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**COMMERCIAL CONDITIONS OF CONTRACT FOR**

**SUPPLIES CONTRACTS**

**TRN-20-009**

**Provision of Replacement EA School Buses**

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

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**1.0** **Interpretation**

* 1. These Commercial Conditions of Contract shall at all times be read in conjunction with the Public Sector Standard Conditions of Contract. If there is any ambiguity or inconsistency in or between the Public Sector Standard Conditions of Contract and the Commercial Conditions of Contract, the Commercial Conditions of Contract shall take precedence.
	2. The definitions set out in the Public Sector Standard Conditions of Contract shall apply to the Contract unless otherwise expressly defined in these Commercial Conditions of Contract. For the avoidance of doubt, any references to clauses stated in these Commercial Conditions of Contract shall be in relation to the clauses which are contained in the Commercial Conditions of Contract unless expressly stated otherwise.
	3. In these Commercial Conditions of Contract, the following words will have the following meanings:[[1]](#footnote-1)

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| “Affiliates”  | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.  |
| “Client Data” | means:-(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Client; or  (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or(b) any Personal Data for which the Client is the Data Controller. |
| “Client System” | means the Client’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this Contract which is owned by the Client or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the Services. |
| “Contractor Personnel”  | means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of the contractor's obligations under this Contract. |
| “Contractor Software”  | means software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services.  |
| “Contractor System” | means the information and communications technology system used by the Contractor in implementing and performing the Services including the Software, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client’s System). |
| “Control” | means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “**Controls**” and “**Controlled**” shall be interpreted accordingly.”  |
| “Controller” “Processor” “Data Subject” “Personal Data Breach” “Data Protection Officer” | have the meaning given in the GDPR.  |
| “Data Loss Event” | means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.  |
| “Data Processor”  | has the meaning given in the GDPR. |
| “Data Protection Impact Assessment” | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| “Data Protection Legislation” | means:1. the GDPR, the LED and any applicable national implementing Laws amended from time to time;
2. the DPA 2018 to the extent that it relates to processing of personal data and privacy; and
3. all applicable Law about processing of personal data and privacy.
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| “Data Protection Schedule” | means the Schedule to the Commercial Conditions of Contract entitled ‘*Processing, Personal Data and Data Subjects.’* |
| “Data Subject” | has the meaning given in the GDPR. |
| “Data Subject Access Request” | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| “DPA 2018” | means Data Protection Act 2018. |
| “GDPR” | means the General Data Protection Regulation (Regulation (EU) 2016/679). |
| “Goods” | means any such Goods as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Contract as specified in the Specification. |
| “ICT Environment” | means the Client System and the Supplier System. |
| “Joint Controller” | means where two or more Controllers jointly determine the purposes and means of processing. |
| “Joint Controller Agreement Schedule” | means the Schedule to the Commercial Conditions of Contract entitled ‘Joint Controller Agreement’. |
| “Key Personnel” | means any persons specified as such in the Award Letter, Tender or Specification (as the case may be), or otherwise notified by the Client to the Contractor in writing. |
| “LED” | Law Enforcement Directive (Directive (EU) 2016/680).  |
| “Malicious Software”  | means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.  |
| “Personal Data” | means personal data (as defined in the GDPR) which is Processed by the Contractor or any sub-contractor on behalf of the Client or the Authority pursuant to or in connection with this Contract.  |
| “Process” | has the meaning given to it under the GDPR and “**Processed**” and “**Processing**” shall be construed accordingly.  |
| “Protective Measures” | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access toPersonal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it. |
| “Purchase Order” | means the Client’s order for the supply of Goods which has a unique number, and details the Goods to be supplied by the Contractor to the Client in accordance with the terms of this Contract. |
| “Services” | means all the services to be performed by and all other obligations of the Contractor to be performed under the Contract including the supply and delivery of Goods to the Client as may be further expanded upon in the Specification. |
| “Software” | means the Contractor’s Software or the Third Party Software.  |
| “Sub-processor” | means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.  |
| “Third Party Software” | means software which is proprietary to any third party (other than an Affiliate of the Contractor) which in any case will be or is proposed to be used by the Contractor for the purposes of providing the Services.  |

**2.0 Contract Period**

2.1 The Contract shall take effect on the Commencement Date and shall continue until the end of the Contract Period.

**3.0** NOT USED

**4.0 Contract Price**

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

4.2 For the avoidance of doubt, the Contract Price shall include the cost of packaging, insurance, delivery, unloading, stacking and carriage of the Goods. No extra charges will be effective unless agreed in writing by both Parties and signed by the Client.

4.3 NOT USED

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

**5.0 Payment**

5.1 The Client will pay the Contractor the Contract Price for the Services no later than 30 days after the receipt of a valid invoice in accordance with Schedule 2 (Pricing Schedule).

5.2 The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Specification and Schedule 2 (Pricing Schedule). The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.

5.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice. The characteristics of a valid invoice are detailed in Schedule 2 (Pricing Schedule).

5.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

5.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 5.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.

5.6 The Contractor shall make any payments due to the Client (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

5.7 NOT USED

**6.0 Recovery of Sums Due**

6.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), that sum may be deducted unilaterally by the Client from any sum then due, or which at any later time may become due, to the Contractor under this Contract.

6.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

6.3 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**7.0 The Goods**

7.1 In consideration of the amounts due under the Contract, the Contractor will provide the Services to the Client during the Contract Period in accordance with the Specification which shall include the Contractor complying with any obligations set out in the Specification.

7.2 The Client or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor’s premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 15.0.

7.3 The Contractor shall notify the Client as soon as is practicable if it develops new or improved products during the Contract Period in connection with the Services. Provided that written consent of both Parties is obtained, the new or improved products may be used in substitution for the Goods under the Contract and in such circumstances, an additional fee (if applicable) shall be agreed between the Parties prior to the substitution of the new or improved products.

7.4 If any Goods provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contract holds from such third parties in respect of those Goods will be held on trust for the Client.

7.5 In the event of the goods being recalled, initiated by the manufacturer of the goods, the Secretary of State for Health or Medicines and Healthcare products Regulatory Organisation (or any such similar regulatory body), the Contractor shall, without delay and at its own expense, arrange for the collection of such goods and credit the Client for any goods delivered but unused by the Client including part used packs.

7.6 The Contractor shall perform its obligations under the Contract:

1. with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
2. in accordance with Good Industry Practice; and
3. in compliance with all applicable Laws.

**8.0 Delivery**

8.1 The Goods shall be delivered to the Premises in accordance with the Specification.

8.2 Where any access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and his sub-contractors will at all times comply with the reasonable requirements of the Client's security arrangements.

8.3 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises and the Client has signed for delivery. Where the Goods are collected by the Client, the point of delivery shall be when the Goods are loaded on the Client’s vehicle (“**Delivery**").

8.4 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor’s suppliers or carriers at such place as the Client or duly authorised person shall reasonably direct.

8.5 The Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Client elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 Working Days and to refund to the Client any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Client may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Client.

8.6 The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

8.7 Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments. If, however, the Client does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Client, entitle the Client to terminate the whole of any unfulfilled part of this Contract without further liability to the Client.

8.8 The Client envisages that it may require additional services and/or goods to be provided by the Contractor during the Contract Period. While the precise scope and extent of such additional services cannot be agreed at this time, the intention is for any such additional services to be included within the scope of this Contract in accordance with the Variation Procedure set out in Clause 11 of the Public Sector Standard Conditions of Contract, the precise scope and extent of such additional services being agreed between the Parties. Without limiting the generality of the above, as at the Commencement Date, the Client envisages that it may require those additional services identified under the “Potential Services” heading in the Specification. For the avoidance of doubt, the terms of the Contract shall apply to any such additional services.

## 9.0 Inspection of Premises

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

**10.0 Late Delivery of Goods**

10.1 Time of delivery shall be of the essence and if the Contractor fails to complete Delivery within the time promised or specified in the Specification, the Client may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Client.

**11.0 Quality and Guarantee of the Goods to be supplied**

11.1 The Contractor will supply the Goods to the Client in accordance with the Specification.

11.2 The Contractor warrants that the Goods supplied under this Contract will:

11.2.1 where applicable be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after the date of delivery;

11.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

11.2.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor;

11.2.4 be free from design defects; and

11.2.5 be fit for any purpose held out by the Contractor or made known to the Contractor by the Client expressly or by implication, and in this respect the Client relies on the Contractor’s skill and judgement. The Contractor acknowledges and agrees that the Approval by the Client of any designs provided by the Contractor will not relieve the Contractor of any of its obligations under this sub-clause.

11.3 The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client’s acceptance of them.

11.4 The Contractor hereby guarantees the Goods for the period from the date of delivery to the date 12 months thereafter or as otherwise specified in the Specification, against faulty materials or workmanship. If the Client shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge.

**12.0 Guarantee of Title**

12.1 The Contractor warrants that:

i. it has full clear and unencumbered title to all the Goods;

ii. it has full capacity and authority to enter into this Contract; and

iii. at the date of delivery of any of the Goods it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Client. From that date the Client will acquire a valid and unencumbered title to the Goods.

**13.0 Packaging**

13.1 The Goods shall be packed and marked in a proper manner and in accordance with the Specification and any further instructions of the Client and any statutory requirements and any requirements of the carriers tasked by the Contractor with delivering the Goods.

13.2 All packaging materials shall be consistent with the Client’s environmental policy and considered non-returnable.

**14.0 Cancellation of Orders**

14.1 The Client will have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been delivered to the Client. The cancellation will be notified in writing to the Contractor (the "**Cancellation Notice**”). Without prejudice to the generality of the foregoing, the Client will pay the Contract Price (or where applicable, that part of the Contract Price) for Goods which have been delivered to the Client or at the date of the Cancellation Notice are in transit and the costs of materials which the Contractor has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the Contractor of those materials for a refund.

**15.0 Rejection of Goods**

15.1 The Client may by written notice to the Contractor reject any of the Goods which fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this clause the Client may (without prejudice to other rights and remedies) either:

i. have such Goods promptly, and in any event within five Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

ii. treat the Contract as discharged by the Contractor’s breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other goods in replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

15.2 Any Goods rejected or returned by the Client as described in clause 15.1 shall be returned to the Contractor at the Contractor’s risk and expense.

15.3 The Client’s right of rejection shall continue irrespective of whether the Client has in law accepted the Goods. Taking delivery, inspection, use or payment by the Client of the Goods or part of them shall not constitute acceptance, waiver or Approval and shall be without prejudice to any right of remedy that the Client may have against the Contractor, provided that the right of rejection shall cease within a reasonable time from the date on which the Client discovers or might reasonably be expected to discover the latent defect or other relevant breach of Contract.

**16.0 Property**

16.1 Property and risk of the Goods will, without prejudice to any of the rights or remedies of the Client, pass to the Client on completion of delivery unless otherwise agreed. Delivery of the Goods will be completed once the Goods have been unloaded from the transporting vehicle at the Premises and the Client has signed for the delivery.

**17.0 Indemnity**

17.1 Neither Party excludes or limits liability to the other Party for:

1. Death or personal injury caused by its negligence; or
2. Fraud; or
3. Fraudulent misrepresentation; or
4. Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

17.2 Subject to clause 17.3, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance, non-performance or delay in performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

17.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

17.4 Subject always to clause 17.1, the liability of either Party for Defaults shall be subject to the following financial limits:

1. the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the Property of the other under or in connection with this Contract shall in no event exceed one million pounds (£1,000,000); and

ii. the annual aggregate liability under this Contract of either Party for all Defaults (other than a Default governed by clause 17.4(i) shall in no event exceed the greater of one million pounds / £1,000,000 or one hundred percent / 100% of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises.

17.5 Subject always to clause 17.1, in no event shall either Party be liable to the other for any:

i. loss of profits, business, revenue or goodwill; and/or

ii. indirect or consequential loss or damage.

17.6 The provisions of clause 17.5 will not limit the Client’s right to recover for;

i. additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;

ii. wasted expenditure or charges rendered unnecessary and incurred by the Client arising from a Default by the Contractor;

iii. additional cost of procuring replacement services for the remainder of the term of the Contract;

1. additional costs to maintain the Services arising from a Default by the Contractor;
2. anticipated savings; and
3. any costs and losses arising from delay in performance.

17.7 The Contractor shall effect and maintain with a reputable company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor’s performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

17.8 The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

17.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

17.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 17.2.

**18.0 Intellectual Property Indemnity**

18.1 The Contractor will indemnify, and keep indemnified, the Client in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Contractor or Staff.

**19.0 NOT USED**

**20.0 Changes in Distribution Arrangements**

20.1 Further to clause 8.0 (Delivery), Contractors must give at least 4 weeks’ notice of changes in distribution arrangements to the Client for consideration prior to acceptance by the Client.

**21.0 Monitoring of Contract Performance**

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

**22.0 Social Considerations**

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

**23.0 Security**

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

**24.0 NOT USED**

**25.0** Waste Electrical and Electronic Equipment Regulations (“WEEE Regulations”)

25.1 All electrical and electronic equipment must be supplied in accordance with and conform to the requirements of the WEEE Regulations.

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

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

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

26.0 **Intellectual Property Rights**

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

1. furnished to or made available to the Contractor by or on behalf of the Client shall remain vested in the Client and its licensors; and
2. generated by the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall vest and remain vested in the Client and the Contractor hereby assigns the Intellectual Property Rights referred to in this clause 26.1 (ii) to the Client.

26.2 The Contractor hereby assigns all IPRs, as legal and beneficial owner, which may subsist in the IP Materials prepared in accordance with clause 26.1(ii). This assignment shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the IPRs produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

26.3 The Contractor shall ensure that the third party owner of any IPRs that are or which may be used to perform this Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the IPRs in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.

27.0 **Data Protection**

27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor unless otherwise specified in the Data Protection Schedule. The only processing that the Contractor is authorised to do is listed in the Data Protection Schedule by the Client and may not be determined by the Contractor.

27.2 The Contractor shall notify the Client immediately if it considers that any of the Client’s instructions infringe the Data Protection Legislation.

27.3 The Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

1. process that Personal Data only in accordance with the Data Protection Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures), having taken account of the:
3. nature of the data to be protected;
4. harm that might result from a Data Loss Event;
5. state of technological development; and
6. cost of implementing any measures;
7. ensure that:
8. the Staff do not process Personal Data except in accordance with this Contract (and in particular the Data Protection Schedule);
9. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
10. are aware of and comply with the Contractor’s duties under this clause;
11. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
12. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
13. have undergone adequate training in the use, care, protection and handling of Personal Data; and
14. not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
15. the Client or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;
16. the Data Subject has enforceable rights and effective legal remedies;
17. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
18. the Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
19. At the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

27.5 Subject to clause 27.6, the Contractor shall notify the Client immediately if it:

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

27.6 The Contractor’s obligation to notify under clause 27.5 shall include the provision of further information to the Client in phases, as details become available.

27.7 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 27.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

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

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

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

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

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

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

1. notify the Client in writing of the intended Sub-processor and processing;
2. obtain the written consent of the Client;
3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 27.0 such that they apply to the Sub-processor; and
4. provide the Client with such information regarding the Sub-processor as the Client may reasonably require.

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

27.13 The Contractor may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

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

27.15 Where the Parties include two or more Joint Controllers as identified in the Data Protection Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Joint Controller Agreement Schedule in replacement of Clauses 27.1 - 27.14 for the Personal Data under Joint Control.

# SCHEDULE 1 - SPECIFICATION SCHEDULE

The Specification of Requirements is included in the tender pack.

# SCHEDULE 2 - PRICING SCHEDULE

The Pricing Schedule (Financial Response Document) is included in the tender pack

1. **introduction**
	1. This Schedule 2 details:
		1. the Invoicing Procedure; and
		2. the Payment Profile.
2. **Invoicing Procedure**
	1. The Contractor shall, following the [Commencement Date] submit invoices directly to the address specified below

The Education Authority (EA)

Finance Office

Dundonald Office

* 1. For an invoice to be considered valid it must be legible, from which a clear scanned image can be produced, and clearly show the following information:

 (a) where related to a purchase order (PO), the wording "Purchase Order" or "PO" followed by the 10 digit PO number, or where not related to a PO, the contact name in the AUTHORITY (i.e. the person requesting the [Goods or] Services)

(b) the invoice number, or where a utility bill, the account number

(c) payment terms

(d) invoice date / tax point

(e) supplier name, address, postcode and VAT registration number

(f) remittance name and address where this is different to (f) above

(g) goods / service details which match the PO details, including quantity billed, item description, unit of measure, unit price and total value

(h) the agreed charge, including any discounts, handling and freight charges and a breakdown clearly showing each VAT amount and the applicable VAT rate (and where not complete, a breakdown of the relevant work or services as they relate to this charge or an explanation of a difference in expected charge).

1. **INVOICE PAYMENT**
	1. The Client shall pay all valid invoices submitted in accordance with the provisions of this Schedule 2 and in accordance with the provisions of clause 5 (Payment).
	2. In the event of a disputed invoice, the Client shall make payment in respect of any undisputed amount in accordance with the provisions of clause 5 and return the invoice to the Contractor within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Contractor shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Contractor accepts the Client’s proposed amendments. If it does then the Contractor shall supply with the response a replacement valid invoice. If it does not then the matter shall be dealt with in accordance with the provisions of clause 6.2 (Recovery of Sums Due).
2. **Payment Profile**
	1. The Payment Profile in respect of the Services provided under this Contract is as follows:

|  |  |
| --- | --- |
| Payment Event | Amount |
| Goods are Quality Checked and Approved for Payment | Full Payment |

* + 1. Monthly in arrears

# SCHEDULE 3 - CONTRACT MANAGEMENT/MONITORING SCHEDULE

As part of its contract management procedures, the Client will apply the Protocol for Managing Poor Supplier Performance contained in Annex D of [Procurement Guidance Note PGN 01/12 – Contract Management Principles and Procedures](https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0112-contract-management-principles-and-procedures).

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

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

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

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

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

**A central Register of suppliers in receipt of current Notices and Terminations will be maintained by Construction & Procurement Delivery (CPD), and will be publicly available on its website. This Register will cover all procurements by bodies subject to** [**Northern Ireland Public Procurement Policy**](https://www.finance-ni.gov.uk/publications/ni-public-procurement-policy-document)**.**

**SCHEDULE 4 - SOCIAL CONSIDERATIONS SCHEDULE**

[**PGN 01/13 Integrating Social Considerations into Contracts**](https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0113-integrating-social-considerations-contracts)

**In addition:**

* Goods should be packed in manufacturers packaging, sufficiently robust to withstand transport and each pack bear a label showing the description and quantity of the contents and any necessary safety warning.
* The accepted supplier(s) should be aware of the need to reduce the use of plastic packaging and waste where possible. Any developments or improvements in relation to packaging waste during the period of the framework must be discussed with EA prior to being implemented.

# SCHEDULE 5 - SECURITY SCHEDULE

* + The Contractor shall not delete or remove any proprietary notices contained within or relating to the Client Data.
	+ The Contractor shall not store, copy, disclose, or use the Client Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Client.
	+ To the extent that Client Data is held and/or processed by the Contractor, the Contractor shall supply that Client Data to the Client as requested by the Client.
	+ The Contractor shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.
	+ The Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date backups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at no less than one monthly intervals.
	+ The Contractor shall ensure that any system on which the Contractor holds any Client Data, including back-up data, is a secure system that complies with the Client’s Security Policy.

If the Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Client may:

a. require the Contractor (at the Contractor's expense) to restore or procure the restoration of Client Data and the Contractor shall do so as soon as practicable but not later than one month; and/or

b. itself restore or procure the restoration of Client Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements.

If at any time the Contractor suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Client immediately and inform the Client of the remedial action the Contractor proposes to take.

With respect to the parties' rights and obligations under this Contract, the parties agree that the Client is the Data Controller and that the Contractor is the Data Processor.

The Contractor shall:

a. Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Client to the Contractor during the Contract Period);

b. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

c. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

d. take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;

e. obtain prior written consent from the Client in order to transfer the Personal Data to any sub-contractors or Affiliates for the provision of the Services;

f. ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Schedule;

g. ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client;

h. notify the Client (within [five] Working Days) if it receives:

i. a request from a Data Subject to have access to that person's Personal Data; or

j. a complaint or request relating to the Client's obligations under the GDPR;

k. provide the Client with full cooperation and assistance in relation to any complaint or request made, including by:

l. providing the Client with full details of the complaint or request;

m. complying with a data access request within the relevant timescales set out in the GDPR and in accordance with the Client's instructions;

n. providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and

o. providing the Client with any information requested by the Client;

permit the Client or its authorised representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 28.0 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;

provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Client); and

not Process Personal Data outside the European Economic Area without the prior written consent of the Client and, where the Client consents to a transfer, to comply with:

a. the obligations of a Data Controller under GDPR by providing an adequate level of protection to any Personal Data that is transferred; and

b. any reasonable instructions notified to it by the Client.

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

The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

The Client shall notify the Contractor of any changes or proposed changes to the Security Policy.

If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Variation in accordance with clause 11 of the Public Sector Standard Conditions of Contract. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.

**Malicious Software**

The Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available.

Malicious Software from the ICT Environment.

If Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

Any cost arising out of the actions of the parties taken in compliance with these provisions shall be borne by the parties as follows:

i. by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Client Data (whilst the Client Data was under the control of the Contractor); and

ii. by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

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

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

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

|  |  |
| --- | --- |
| **Description**  | **Details**  |
| Identity of the Client and Contractor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor in accordance with Clause 27.1. |
| Subject matter of theprocessing | Provision of Replacement School Buses for EA |
| Duration of theprocessing | For the complete duration of the contract |
| Nature and purposes ofthe processing | The processing of contact details to enable delivery |
| Type of Personal Data | Name, position and delivery address within EA |
| Categories of DataSubject | EA Employees |
| Plan for return anddestruction of the dataonce the processing iscomplete UNLESS requirement under union or member state law to preserve that type of data | Information retained & Destroyed as per EA Retention Policy |

**SCHEDULE 7 - JOINT CONTROLLER AGREEMENT**

In this Annex the Parties must outline each party’s responsibilities for:

* providing information to data subjects under [Article 13 and 14](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN) of the GDPR.
* responding to data subject requests under [Articles 15-22](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN) of the GDPR
* notifying the Information Commissioner (and data subjects) where necessary about data breaches
* maintaining records of processing under [Article 30](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN) of the GDPR
* carrying out any required Data Protection Impact Assessment
* The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clause 27.2 - 27.14.

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Schedule should be used instead of Clause 27.1 - 27.15.

# SCHEDULE 8 - HUMAN RIGHTS PROTECTIONS AND MODERN SLAVERY PREVENTIONS

1. In performing the Contract the Contractor shall comply with all applicable statutory obligations for the time being in force including (without limitation) those relating to health, safety and welfare, environment, modern slavery, employment rights and relations, working rights, human rights, data protection and equality.
2. The Contractor warrants and represents that all the information contained in its tender remains true, accurate and not misleading except as may have been specifically disclosed in writing to and accepted by the Client prior to the commencement date.
3. The Contractor shall not operate its business in a manner which may in the opinion of the Client bring the Client into disrepute.
4. The Contractor shall not subcontract the performance of all or part of its obligations under this Agreement without the prior written consent of the Client.
5. The Contractor shall provide such information on its subcontractors as the Client may from time to time request.
6. The Contractor shall provide such information as the Client may from time to time request on the Contractor’s supply chain for the goods/services provided.
7. The Contractor shall provide such information as the Client may from time to time request in respect of any recruitment/ employment agencies used by the Contractor in order to provide the services including (without limitation) information on the recruitment/employment practices and procedures used by those agencies.
8. The Client shall be entitled to inspect and examine the Contractor’s premises from which the services/goods are supplied, stored, provided on request and to speak directly to the Supplier’s employees.
9. The Contractor shall ensure that its subcontractors and suppliers have accepted obligations equivalent to those set out in these clauses under Schedule 8 dealing with modern slavery and human rights and/or employment and working practices of these terms and conditions.
10. The Client may terminate the Contract by notice with immediate effect if the

Contractor is the subject of a claim for breach of the Human Rights Act.

1. The Client may terminate the Contract by notice with immediate effect if the

Contractor is the subject of formal investigation, or the subject of a claim arising, in connection with its statutory obligations relating to employment rights, employment relations, working rights or equality.

1. The Client may terminate the Contract by notice with immediate effect if the Contractor is the subject of formal investigation for or is the subject of prosecution for any offence under the Modern Slavery Act 2015, as a material breach of contract and in accordance with Clause 39.
1. [↑](#footnote-ref-1)