bodies with effect from 1 January 2005. All NHS bodies will have a policy on managing requests for information in accordance with their legal obligations.

Tenderers should be aware that whilst submitted information is treated as 'commercial and in confidence' the Organisation may be obliged to release any such information at a future date, if requested. The HSC Business Services Organisation, Procurement and Logistics Service requires the supplier/tenderer, in submitting information in support of any quote or formal tender, to specifically identify any information, which it is reasonably considered is commercially sensitive and which should be held in confidence during the course of the tendering process. The tenderer should indicate why the information is considered to be confidential and for what period it should be regarded as being held HSC Business

Service Organisation, Procurement and Logistics Service in confidence. The tenderer is advised that the use of blanket protective markings such as "commercial in confidence" will no longer be regarded as appropriate or as binding on HSC Business Services Organisation, Procurement and Logistics Service.

Data protection

38 The contractor must protect personal data in accordance with the provisions and principles of the Data Protection Act 1984 and the Data Protection Act 1998 and in particular the contractor must ensure compliance with the authority's security arrangements and ensure the reliability of its staff who have access to any personal data held by the authority. In addition, if the contractor is required to access or process personal data held by the authority, the contractor shall keep all such personal data secure at all times and shall only process such data in accordance with instructions received from the authority.

The contractor shall indemnify the authority and the Minister for Health, Social Services and Public Safety against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the contractor's unauthorised and/or unlawful processing or the contractor's destruction and/or damage to any personal data held by the contractor, its employees or agents.

Inducements to purchase

39 The contractor shall not offer to any Health Authority or its representatives as a variation of the conditions of the contract, or as an agreement collateral to it, any advantage other than a cash discount against the contract price.

40 The authority shall be entitled to terminate the contract and to recover from the contractor the amount of any loss resulting from such termination in the following circumstances:

- if the contractor shall have offered or given or agreed to give to any person 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 action in relation to the obtaining or execution of the contract or any other contract with the authority or any health authority, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the authority or any health authority
- if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the contractor)
- if in relation to the contract or any other contract with the authority or any health authority the contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward to any officer of the authority which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration.

Insolvency

41 The authority may at any time by notice in writing summarily terminate the contract without compensation to the contractor in any of the following events:

- if the contractor 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, administration order or interim order made against them, or shall make any composition or scheme of arrangement with or for the benefit of their creditors, or shall make any conveyance or assignment for the benefit of their creditors, or shall purport to do so, or if in Scotland they shall become insolvent or notour bankrupt, or any application shall be made for sequestration of their estate, or a trust deed shall be granted by them for the benefit of their creditors
- if the contractor being a company shall pass a resolution, or the courts shall make an order, that the company shall be wound up (except for the purposes of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the courts shall make an administration order, or if circumstances shall arise

that entitle the courts or a creditor to appoint an administrative receiver, or which entitle the courts to make a winding-up order or administration order provided always that such termination shall not prejudice or affect any right of action or remedy that shall have accrued or shall accrue thereafter to the authority.

Publicity

42 The contractor shall not advertise or publicly announce that it is supplying services or undertaking work for the authority without the prior written consent of the authority, such consent not to be unreasonably withheld.

Use of agreements

43 Upon receiving a written request the authority may allow the contractor to use Authority purchase agreements for goods or services. Should the authority allow such use it is on the understanding that the goods or services so purchased by the contractor against these agreements are only for the performance of the contract. The authority retains the right to withdraw consent for the use of any agreement instantly at any time without giving any period of notice and without giving any reason. All information received by the contractor concerning Authority purchase agreements shall be held in confidence in accordance with conditions 36 and 37.

Law

44 The parties shall accept the non-exclusive jurisdiction of the Northern Ireland courts and agree that the contract is to be governed and construed according to Northern Ireland law.

Electronic Catalogue / Electronic Trading

45 In the event of the introduction of an electronic catalogue or trading facility the following shall apply:

Contractors will supply product details of the goods and services supplied under the contract in a form and upon media specified by the authority. It shall be the responsibility of the contractor to ensure that all such details are correct as at the date upon which they are delivered to the authority and that such details do not contain any data or statement which gives rise to any liability on the part of the authority following publication of the same in accordance with this clause. The contractor warrants that such details are complete and accurate as at the date they are delivered to the authority and that in the event such details cease to be complete and accurate then the contractor shall promptly notify the authority in writing of any modification or addition to or any inaccuracy or omission in such product details.

The authority shall reproduce the product details provided by the contractor in the Authority's electronic catalogue, which shall be made available to Health Authorities.

Before "going live" the authority will submit a copy of the relevant sections of the catalogue to the contractor for approval and the contractor undertakes to approve the same without unnecessary delay.

Subject to condition 34, the contractor grants to the authority a licence to use and exploit the product details provided as aforesaid for the purpose of illustrating the range of goods and services available under the Authority's contracts for an indefinite period subject to the contractor notifying the authority in writing that it no longer wishes such product details to be included in the Authority's catalogue.

If requested in writing by the authority, the contractor and the authority, shall forthwith negotiate in good faith an agreement to use such electronic trading system as the authority may specify in its request. For the purposes of this condition, "electronic trading system" shall include, without limitation, Electronic Data Interchange with such message standards and protocols as the authority may specify and the world wide web.

The contractor shall indemnify the Authority from and against all liability of the contractor arising out of or in connection with any statement relating to the goods and services or information or material on or description of the goods and services provided by or on behalf of the contractor, which is included in the Authority's catalogue or associated material.

Mediation

46 Any dispute, difference or question between the parties to the Contract with respect of any matter arising out of or relating to this Contract which can not be resolved by negotiation and except insofar as may be otherwise provided in this Contract shall be referred to Arbitration under the provision of the Arbitration Act (N.I.) 1937 or any statutory modification or re-enactment thereof by a single Arbitrator to be appointed by agreement between the parties or in default of agreement by the President for the time being of the Chartered Institute of Arbitrators.

Alternatively consideration will be given to the use of Alternative Dispute Resolution by way of mediation.

Third party rights

47 Except as otherwise provided in this contract, including without limitation clause 28, this contract is intended and agreed to be solely for the benefit of the contractor and the authority and no third party shall acquire any benefit, claim or rights of any kind whatsoever pursuant to, under, by or through this contract.

Environmental considerations

48 The contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of the contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the contractor shall comply with such agreements or codes of practice as if they were incorporated into English law subject to those voluntary agreements being cited in the tender documentation. Without prejudice to the generality of the foregoing, the contractor shall: -

- comply with all reasonable stipulations of the authority aimed at minimising the packaging in which the products the subject of the contract, or any products supplied by the contractor to the authority as part of performance of the services, are supplied;
- promptly provide such data as may reasonably be requested by the authority from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the authority under or pursuant to the contract;
- comply with all obligations imposed on it in relation to the products/services the subject of the contract by the Packaging Waste Regulations 1997 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);
- label all products supplied to the authority under the contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;
- unless otherwise agreed with the authority, insofar as any products supplied under the contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment and recycling and provide any information which the authority may reasonably require from time to time regarding the costs of such activity;
- promptly provide all such information regarding the environmental impact of any products supplied or used under the contract as may reasonably be required by the authority to permit informed choices by end users;
- where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (as amended) the Contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.

The contractor shall meet all reasonable requests by the authority for information evidencing the contractor's compliance with the provisions of this clause.

Comptroller and Auditor General Audit Rights

49 The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

The Contractor shall grant to the Authority or its authorised agents, such access to those records as they may reasonably require in compliance with the Contract.

Acceptance

50 Tenderers are invited and received only on the clear understanding that the HSC Business Organisation (herein referred to as the "Organisation") may in its sole discretion draw the full range of

goods and services required either (a) entirely from one successful Tenderer (b) partly from each of several Tenderers to the extent to which specified parts of the respective Tenders have been accepted for that purpose by the Organisation.

Expenses

51 The Organisation shall not be responsible for any payment in connection with any expenses which may be incurred by the Tenderer in the preparation and submission of this Tender.

Administration Charge

52 Without prejudice the Organisation shall be at liberty to charge an administration fee, not in excess of 10% of the gross cost of any other services purchased, as a result of a breach of Clause 14.

Mandatory Exclusion of Economic Operators

53 The Public Contracts Regulations and the Utilities Contracts Regulations 2006 require contracting authorities to exclude economic operators (suppliers, contractors and service providers) from public contracts where they have actual knowledge that the economic operator has been convicted of offences as listed in Regulation 23(1) (subject to paragraph 2). Your attention is drawn to the Pre-qualification questionnaire or the Additional Information Schedule III, which must be completed declaring any such offence.

ACCEPTANCE TO THE ABOVE IS TO BE CONFIRMED ONLINE WHEN YOU RESPOND TO THE QUALIFICATION ENVELOPE ON ESOURCING NI.