



Dear Sir/ Madam,

**Contract Title: Northern Ireland Authority for Utility Regulation (the Utility Regulator)  
Consultancy Input into General Gas Engineering and Regulatory Advice**

**Contract Reference: CON/32/09**

The Northern Ireland Authority for Utility Regulation (the Utility Regulator) invites you to tender for the above call off contract, which is detailed in the attached Terms of Reference.

Please note the following forms which are contained in subsequent parts of the paperwork further below **MUST** be signed, completed and returned if you wish to enter a tender for this project:

- Schedule of Costs (part 3)
- Form of Tender (part 4)
- VAT Registration (part 4)
- Fair Employment Declaration (part 4)
- Certificate of Bona Fide Tendering (part 4)
- Freedom of Information (part 4)
- Authorised Representative (Appendix B to Part 5)

The closing date for the return of tenders is **no later than** 3.00pm on Thursday 28th January 2010. The Utility Regulator plans for the assignment to commence on 3<sup>rd</sup> February 2010.

Please note that the Utility Regulator is not obliged to accept the lowest or any tender. Under no circumstances, will late tenders be considered.

Thank you for your interest and response.

Yours faithfully

Karen McConnell

Tel: 02890 316342  
E-mail: [karen.mcconnell@niaur.gov.uk](mailto:karen.mcconnell@niaur.gov.uk)

**Part 1**

**Instructions to Tenderers**

## INSTRUCTIONS TO TENDERERS

### Completion and Submission of Tender Documentation

Responses, completed as directed, should be returned by post to:

Karen McConnell  
The Utility Regulator  
3<sup>rd</sup> Floor Reception  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

Proposals must be received at the Utility Regulator by 3.00pm on Thursday 28th January 2010.

Tenderers should include one original hard copy and 2 photocopies of the tender to be delivered to the address above before 3.00pm on the closing date.

Tenders will not be accepted by fax or e-mail.

If returning by post, where documentation is bulky, suppliers must ensure that the packaging is strong enough to secure the documents. Envelopes or packages should bear no marks indicating the identity of the supplier, but should clearly identify the tender reference.

Tenders sent by post should be registered or sent by Recorded Delivery or Datapost. The enveloped containing tender documents shall be clearly marked 'TENDER SUBMISSION – Contract Number CON/32/09'.

Each copy of the tender documentation must be either heat sealed or spiral bound and there should be no amendments to the original documentation save for the elements that the tenderer has to sign.

Tenderers are advised that manually delivered tenders can only be accepted during normal office hours, which are between 9.00am and 5.00pm (Monday to Friday) and that a receipt stamped with the date and the time of acceptance should be requested. Tenders sent by special delivery or delivered by hand will not be accepted on either weekends or on Northern Ireland Public and Statutory Holidays.

The Utility Regulator cannot accept responsibility for postal or delivery delays.

Late tenders will not be considered.

All submissions must be in the English language.

Tenders must be fully compliant with the requirements detailed in the tender documentation.

All prices entered in the pricing schedule or other documents must be exclusive of VAT and in pounds sterling.

Tenders may be rejected if the required information is not given at the time of tendering.

### **Economic and Financial Standing**

Tenderers may be required to furnish information as to economic and financial standing for assessment by the Utility Regulator prior to the acceptance of any tender.

### **Costs and Expenses**

Tenderers will not be entitled to claim from the Utility Regulator any costs or expenses which may be incurred in preparing their tender whether or not it is successful.

### **Period of Validity**

Tenderers are required to keep their tenders valid for acceptance for a period of ninety days from the closing date.

### **Confidentiality**

Tenderers should treat the tender documents as private and confidential between the tenderer and the Utility Regulator. Tenderers should note that Utility Regulator shall use the tender documents for the purposes of evaluation.

### **Official Amendments**

If it is necessary for the Utility Regulator to amend the tender documentation in any way, prior to receipt of tenders, all tenderers in receipt of documents will be notified simultaneously. If deemed appropriate, the deadline for receipt of tenders will be extended.

### **Canvassing**

Any tenderer who directly or indirectly canvasses any official of the Utility Regulator concerning the award of contract or who directly or indirectly obtains or attempts to obtain information from such official concerning the proposed or any other tender will be disqualified. This should not, however deter any supplier seeking clarification in relation to the tender.

### **Assumptions**

Tenderers must not make assumptions that the Utility Regulator has experience of their organisation or their service provision even if on a current or previous contract. Tenderers will only be evaluated on the information provided in their response.

### **Compliance**

Tenders must be submitted in accordance with these instructions. Failure to comply may result in a tender being rejected by the Utility Regulator.

### **Freedom of Information Act (FOIA)**

The tenderer should treat the tender documents as private and confidential between themselves and the Utility Regulator. Tenderers are advised that as a public body, the Utility Regulator must ensure full compliance with the Freedom of Information Act. Please note that unless an exemption provided for under the Act is applicable in relation to any particular information, a public authority will be obliged to disclose that information in response to a request regardless of the terms of any contract.

Tenderers are asked to consider if any of the information supplied in the course of this tender competition should not be disclosed because of its sensitivity. Tenderers must complete the “Freedom of Information Statement contained at Part 4 (e) “Forms and Certificates: Freedom of Information Statement” identifying which information is considered commercially sensitive and specify the reasons for its sensitivity. The Utility Regulator will consult with you about sensitive information before making a decision on any Freedom of Information requests received.

## **Evaluation Process**

### **Stage 1 - Selection Criteria**

Tenderers must demonstrate that they have the required minimum level of experience of administering and delivering a programme of a similar nature as detailed in the **Format of Response**.

Failure to comply with this element of the tender requirement will result in the tender being rejected and it will not proceed to the second stage as this is assessed on a pass or fail basis.

## **Format of Response**

### **Experience**

In order to progress to the evaluation stage of the process, tenderers must clearly demonstrate experience in the following areas.

Company Experience – The principal contractor and not sub-contracting parties, must have 3 years experience in the completion of technical, economical and regulatory studies in relation to significant projects in the energy field and in particular the natural gas industry.

The principal contractor must provide details of at least 5 projects satisfactorily carried out over the last 3 years involving gas engineering and regulatory advice projects for gas transmission and distribution systems in terrain similar to that of Northern Ireland. Examples must be included (max 1 page per project to include, type of client, nature of project, size, value, reporting outputs, timeframe, dates and relevance to this project).

Key Personnel – The contractor must supply CVs of key personnel, each of whom must have 3 years relevant experience in providing engineering and regulatory consultancy advice on relevant projects within the energy or natural gas industry. Key personnel must include the Project Manager/leader of the team, principal/ senior engineering staff and others engaged in this project. Examples must be included (max 1 page per project to include, type of client, nature of project, size, value, reporting outputs, timeframe, dates, relevance to this project and each individual’s role).

## **Stage 2 - Award Criteria**

Tenders that meet the selection criteria in *stage 1* will go forward to the tender evaluation *stage 2* and will be assessed using the following criteria:

<b><u>Criterion</u></b>	<b>Weighting</b>	
<b>Methodology</b>		<b>50%</b>
Methodology to be used in approaching projects to provide a robust service e.g. detailed approach to accessing cost efficiency of gas engineering projects	25%	
Engineering skills and qualities which enable you to understand and deliver the itemised needs as set out in the Terms of Reference section 15 (or as the case may be)	10%	
Envisaged ways of working with the Utility Regulator (including frequency of contacts, update services)	5%	
Guaranteed response times	5%	
Availability and commitment both at short notice and after usual business hours for advice which is required urgently, i.e. within 48 hours or less	5%	
<b>Project Delivery</b>		<b>20%</b>
How will the company's resources be used to deliver the project requirements?	10%	
Provided project management arrangements	10%	
<b>Cost</b>		
Tenderers must demonstrate value for money services and stipulate the number and the Grade of key personnel proposed for this 'call off' contract and their daily fixed rates.	30%	<b>30%</b>
The fixed daily consultancy fee will be used to score the cost criterion.		

Tenderers must also complete the pricing schedule in Part 3 of this Service Pack. All prices quoted must be exclusive of VAT.

Costs for carrying out and delivering services by the provider, according to the Terms of Reference must be clearly set out according to the form required in the pricing schedule (part 3 to this documentation). Please note that this includes likely out of pocket expenses incurred in delivering the service. The Utility Regulator will require that value for money is achieved in all aspects of this project including the payment of reasonable expenses. Where travel is necessary (the office has video conference facilities which may be used as an alternative wherever possible) the most economical means of travel **MUST** be booked and the type of flight etc that you propose to book must be specified in the expenses section of the tender. In the event that the winning bidder fails to comply without good reason, the Utility Regulator reserves the right to cut the expenses that will be paid.

**Conflict of Interest**

Tenderers must confirm in their proposals that there would be no conflict or perceived conflict of interest in relation to their servicing this contract. A statement to confirm this should be made in the covering letter sent with the completed tender documentation.

**Liability**

No variances have been made regarding the standard condition 28 of the contract below.

**Contact Details**

If tenderers require further information or wish to clarify any points of doubt or difficulty relating to the tender documentation before submitting their tender. For the purposes of this contract the contact point is: -

Karen McConnell  
The Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

Tel: 02890 3216342

Email: karen.mcconnell@niaur.gov.uk

**Part 2**

**Terms of Reference and Consultancy  
Brief**



## **Terms of Reference for Consultancy input into the General Gas Engineering and Regulatory Advice**

### **Background**

- 1) The Northern Ireland Authority for Utility Regulation (Utility Regulator) is a Non-Ministerial Government Department. It is headed by a Board of Directors, comprising seven non-executive Directors and one executive Director – the Utility Regulator’s Chief Executive. The Chairman is Peter Matthews. It is not a policy-making department of government and its role is to ensure that the utility industries in Northern Ireland are regulated and developed within the strategic policy parameters determined by Ministers. Within the office, the Utility Regulator currently has approximately 70 staff. The Utility Regulator’s annual budget is around £7m this year.
- 2) In March 2009, the Utility Regulator published its Forward Work Programme for 2009-10. The Programme, together with further information about the work of the Authority, may be viewed at [www.niaur.gov.uk](http://www.niaur.gov.uk). Also available from the website, is our five year Corporate Strategy document.

### **Electricity**

- 3) The main statutory framework for the Utility Regulator’s work in electricity is set out in the Electricity (Northern Ireland) Order 1992, the Energy (Northern Ireland) Order 2003 and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007. Our principal objective is to protect consumers’ interests, wherever appropriate by promoting effective competition, and we have a series of further objectives relating to universal service, financeability, sustainability and vulnerable customers.
- 4) Northern Ireland has around 805,000 electricity consumers with load split around 92% / 8% between domestic and non-domestic customers. This electricity is generated by three main power stations, plus a large number of smaller and renewable stations. Significant volumes are imported from Scotland through the 450MW Moyle interconnector, and there is a 500MW transmission line to the Republic of Ireland. Electricity generation on the island of Ireland is around 60% gas-fired, with peat, coal and wind also being significant fuels.
- 5) Northern Ireland belongs to the all-island Single Electricity Market (SEM). This is the only regional market in Europe with fully integrated arrangements for regulation, scheduling, and dispatch, as well as a high level of harmonisation in system operation and network tariff arrangements. The SEM is regulated by the SEM Committee which consists of three members from the North, three from the Irish Republic’s Commission for Energy Regulation (CER) and an independent member.

### **Gas**

- 6) Northern Ireland’s gas infrastructure is still under construction. With power generation as anchor-load, transmission lines have been constructed from Belfast to the North-West and from the border to the Belfast area.

- 7) There are around 120,000 gas customers in Northern Ireland. These are mostly in the Greater Belfast area, on the Phoenix network that has been under construction since 1996. In recent years 10 towns near the two main transmission lines have also seen the construction of gas distribution networks, by firmus Energy.
- 8) The fragmentation of our gas industry is mirrored across the island. The regulators are now engaged in a programme of work to design common arrangements for gas (CAG). These should simplify system operation, strengthen supply security and provide a sound basis for future investments in gas infrastructure.

### **Water**

- 9) The Water Directorate was established on 1 April 2007 with the specific responsibility for the economic regulation of the water and sewerage industries in Northern Ireland. Our principal role is to regulate Northern Ireland Water Ltd (NIW) in a way that provides incentives and encourages the company to achieve the highest possible service for customers in terms of both quality and value.
- 10) The Utility Regulator's duties with respect to water and sewerage are broadly in line with the role currently discharged by Ofwat in England and Wales; although somewhat wider in one or two instances (e.g. we have wider functions in relation to treatment of land disposals).

### **Other Work Streams**

- 11) The Utility Regulator holds concurrent competition law powers and is Northern Ireland's competition authority for the industries it regulates.
- 12) We are uniquely placed as the UK's only cross-utility regulator, and Northern Ireland's only non-ministerial government department. These facts create challenges and opportunities in equal measure which the Utility Regulator is keen to address over the coming years.
- 13) The Utility Regulator is also responsible for certain aspects of the Government's "green" agenda and works daily on administrative and monitoring aspects of Northern Ireland's Renewables Obligation (with assistance from Ofgem on an agency basis), via the issuance of Renewables Obligation Certificates. It also has a guiding role to play with the Northern Ireland's Energy Efficiency Levy. The Utility Regulator also has a role in working with the regulated companies to deliver Social Action Plans.
- 14) The Utility Regulator has quasi-judicial powers to determine certain complaints, disputes and appeals.

### **Terms of Reference for the Consultancy Project**

- 15) The prospective consultants will provide general engineering and regulatory advice to the Gas Group within the Utility Regulator on a 'call off' basis. Detailed input may be required in the following instances:
  - i) Advise on all relevant issues such as engineering, safety and cost efficiencies

- ii) Advise on relevant issues pertaining to the establishment and modification of gas transmissions and distribution Network codes
- iii) Assist in gas price control exercises and establish economic levels of spend for regulated companies
- iv) Assist in determination of pipeline capacities and maximising operational arrangements of the various regulated natural gas assets
- v) Assist in licence enforcement and clarification of relevant licence related engineering issues
- vi) Attend meetings with the Utility Regulator, DETI, private companies and other industry players
- vii) Any other issues pertaining to assist and fulfil the Gas Branch to meet its statutory duties as set out in the Gas Order 1996 and the new Energy Order 2003.

### **Timetable**

- 16) Tenders must be received by Thursday 28th January 2010 before 3pm. Selection of the winning tender will take place mid January. This consultancy assignment is scheduled to commence on the Wednesday 3<sup>rd</sup> February 2010

### **Relationship between the Utility Regulator and Successful Provider(s)**

- 17) Relationships must be centred on the need for mutual confidence, understanding of role, co-operation and where necessary confidentiality / sensitivity of information. We need to ensure that the consultants are able to provide quality expertise, advice and delivery of a high quality the Utility Regulator consultation paper that can withstand robust analysis. The successful provider(s) must ensure that all services provided respect the highly sensitive nature of the specialist work of the Authority and the need for the highest quality level of content.
- 18) Considerable communication will be required between the winning consultant(s) and the Utility Regulator personnel in the gas directorate. This needs to be a fundamental aspect of the assignment. To aid this, the project will be led by a project manager within the Utility Regulator.

### **Reporting Requirements**

- 19) The Utility Regulator shall be entitled to establish such monitoring and budgetary arrangements in relation to the operation of the contract as the Utility Regulator acting reasonably may deem appropriate. The winning tenderer will be required to provide such assistance and co-operation as necessary.

### **Hospitality and Gifts**

20) Consultants working for the Utility Regulator shall be bound by the terms of the Statement on Acceptance and Provision of Gifts and Hospitality. A copy will be provided to the winning tenderer at the time of commencement of the contract. The fundamental principles underlying the Statement are defined as;

- a) corruptly accept any gift or consideration as an inducement or reward for doing, or refraining from doing, anything in that capacity; or
- b) showing favour or disfavour to any person; or
- c) receiving money, gifts or consideration from a person or organisation holding or seeking to obtain a Government contract

21) A breach of any part of the Statement will be reported to the directors or other senior management of the winning tenderer and the Utility Regulator reserves the right to consider the future of the contract in these circumstances.

**Information to be supplied by Service Provider**

22) Prospective tenderers must comply with the information requirements set out in the "Instructions to Tenderers" section of this tender. Failure to do so in full will result in the tender being rejected.

**Part 3**  
**Pricing Schedule**

**Pricing Schedule: Fees - Call Off Contracts**

<b>Pricing Schedule: Fees - Call Off Contracts</b>						
<b>Consultant (name)</b>						
<b>Grade</b>						
<b>Call Off Specialism</b>		<b>Call Off Rate Per Hour</b>				
<b>1</b>						
<b>2</b>						
<b>3</b>						
<b>4</b>						
<b>5</b>						
<b>6</b>						
<b>7</b>						
<b>8</b>						
<b>9</b>						
<b>10</b>						
<b>11</b>						
<b>12</b>						

---

**Pricing Schedule: Expenses**

<b>Pricing Schedule: Expenses</b>						
<b>Consultant (name)</b>						<b>Expenses (£)</b>
<b>Grade</b>						
<b>Key Activities/Tasks</b>						
<b>1</b>						
<b>2</b>						
<b>3</b>						
<b>4</b>						
<b>5</b>						
<b>6</b>						
<b>7</b>						
<b>8</b>						
<b>9</b>						
<b>10</b>						
<b>11</b>						
<b>12</b>						
<b>Total Days/consultant</b>						

**Part 4**  
**Forms and Certificates**



---

## Instructions

The following forms are contained in this section and must be completed in full to ensure your tender is valid;

Form of Tender	(Sign and return)
Certificate relating to Bonafide Tender	(Sign and return)
VAT Registration	(Sign and return)
Fair Employment and Treatment (Northern Ireland) Order 1998	(Sign and return)
Freedom of Information Statement	(Sign and return)
Authorised Representatives	(Sign and return)

---

**A: CONTRACT FOR: Utility Regulator – Consultancy input into General Gas Engineering and Regulatory Advice**

I/We the undersigned hereby tender for the above contract in accordance with the attached Conditions of Contract and Specification at the prices quoted in the Schedule forming part of my/our tender response.

I/We agree that this Tender together with your written acceptance thereof shall constitute a binding contract in relation to the whole or such part of the Tender as may be specified in your written acceptance.

I/We have read, accept and agree to abide by the attached Conditions of Contract which take precedence now and for the life of this Contract over any terms, conditions, stipulations or provisos which may accompany or be contained in any correspondence submitted by me/us in connection with this Contract. We acknowledge and agree that any reference to, or submission of, our standard terms and conditions of business (whether in whole or in part (e.g. our disclosure protocols) or whether signed or unsigned by you) shall be for information only, and shall not bind you above and beyond your obligations under the attached Conditions of Contract.

I/We understand that the Utility Regulator does not bind itself to accept the lowest or any tender submitted in response to this enquiry and may accept the whole or part of any tender.

I/We understand the Utility Regulator reserves the right to discontinue the award procedure in the event of irregular tenders or in the absence of appropriate tenders and in such circumstances may use the negotiated procedure without a further call for competition.

I/We warrant that I/we have all the requisite corporate authority to sign this tender.

Dated this _____ day of _____ 2010	
Signed by/on behalf of the tenderer	
Printed	
Full name of tenderer or in the case of a partnership the full names of all partners (block capitals)	
Registered address	

---

**B: Certificate Relating to Bona Fide Tender**

The essence of tendering is that the client shall receive bona fide competitive tenders from all firms tendering. In recognition of this principle, we certify that this is a bona fide tender intended to be competitive and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangements with any other person.

We also certify that we have not:

- communicated to a person other than the person calling for these tenders the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of this tender;
- entered into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted;
- offered or paid or given or agreed to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

We undertake that we will not do any of the acts mentioned in paragraphs 2a, 2b or 2c above at any time before the acceptance or rejection of this tender.

In this certificate the word "person" includes any persons and anybody or association, corporate or unincorporate and "any agreement or arrangement" includes any such transaction, formal or informal and whether legally binding or not.

Dated this _____ day of _____ 2010	
Signed	
Printed	
For and on behalf of:	

---

**C: VAT Registration**

Part 1 or Part 2 **and Part 3** to be completed as appropriate by the Tenderer and returned with Tender Documents:-

<b>Part 1</b>	
My/Our VAT registration number is:	
Signed by:	
For and on behalf of:	
Dated this _____ day of _____ 2010	

<b>Part 2: I/We are “exempt” from VAT under the terms of the Value Added Tax Act 1994</b>	
My/Our VAT registration number is:	
Signed by:	
For and on behalf of:	
Dated this _____ day of _____ 2010	

<b>Part 3: Please indicate which of the following best describes the economic status of your company/organisation</b>	
Small and Medium Sized Enterprise	Y/N
Social Economy Enterprise	Y/N
Voluntary and Community Organisation	Y/N
If other please specify	

:

---

---

**D: Fair Employment and Treatment (Northern Ireland) Order 1998**

1. Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998 provides inter alia that a public authority shall not accept an offer to execute any work or supply any goods or services where the offer is made by an unqualified person in response to an invitation by the public authority to submit offers. Article 64(4) also provides that the public authority shall take all such steps as are reasonable to secure that no work is executed or supplies or services supplied for the purposes of such contracts as are mentioned above by an unqualified person.
2. For the purposes of Articles 64-66 of the Order, an unqualified person is a person on whom a notice has been served under Article 62(2) or Article 63(1) of the Order and which has not been cancelled.
3. Mindful of the Order, the Utility Regulator has decided that it shall be a condition of tendering that a contractor shall not be an unqualified person for the purpose of Articles 64-66 of the Order.
4. Contractors are therefore asked to complete and return the form endorsed hereon, with their tender, to confirm that they are not unqualified persons and to undertake that no work shall be executed or supplies or services supplied by an unqualified person for the purposes of any contract with the Utility Regulator to which Article 64 of the Order applies.

**Fair Employment and Treatment (Northern Ireland) Order 1998**

- 1) I/We hereby declare that I am/we are not unqualified for the purposes of the Fair Employment and Treatment (Northern Ireland) Order 1998.
- 2) I/We undertake that no work shall be executed or supplies or services supplied by any unqualified person for the purposes of any contract with NIAUR, to which Article 64 of the Order apply.

Signed by:	
Duly authorised to sign for and on behalf of:	
Date:	

---

**E: Freedom of Information Statement**

**With reference to Section 5 of the Instructions to Tenderers and Clause 24 of the Terms and Conditions of Contract, please complete where appropriate.**

**I/We consider that:**

The information in this tender is sensitive\*.

The information in this tender is not sensitive\*.

**\*Delete as Appropriate**

If the information supplied in this tender is considered sensitive, please state which information should not be disclosed and provide reasons.

Please state the period for which information should remain commercially sensitive.	
Signed	
Block Capitals	
For and on behalf of:	
Date	

---

**F: Authorised Representatives**

**The Authorised Representative of the Utility Regulator for the purposes of the Contract is:**

***Mr Brian McHugh  
(Gas Director)***

Signature: .....

Date: .....

**The Authorised Representative of the Contractor for the purpose of the Contract is:**

***Your Company Name***

Signature: .....

Date: .....

---

# **Part 5**

## **Terms and Conditions of Contract**



---

**CONDITIONS OF CONTRACT**

**FOR**

**SERVICES**

**FOR**

**Northern Ireland Authority for Utility Regulation  
(The Utility Regulator)**

**Consultancy Title: General Gas Engineering and Regulatory  
Advice**

**Contract Reference: CON/32/09**

---

## **CONTENTS OF CONDITIONS OF CONTRACT**

### **Introduction**

1. Interpretation
2. Entire Agreement
3. Period of Contract
4. Services/Appointment of Contractor

### **Provision of Services**

5. Conditions affecting provision of services
6. Contractor Status
7. Department's Property
8. Equipment
9. Staff
10. Co-ordination
11. Use of Departments Premises
12. Right of Access
13. Manner of providing the Services
14. Standards
15. Overtime Working
16. Progress Reports

### **Payments**

17. Payment
18. Value Added Tax
19. Recovery of Sums Due
20. Price Adjustments

### **Protection of Information**

21. Intellectual Property Rights - assignment and indemnity
22. Security
23. Confidentiality
24. Freedom of Information
25. Publicity
26. Right of Audit
27. Data Protection Act 1998

### **Liabilities**

28. Indemnity and Insurance

### **Compliance with Legal and Other Obligations**

29. Corrupt Gifts and Payments of Commission
30. Statutory and Other Regulations
31. Equality of Opportunity
32. Health and Safety
33. Social Security System
34. Conflict of Interest
35. Official Secrets Act

---

## **Control of Contract**

- 36. Transfer, Sub-Contracting and Assignment
- 37. Severability
- 38. Waiver
- 39. Variations
- 40. Performance Monitoring

## **Default and Termination**

- 41. Force Majeure
- 42. Bankruptcy
- 43. Termination on Default
- 44. Break
- 45. Consequences of Termination

## **Disputes**

- 46. Arbitration
- 47. Law

Appendix A to Part 5: Variation to Contract

## 1. Interpretation

1.1. In these Conditions the following words shall have the following meanings except where the context otherwise requires:

a	Amendments	The amendments (if any) to the Contract which may be agreed by the Contractor and the Utility Regulator [in writing]
b	Authorised Representative	The nominated representative of the Utility Regulator
c	Commencement Date	3 <sup>rd</sup> February 2010
d	Conditions	The terms and conditions set out herein.
e	Sensitive Information	An overarching term for information that may be security classified as protected or above by the Utility Regulator, the Contractor or any aspect of their respective businesses, the Contract, its contents or the transactions contemplated by it and the negotiations relating to the Contract.
f	Contract	The tender completed by the counterparty to these Conditions and to which these Conditions relate, these Conditions; any specification or operational requirements; any drawings, any schedule of prices or rates or lump sum as submitted by the accepted tenderer, any letter of acceptance issued by the Utility Regulator to the accepted tenderer together with such correspondence, if any, between the accepted tenderer and the Utility Regulator, as may be agreed by both parties to form part of the Contract.
g	Contractor	The person, firm or corporate body whose tender shall have been accepted by the Utility Regulator and who is a counter party to these Conditions and shall include the Contractor's personal representatives, successors, and permitted assigns.
h	Contractors' Staff	Employees, sub-contractors, employees and agents or any representatives of both Contractor and sub-contractor of the Contractor.
i	Utility Regulator	Northern Ireland Authority for Utility Regulation (NIAUR)

j	Equipment	All materials, plant, equipment, and consumables other than the Utility Regulator's property to be used by the Contractor in the provision of the Services.
k	Intellectual Property	All patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade, dress or get-up, rights in goodwill or to sue for passing off, rights in design, rights in computer software, information sets collected and database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
l	Premises	Land or buildings where the Services are performed.
m	Services	The services to be provided by the Contractor as set out in Part 2, together with any other services which the Contractor provides or agrees to provide to the Utility Regulator.

1.2. Words importing the singular shall also include the plural, and importing the masculine shall also include the feminine and vice versa where the context requires.

1.3. A reference to any statute, enactment, order, regulations or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted.

1.4. A reference to a law:

1.4.1. includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgement, rule of common law or equity;

1.4.2. is a reference to that law as amended, consolidated, supplemented or replaced; and

1.4.3. is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law

1.5. A reference to a document (including these conditions) is a reference to that document (including any schedules, annexures and appendices) as amended, consolidated, supplemented, novated or replaced.

---

## **2. Entire Agreement**

- 2.1. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, agreements, communication, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- 2.2. This Contract takes precedence now and for the life of this Contract over any terms, conditions, stipulations or provisos which may accompany or be contained in any correspondence submitted by the Contractor in connection with the Contract or any part thereof. The Contractor acknowledges and agrees that any reference to, or submission of, its standard terms and conditions of business (whether in whole or in part (e.g. disclosure protocols) or whether signed or unsigned by the Utility Regulator) shall be for information only, and shall not bind the Utility Regulator above and beyond its obligations under these Conditions of Contract.

## **3. Period of Contract**

- 3.1. The Contract shall take effect on the Commencement Date and shall remain in force for period of up to 2 years but with the written agreement of both parties may be extended for a further year, unless it is otherwise terminated in accordance with the provisions of these Conditions.

## **4. Services/Appointment of Contractor**

- 4.1. The Utility Regulator hereby appoints the Contractor to provide the Services during the term of the Contract, and the Contractor shall act in that capacity subject to the Contract.
- 4.2. Requests to provide the Services may be transmitted by the Utility Regulator in writing by post, fax or other electronic means as may be agreed by both parties. In cases of urgency verbal instructions may be given by the Utility Regulator pending written confirmation.

## **5. Conditions Affecting Provision of Services**

- 5.1. The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the means of communication with and access to the Premises, the supply of and conditions affecting labour, the suitability of the Utility Regulator's property and the equipment necessary for the performance of the Services, subject to all such matters being discoverable by the Contractor.

## **6. Contractor Status**

- 6.1. Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Utility Regulator and the Contractor.

---

## **7. NIAUR'S Property**

- 7.1. All NIAUR's property shall remain the property of the Utility Regulator and shall be used in the performance of the Contract and for no other purpose unless the prior approval of the Utility Regulator is obtained.
- 7.2. On receipt of any item of the Utility Regulator's property the Contractor shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective; within 14 days of receipt of any item of the Utility Regulator's property, or such other period as may be agreed by the parties, the Contractor shall notify the Utility Regulator in writing of any defects discovered; within 14 days after receiving such notification, the Utility Regulator shall inform the Contractor of the action to be taken
- 7.3. The Utility Regulator shall be responsible for the repair or replacement of the Utility Regulator's property unless the need for repair or replacement is caused by the Contractor's failure to comply with Condition 7.5, or by the negligence or default of the Contractor.
- 7.4. The Contractor shall be responsible for his own costs resulting from any failure of the Utility Regulator's property, unless he can demonstrate that the Utility Regulator's had caused undue delay in its replacement or repair.
- 7.5. The Contractor shall maintain all items of the Utility Regulator's property in good and serviceable condition, fair wear and tear excepted, and in accordance with the manufacturer's recommendations.
- 7.6. The Contractor shall be liable for any loss of or damage to any the Utility Regulator's property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Utility Regulator.
- 7.7. The Contractor shall not in any circumstances have a lien on any of the Utility Regulator's property and shall take all steps necessary to ensure that the title of the Utility Regulator and the exclusion of any lien are brought to the attention of any third party dealing with any of the Utility Regulator's property.
- 7.8. The Contractor undertakes the due return of all re-useable Utility Regulator property and will be responsible for all loss thereof or damage thereto from whatever cause. Deterioration in such property resulting from its normal and proper use in the performance of the Contract shall not be deemed to be loss or damage, except in so far as the deterioration is contributed to by any want of maintenance and repair by the Contractor.

## **8. Equipment**

- 8.1. The Contractor shall provide and maintain the equipment in good and serviceable condition.
- 8.2. The Equipment shall be at the risk of the Contractor and the Utility Regulator shall have no liability for any loss of or damage to the equipment unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Utility Regulator..
- 8.3. The Contractor shall provide for the haulage or carriage of the equipment to the premises and its off-loading and removal when no longer required.

---

8.4. The Utility Regulator may at its option purchase any item of equipment from the Contractor at any time, if the Utility Regulator considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Utility Regulator shall be the fair market value.

## **9. Staff**

9.1. The Contractor warrants and represents that all staff assigned to the performance of the Contract shall possess such skill and experience as is necessary for the proper performance of the Contract.

9.2. Where the Contract provides that the work shall be done by named staff the Contractor undertakes to take all reasonable steps to ensure that his staff remain for the full period of the Contract. Unavoidable changes in the Contractor's staff proposed by the Contractor and agreed by the Authorised Representative shall be subject to not less than one month's written notice.

9.3. If for any other reasons changes in the Contractor's staff become necessary in the opinion of the Authorised Representative such changes shall be subject to 1 week's written notice by the Authorised Representative to the Contractor.

9.4. In the event that the Contractor is unable to provide replacement staff acceptable to the Authorised Representative within sufficient time to enable the Contractor to complete the work on time then the Utility Regulator may obtain replacement staff from other sources or terminate the Contract at its discretion.

## **10. Co-ordination**

10.1 The Contractor shall co-ordinate his activities in the provision of the Services with the Utility Regulator (including the Authorised Representative) personnel and other contractors engaged by the Utility Regulator.

## **11. Use of the Utility Regulator's Premises**

11.1 Where the Services are performed on the Utility Regulator's premises the Contractor shall have use of the NIAUR's premises without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract.

11.2 The Contractor shall not use the Utility Regulator's premises for any purpose or activity other than the provision of the Services unless given prior approval by the Utility Regulator.

11.3 Should the Contractor require modifications to the Utility Regulator's premises, such modifications shall be subject to the Utility Regulator prior approval and shall be carried out by the Utility Regulator at the Contractor's expense. The Utility Regulator shall undertake approved modification work as soon as reasonably practicable. Ownership of such modifications shall rest with the Utility Regulator.

11.4 The Contractor shall not deliver the equipment to the Utility Regulator's premises outside normal working hours without its prior approval. The Contractor shall maintain the equipment and its place of storage within the Utility Regulator's premises in a safe, serviceable and clean condition.



- 
- 11.5 On the completion or earlier termination of the Contract, the Contractor shall, subject to the provisions of Condition 8.5, remove the equipment and shall clear away the Utility Regulator's premises all waste arising from the performance of the services and shall leave the Utility Regulator's premises in clean and tidy condition.
  - 11.6 Whilst on the Utility Regulator's premises, all Contractors staff shall comply with such rules, regulations and other requirements as may be in force in respect of the conduct of persons attending and working on the Utility Regulator's premises.

## **12. Right of Access**

- 12.1. The Utility Regulator's reserves the right to refuse to admit to any premises occupied by or on behalf of itself or the Crown any person employed by the Contractor, or by a sub-contractor, whose admission would be, in the opinion of the Utility Regulator's undesirable.
- 12.2. The Contractor shall comply with the requirements of the Utility Regulator in regard to ensuring the identity and bonafides of all workers and other persons requiring to be admitted to any officially occupied premises in connection with the Contract.
- 12.3. If the Contractor shall fail to comply with condition 12.2 and if the Utility Regulator shall decide that such failure is prejudicial to the interests of the Utility Regulator or the Crown, then the Utility Regulator may terminate the Contract if the Contractor does not comply with such provisions of condition 12.2 within a reasonable time of written notice to do so provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued thereafter to the Utility Regulator.
- 12.4. The decision of the Utility Regulator as to whether any person is to be refused admission to any premises occupied by or on behalf of itself or the Crown and as to whether the Contractor has failed to comply with condition 12.2 shall be final and conclusive.

## **13. Manner of Providing the Services**

- 13.1. The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with good industry practice. Timely provision of the Services is of the essence of the Contract.
- 13.2. The Services shall be performed only on sites previously approved by the Utility Regulator.
- 13.3. The Contractor shall, upon the instruction of the Authorised Representative:
- 13.4. remove from the Utility Regulator's premises any materials which are not in accordance with those contained in any standards or quality specified and substitute proper and suitable materials;
  - 13.4.1. remove and properly re-execute any work which is not in accordance with the Contract, irrespective of any previous testing or payment by NIAUR. The Contractor shall at his own expense complete the re-executed work correctly in accordance with the Contract within such reasonable time as the Utility Regulator may specify.
- 13.5. The signing by the Authorised Representative of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

---

## **14. Standards**

- 14.1. Materials and processes used in connection with the Services shall be in accordance with any standards and quality specified.
- 14.2. At the request of the Authorised Representative, the Contractor shall provide proof to the Utility Regulator's satisfaction that the materials and processes used or proposed to be used, conform to those standards.
- 14.3. The introduction of new methods or systems which impinge on the Services shall be subject to the Utility Regulator's prior approval.

## **15. Overtime Working**

- 15.1. The Contractor shall not normally be prevented from working reasonable overtime hours on the Utility Regulator's premises if he so desires, provided that he obtains the Utility Regulator's prior approval and it is at no additional cost to the Utility Regulator.

## **16. Progress Reports**

- 16.1. If the Utility Regulator requests progress reports the Contractor shall render progress reports at such time and in such form as may be specified or otherwise agreed upon between the parties.
- 16.2. The submission and receipt of progress reports shall not prejudice the rights of either party under the Contract.

## **17. Payment**

- 17.1. The Utility Regulator shall pay the Contractor for work completed at the rates or prices contained in the pricing schedule [or other interest documentation]. Where payment is based upon daily rates the Contractor and his staff will be expected to work 7½ hours per day, exclusive of meal breaks, unless alternative arrangements are agreed with the Utility Regulator.
- 17.2. In cases where payment is via the Government Purchasing Card, all payments shall be made to Service Providers by the nominated Bank in accordance with the provisions of the scheme.
- 17.3. In all other cases payment shall be due within thirty (30) days of receipt by the Utility Regulator of a correct application for payment or invoice or as otherwise specified in the Contract.
- 17.4. The Utility Regulator reserves the right to withhold payment against any invoice which is not submitted in accordance with the Contract or which covers or purports to relate to services which have not been provided in accordance with the Contract and shall forthwith notify the Contractor accordingly in writing.

## **18. Value Added Tax**

- 18.1. The Utility Regulator shall pay to the Contractor, in addition to the charges due for the work performed under the Contract, a sum equal to the value added tax as may be properly chargeable on the value of the Services provided in accordance with the Contract.

- 
- 18.2. Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Valued Added Tax Act 1994.
- 18.3. The Contractor shall, if so requested by the Utility Regulator, furnish such information as may reasonably be required by the Utility Regulator as to the amount of value added tax chargeable on the value of goods and services supplied in accordance with the Contract and payable by the Utility Regulator to the Contractor in addition to the charges for work. Any over payment by the Utility Regulator to the Contractor shall be a sum of money recoverable from the Contractor.
- 18.4. If the costs of the Contract are increased or decreased any monies thereby payable shall have added to them a sum equal to any appropriate adjustment in respect of value added tax due on the final value of the work.

## **19. Recovery of Sums Due**

- 19.1. Whenever under the 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 Utility Regulator in respect of any breach of the Contract), the Utility Regulator may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under the Contract or under any other contract with the Utility Regulator or with any other department, office or agency of the Crown.
- 19.2. The Utility Regulator shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 19.1 giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 19.3. Any overpayment by the Utility Regulator to the Contractor, whether of the contract price or of value added tax, shall be a sum of money recoverable by the Utility Regulator from the Contractor.

## **20. Price Adjustments**

- 20.1. Prices quoted shall remain firm for the initial contract period set out in Condition 3.1.
- 20.2. In the event that the contract period is extended a price review shall take place and any increases or decreases shall be agreed by both parties and recorded as a variation in line with Condition 39. Work arising from any variation will normally be carried out by the contractor at the daily rate quoted in the original tender.

## **21. Intellectual Property Rights - Assignment and Indemnity**

- 21.1. The Contractor hereby assigns to the Utility Regulator all Intellectual Property Rights owned by the Contractor in any material, including all data and data sets, which are generated by the Contractor and delivered to the Utility Regulator in the performance of the Services and shall waive all moral rights relating to such material. The Contractor shall not reproduce, publish or supply any such material to any person other than the Utility Regulator without prior approval in writing.
- 21.2. In performing the Services the Contractor shall obtain the Utility Regulator's approval before utilising any material which is or may be subject to any Intellectual Property Rights other than those referred to in Condition 21.1.

---

21.3. The Contractor shall indemnify the Utility Regulator against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, or the use by the Utility Regulator following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.

## **22. Security**

22.1. The Contractor shall take all measures necessary to comply with the provisions of any law or the directions or regulating of any regulatory or governmental authority relating to security which may be applicable to the Contractor in the performance of the Services.

22.2. The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that staff have notice that all provisions referred to in Condition 22.1 will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

22.3. Whilst on the Utility Regulator's premises, staff shall comply with all security measures implemented by the Utility Regulator in respect of personnel and other persons attending those premises. The Utility Regulator shall provide copies of its written security procedures to the Contractor on request.

22.4. The Utility Regulator shall have the right to carry out any search of staff or of vehicles used by the Contractor at the Utility Regulator's premises.

22.5. The Contractor shall co-operate with any investigation relating to security which is carried out by the Utility Regulator or by any person who is responsible to the Utility Regulator for security matters and when required by the Authorised Representative:

22.6. Shall use his best endeavours to make any staff identified by the Authorised Representative available to be interviewed by the Authorised Representative, or by a person who is responsible to the Utility Regulator for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by a contractor's representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authorised Representative and any contractor's representative; and

22.7. Shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Utility Regulator or by a person who is responsible to the Utility Regulator for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Utility Regulator shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

## **23. Confidentiality**

23.1. Each party must, and must use its best endeavours to ensure that its officers, employees, agents or professional advisers:

23.1.1. treat all sensitive information according to the requirements of its security classification and safeguard it accordingly; and

- 
- 23.1.2. not disclose any sensitive information to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- 23.2. The contractor shall take all necessary precautions to ensure that all sensitive information obtained from the Utility Regulator under or in connection with the contract is given only to such officers, employees, agents or professional advisors engaged to advise it in connection with the contract as is strictly necessary for the performance of the contract and only to the extent necessary for the performance of the contract;
- 23.2.1. the contractor shall ensure that its officers, employees, agents or professional advisers are aware of the contractor's confidentiality obligations under this contract.
- 23.3. The contractor shall not use any sensitive information it receives from the Utility Regulator otherwise than for the purposes of the contract.
- 23.4. The provisions of conditions 23.1 to 23.4 shall not apply to any sensitive information received by one party from the other:-
- 23.4.1. which is or becomes public knowledge (otherwise than by breach of this condition);
- 23.4.2. which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- 23.4.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 23.4.4. is independently developed without access to the sensitive information; or
- 23.4.5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to condition 24.3 (Freedom of Information)
- 23.5. Nothing in this Condition shall prevent the Utility Regulator disclosing any sensitive information for the purpose of:
- 23.5.1. the examination and certification of the Utility Regulator's accounts; or
- 23.5.2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Utility Regulator has used its resources; or
- 23.5.3. disclosing any sensitive information obtained from the Contractor; or
- 23.5.4. to any government department or any other contracting authority; or
- 23.5.5. to any person engaged in providing any services to the Utility Regulator for any purpose relating to or ancillary to the Contract.

---

All government departments or contracting authorities receiving such sensitive information shall be entitled to further disclose the sensitive information to other government departments or other contracting authorities on the basis that the information is sensitive and is not to be disclosed to a third party which is not part of any government department or any contracting authority.

- 23.6. Provided that in disclosing information under sub paragraph 23.5 the Utility Regulator discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 23.7. Nothing in this Condition 23 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of confidential information or an infringement of Intellectual Property Rights.
- 23.8. In the event that the Contractor fails to comply with this Condition 23, the Utility Regulator reserves the right to terminate the Contract by notice in writing with immediate effect.
- 23.9. The provisions under this Condition are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

## **24. Freedom of Information**

- 24.1. The Contractor acknowledges that the Utility Regulator is subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") and the Environmental Information Regulations 2004 and shall assist and cooperate with NIAUR (at the Contractor's expense) to enable the Utility Regulator to comply with these information disclosure requirements.
- 24.2. The Contractor shall and shall procure that its sub-contractors shall:
- 24.3. Transfer the Request for Information to the Utility Regulator as soon as practicable after receipt and in any event within two working days of receiving any Request for Information;
- 24.4. Provide the Utility Regulator with a copy of all information in its possession or power in the form that the Utility Regulator's requires within five working days (or such other period as the Utility Regulator may specify) of the Utility Regulator requesting that Information; and
- 24.5. Provide all necessary assistance as reasonably requested by the Utility Regulator to enable the Utility Regulator to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations as the case may be].
- 24.6. The Utility Regulator shall be responsible for determining at its absolute discretion whether any commercially sensitive information and/or any other information:-
- 24.6.1. is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
  - 24.6.2. is to be disclosed in response to a Request for Information, and
  - 24.6.3. in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Utility Regulator.

---

24.7. The Contractor acknowledges that NIAUR may be obliged under the FOIA, or the Environmental Information Regulations 2004 to disclose Information:

24.7.1. without consulting with the Contractor, or

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

24.8. The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Utility Regulator to inspect such records as requested from time to time.

24.9. The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Utility Regulator may nevertheless be obliged to disclose Confidential Information in accordance with Clause 24.4.

## **25. Publicity**

25.1. The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior approval of the Utility Regulator, which shall not be unreasonably withheld.

## **26. Right of Audit**

26.1. 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 Utility Regulator and all payments made by the Utility Regulator.

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

## **27. Data Protection Act 1998**

27.1. The Contractor shall not disclose or allow access to any personal data provided by the Utility Regulator or acquired by the Contractor during the course of tendering for or executing the Contract, other than to a person employed or engaged by the Contractor or any sub-contractor, agent or other person concerned with the same.

27.2. Any disclosure of or access to personal data allowed under Condition 27.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.

27.3. The Contractor shall store or process such personal data only at sites specifically agreed in writing, in advance, with the Utility Regulator.

27.4. If the Contractor fails to comply with any provision of this Condition then the Utility Regulator may summarily terminate the Contract by notice in writing to the Contractor provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Utility Regulator.

---

27.5. If the Contractor or any employee, servant agent or sub contractor of the Contractor, having obtained without the consent of the Utility Regulator personal data within the meaning of the Data Protection Act 1998, directly or indirectly discloses or publishes the data to any other person or allows improper access to the data, or in any event directly or indirectly causes the loss, damage, or destruction of such data, he shall indemnify the Utility Regulator against all claims, proceedings, costs and expenses in respect of any damage or distress suffered whereby by any person.

27.6. The decision of the Utility Regulator upon matters arising under this Condition 27 shall be final and conclusive.

## **28. Indemnity and Insurance**

28.1. The Contractor shall indemnify the Utility Regulator to a limit of £5,000,000 (5 million pounds sterling against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury or loss of or damage to property which is caused directly or indirectly by any act or omission of the Contractor. This Condition 28.1 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his staff or sub-contractors, or by any circumstances within his or their control.

28.2. The Contractor shall effect and maintain with a reputable insurance 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 the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

28.3. The Contractor shall hold employer's liability insurance in accordance with any legal requirement for the time being in force.

28.4. The Contractor shall produce to the Utility Regulator's Representative, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

28.5. The terms 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 this Condition.

## **29. Corrupt Gifts and Payments of Commission**

29.1. The Contractor shall not:

29.1.1. offer or give or agree to give any person in Her Majesty's Service or who is an agent or employee of the Utility Regulator any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or any other contract for Her Majesty's Service and/or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract for Her Majesty's Service or the Utility Regulator;



- 
- 29.1.2. enter into this Contract or any other contract with the Utility Regulator or any government department in connection with which commission has been paid or agreed to be paid by him, or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Utility Regulator; or
- 29.1.3. act in any manner which is contrary to the Utility Regulator's Statement on Hospitality and Gifts.
- 29.2. Any breach of this Condition by the Contractor, the Contractors staff or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor, the Contractors staff and or the Utility Regulator) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf, (either with or without the knowledge of the Contractor, the Contractor's staff and or the Utility Regulator) under the Prevention of Corruption Acts, 1889 to 1916, in relation to this Contract or any other contracts for Her Majesty's Service, shall entitle the Department to determine the Contract and recover from the Contractor, the Contractors staff and or the Utility Regulator the amount of any loss resulting from such determination and/or to recover from the Contractor the Contractors staff and or the Utility Regulator the amount or value of any such gift, consideration or commission.
- 29.3. Any dispute, difference or question arising in respect of either the effect or the interpretation of this condition or the amount recoverable hereunder by the Utility Regulator from the Contractor or the right of the Utility Regulator to determine the Contract, or the amount or value of any such gift, consideration or commission shall be decided by the Utility Regulator whose decision shall be final and conclusive.

### **30. Statutory and Other Regulations**

- 30.1. The Contractor shall be deemed to have acquainted himself with any and all laws, regulations, recommendations, guidance or practices as may affect the Services.
- 30.2. The Contractor shall be deemed to have acquainted himself with British/European Standards, and relevant codes of practice as may be relevant to this Contract.
- 30.3. The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practical the standards and codes of practice are observed.

### **31. Equality of Opportunity**

- 31.1. The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination laws, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and the Employment Rights (Northern Ireland) Order 1996 and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Contractor under this agreement he has due regard to the need to promote equality of treatment and opportunity between:

- 
1. Persons of different religious beliefs or political opinions;
  2. Men and women or married and unmarried persons;
  3. Persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);
  4. Persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
  5. Persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
  6. Persons of different ages; and
  7. Persons of differing sexual orientation

31.2. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition 31.1 by all officers, agents, employees, consultants and sub-contractors of the Contractor.

### **32. Health and Safety**

- 32.1. The Contractor shall comply with all relevant environmental and safety law and shall comply with all legal requirements from time to time in force in relation to the Services. The Contractor's attention is drawn to the provision of the Health and Safety at Work (Northern Ireland) Order 1978 and in particular to Article 4 "General Duties of Employers to their Employees".
- 32.2. The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practicable, the health and safety of all persons who may be affected by the Services. Before commencing work on the Contract the Contractor, shall prepare a written policy of the health and safety of staff employed in connection with the Contract together with written organisational arrangements for carrying out the policy.

### **33. Social Security System**

- 33.1. The Contractor shall not employ any person whom he knows or ought to know is by reason of his employment engaged in any unlawful procurement of social security benefits or tax exemptions and the Contractor shall not make, facilitate or participate in the procurement of, any unlawful payments whatsoever, whether in the nature of social security fraud, or evasion of tax, or otherwise.
- 33.2. The Contractor shall prepare and maintain such records of his staff and all other persons engaged in the performance of this Contract by the Contractor as NIAUR may from time to time require.
- 33.3. Without prejudice to Condition 33.2 the Contractor shall forthwith on demand by the Utility Regulator furnish the Utility Regulator with the names, addresses and national insurance numbers of all persons employed by him under the contracts of service and shall forthwith on demand furnish the Utility Regulator with the names, addresses, periods of employment and exemption certificates of all persons employed by him under contracts for services.

---

33.4. The Contractor shall permit the Utility Regulator, its servants or agents at all reasonable times to enter on any premises of the Contractor for the purpose of inspection and investigation of the employment, social security and tax records of any person employed by the Contractor or engaged by him to carry out any works under the Contract.

#### **34. Conflict of Interest**

34.1. Provided that there shall be no conflict of interest and the Contractor shall fulfil his obligations to the Utility Regulator the Contractor shall be at liberty to enter into agreement with other public sector organisations elsewhere in the United Kingdom for the provision of services.

34.2. The Contractor warrants that he is not at the date hereof retained by any interest that could be in conflict with the work of the Utility Regulator and that for the duration of this Contract he will not accept instructions from any such interest either directly or indirectly nor do any other act which may give rise to conflict of interest.

#### **35. Official Secrets Act**

35.1. The provisions of the Official Secrets Act 1911 - 1989 in general and the provisions of the Official Secrets Act 1989 in particular shall apply to the Contractor, the staff and all persons engaged whether as agents or sub-contractors by the Contractor on any work under the Contract, and shall continue to apply without limitation of time after the expiry or termination of the Contract, and the Contractor shall bring to the notice of each and every such person the provisions of the said Acts.

35.2. If the Utility Regulator shall at any time so direct, a declaration of knowledge of these provisions in such terms as the Utility Regulator shall require shall be signed by every such person as the Utility Regulator shall direct and be delivered to the Utility Regulator by the Contractor.

#### **36. Transfer, Sub Contracting and Assignment**

36.1. The Contractor shall not transfer, assign or in any way dispose of the Contract or a part thereof and shall not sub-contract any part of the provision of the Services without the prior written consent of the Utility Regulator.

36.2. It is a condition of such consent that the sub-contractor must undertake directly to perform the terms of the Contract in respect of the sub-contracted services as if he were the Contractor.

36.3. Any consent to sub-contract will not release the Contractor from any liability to the Utility Regulator in respect of the sub-contracted section and the contractors shall be responsible for the acts, defaults or neglect of any sub-contractor or its officers, agents or employees in all respects as they were the acts, defaults or neglect of the Contractor or its officers, agents, or employees.

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

---

36.5. The Utility Regulator may assign or in any other way dispose of its rights and obligations under the Contract or any part of it to any Department, office or agency of the Crown or any other body provided that any such assignment or other disposal shall not increase the burden of the Contractors obligations under this Contract.

### **37. Severability**

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

### **38. Waiver**

38.1. The failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

38.2. No waiver shall be effective unless it is communicated to the other party in writing.

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

### **39. Variations**

39.1. The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out at Appendix A.

39.2. In the event of an emergency the Utility Regulator shall have the right to vary the Contract by oral instructions given by the Utility Regulator's Authorised Representative, which shall be confirmed by the issue of a Variation to Contract Form within 7 days.

39.3. The Utility Regulator shall have the right to vary the Services at any time, subject to the variation being related in nature to the Services being provided, and no such variation shall vitiate the Contract.

39.4. The Contractor may request a variation provided that:

39.4.1. the Contractor shall notify the Authorised Representative in writing of any additional or changed requirement which it considers should give rise to a variation within 7 days of such occurrence first becoming known to the Contractor;

39.4.2. any proposed variation shall be fully supported by a quotation as detailed in Condition 39.5

39.5. The Contractor, within 14 days of being requested by the Utility Regulator's Authorised Representative or where requesting a Variation pursuant to Condition 39.4, shall submit a quotation to the Utility Regulator, such quotation to contain at least the following information:

39.5.1. a description of the work together with the reason for the propose variation;

- 
- 39.5.2. the price, where applicable;
  - 39.5.3. details of the impact, if any, on other aspects of the Contract.
- 39.6. The price for any variation shall, unless otherwise agreed between the parties, be calculated in the following order of precedence:
- 39.6.1. using the prices or rates;
  - 39.6.2. prices pro-rata to the prices or rates;
  - 39.6.3. prices based on the prices or rates.
- 39.7. The Utility Regulator shall either approve or reject any variation proposed by the Contractor.
- 39.8. In the event that the Contractor disputes any decision by the Utility Regulator to reject a proposed variation or contends that a proposed variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed variation every month and shall send the updated information to the Utility Regulator.

#### **40. Performance Monitoring**

- 40.1. The performance of the Contractor will be subject to monitoring and review against agreed quality aspects.
- 40.2. Where applicable, performance and or price indices may be applied by the Utility Regulator to measure the performance of the Contractor.
- 40.3. The Contractor shall ensure that information, records, and documentation necessary to monitor effectively the performance of the Contract are maintained and are available at all times to the Authorised Representative.

#### **41. Force Majeure**

- 41.1. Neither party shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the party concerned to avoid such failure or delay.
- 41.2. If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue.
- 41.3. For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

---

41.4. Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

## **42. Bankruptcy**

42.1. In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for the purpose of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders or any debentures secured by a floating charge of any property comprised in or subject to the floating charge, the Utility Regulator may at its discretion forthwith terminate this Contract.

## **43. Termination on Default**

43.1. The Utility Regulator may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:

43.1.1. the Contractor has not remedied the default to the satisfaction of the Utility Regulator within 30 days, or such other period as may be specified by the Department, after service of written notice specifying the default and requiring it to be remedied; or

43.1.2. the default is not capable of remedy; or

43.1.3. the default is a fundamental breach of the Contract

## **44. Break**

44.1. The Utility Regulator shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 3 months' written notice to the Contractor. The Utility Regulator may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

## **45. Consequences of Termination**

45.1. If the Utility Regulator terminates the Contract under Condition 43, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, the Utility Regulator shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Utility Regulator throughout the remainder of the term of the Contract. Where the Contract is terminated under Condition 43, no further payments shall be payable by the Utility Regulator until the Utility Regulator has established the final cost of making those other arrangements.

- 
- 45.2. If the Utility Regulator terminates the Contract, or terminates the provision of any part of the Services, under Condition 44, the Utility Regulator shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce equipment and labour costs as appropriate.
- 45.3. For the purposes of Condition 45.2 the Contractor shall submit to the Authorised Representative, within 14 working days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.
- 45.4. The Utility Regulator shall not be liable under Condition 45.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

#### **46. Arbitration**

- 46.1. All disputes, differences or questions between the parties to the Contract with respect to any matter arising out of or relating to the Contract, other than a matter of things as to which the decision of the Department is under the Contract to be final and conclusive, shall after written notice by either party to the Contract to the other be referred to a single arbitrator agreed for that purpose or in default of such agreement within twenty-one (21) days, appointed at the request of either party by the President of the Law Society of Northern Ireland. The decision of such arbiter shall be final and binding on the parties of the Contract.
- 46.2. The provision of the Arbitration Act 1996 shall apply to any arbitration under this contract and such arbitration shall be conducted solely within Northern Ireland.

#### **47. Law**

- 47.1. The Contract shall in all respects be governed by and construed in accordance with the laws of Northern Ireland and the parties hereby agree that the Courts of Northern Ireland shall have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with the Contract.

---

**Appendix A (to Part 5)**

(See Condition 39.1 of Contract)

**Variation to Contract Form**

**Contract Title: Utility Regulator – Consultancy input into XXXXXXXXXXXX**

**Contract Reference: XXXXXX**

The Contract is varied as follows.

--

Words and expressions in this Variation shall have the meaning/s given to them in the Contract.

The Contract, including any previous Variation(s), shall remain effective and unaltered except as amended by this Variation.

<b>Signed</b>			
<b>For the Utility Regulator</b>		<b>For Contractor</b>	
By		By	
Full Name		Full Name	
Grade		Title	
Date		Date	