

**DATED**

---

**SUPPLY OF GOODS & SERVICES AGREEMENT**

between

**NORTHERN REGIONAL COLLEGE (1)**

and

**[SUPPLIER] (2)**

in relation to

**[DESCRIBE CONTRACT]  
[(OJEU REFERENCE [ ])]**

## CONTENTS

---

### CLAUSE

1.	Interpretation .....	1
2.	Basis of Agreement .....	5
3.	Supply of Goods .....	5
4.	Delivery of Goods .....	6
5.	Supply of Services .....	7
6.	Change control .....	8
7.	NRC remedies .....	9
8.	NRC's obligations.....	11
9.	Charges and payment .....	11
10.	Insurance .....	13
11.	Intellectual property rights .....	13
12.	Indemnity .....	14
13.	Confidentiality .....	14
14.	NRC data .....	15
15.	Licences, permissions, etc .....	16
16.	Compliance with relevant law .....	16
17.	Termination .....	16
18.	Consequences of termination .....	17
19.	Dispute resolution procedure.....	17
20.	Prevention of corruption.....	18
21.	Audit.....	19
22.	Anti-discrimination .....	20
23.	Human rights .....	20
24.	Equality of opportunity.....	20
25.	Freedom of information.....	21
26.	Social Security System .....	22
27.	Environmental issues and sustainability .....	22
28.	General .....	23

### SCHEDULE

SCHEDULE 1	GOODS .....	26
SCHEDULE 2	SERVICES .....	27
Annexure A	ITT	
Annexure B	Response	

## **PARTIES**

- (1) **NORTHERN REGIONAL COLLEGE** (a College of Further and Higher Education) whose principal address is care of Farm Lodge, Ballymena, Co Antrim, BT43 7DF (“NRC”).
- (2) [FULL COMPANY NAME], a company incorporated and registered in [Northern Ireland] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Supplier”).

## **BACKGROUND**

The Supplier has been awarded the tender to [DESCRIBE TENDER, INCLUDE OJEU REFERENCE NUMBER IF APPLICABLE]. This agreement sets out the terms and conditions which the parties intend to regulate their arrangement.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in Belfast are open for business.

**Change Control Procedure:** the procedure set out in Clause 6.

**Change Request:** means:

- (a) a request to change (including to cease) any Service or add new services to the Services; or
- (b) a request to amend this Contract or any document attached to it or referred to in this Contract,

and a Change Request shall become a "**Change Order**" when the requirements of the Change Control Procedure have been satisfied and the Change Request is signed by the Authorised Representatives of both parties to signify their approval to the change.

**Commencement Date:** [[SPECIFY DATE] **OR** the date of this agreement].

**Data Protection Legislation:** the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Deliverable:** means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts), all as more particularly set out in the Services Specification.

**Delivery:** completion of delivery of Goods under this agreement.

**Delivery Location:** the location specified for delivery of an Order in accordance with clause 4.2(b).

**Dispute:** has the meaning given in clause 19.1.

**Dispute Notice:** has the meaning given in clause 19.1.

**Environmental Information Regulations:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**[Extended Term:** the term of the agreement, as determined in accordance with clause 2.1.]

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** has the meaning given in clause 28.2(c).

**Goods:** the products to be supplied by the Supplier under this agreement.

**Goods Specification:** the specification of the Goods set out in Part 1 of Schedule 1.

**Group:** in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.

**holding company** and **subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.

**Information:** has the meaning given under section 84 of FOIA.

**[Initial Term:** the term of the agreement, as determined in accordance with clause 2.1.]

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, 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. **Intellectual Property Right** means any one of the Intellectual Property Rights.

**ITT:** means the Invitation to Tender issued by NRC in respect of the Goods and/or Services in and around the [DATE] [and relating to OJEU Reference [ ]] a copy of which is appended hereto as Annexure A.

**Legal and Beneficial Title:** full and unrestricted title with the benefit of quiet possession free from lawful interruption and disturbance

**Mediation Notice:** has the meaning given in clause 19.1.

**month:** a calendar month.

**NRC Materials:** has the meaning given in clause

**Premises:** means any location or campus where the Services are to be supplied, as more particularly set out in the Service Specification.

**Price:** in the case of Goods, the price set out in Part 2 of Schedule 1 and, in the case of Services, the price set out in Part 2 of Schedule 2.

**Regulatory Body:** those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any applicable law to supervise, regulate, investigate or influence the matters dealt with in this agreement or any other affairs of NRC.

**Request for Information:** a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Response:** means the Supplier's formal response to the ITT a copy of which is appended hereto as Annexure B.

**Service Levels:** any performance or quality standards stipulated in the ITT in respect of the Services in accordance with which the Supplier is to provide the Services and the phrase "Service Level" shall be construed accordingly.

**Services:** the services to be provided by the Supplier under this agreement.

**Services Specification:** the specification of the Services set out in Part 1 of Schedule 2, including details of Deliverables and Service Levels.

**Specification:** means either the Goods Specification or the Services Specification.

**Tender Documentation:** means the documentation included in Annexes [ ] to [ ].

**Term:** [the term of the agreement as defined in clause 2.1 OR the term of the agreement, being the Initial Term and any Extended Term.]

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

**year:** any successive period of 12 calendar months.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time and, in the case of a statute, includes any subordinate legislation made under that statute from time to time.
- 1.9 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to an agreement is a reference to that agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14 In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in the Tender Documentation, or any other document referred to by the Tender Documentation, the order of precedence shall be as follows:
- (a) this agreement;
  - (b) the ITT; and

(c) the Response.

## **2. BASIS OF AGREEMENT**

- 2.1 This agreement shall commence on the Commencement Date and shall, unless otherwise terminated in accordance with any termination provisions in this agreement, remain in effect for [SPECIFY PERIOD] at which time it shall terminate automatically (“**Initial Term**”) [unless, no later than 3 months before the end of the Initial Term (or any Extended Term agreed under this clause), NRC shall notify the Supplier in writing that it requires the term of this agreement to be extended for a further period of one year (“**Extended Term**”) provided always that NRC shall not be permitted to exercise such right to extend the term of this agreement on more than two occasions. Unless it is further extended under this clause or terminated earlier in accordance with any other clause of this agreement, the agreement shall terminate automatically without notice at the end of an Extended Term.]
- 2.2 During the Term, the Supplier shall supply, and NRC shall purchase, Goods and/or Services in accordance with the terms and conditions of this agreement.
- 2.3 The provisions contained in Part A of the agreement shall correspond to the supply of Goods.
- 2.4 The provisions contained in Part B of the agreement shall correspond to the supply of Services.
- 2.5 The provisions contained in Part C of the agreement shall apply equally to the supply of both Goods and Services except where the application to one or the other is specified.

## **PART A**

### **3. SUPPLY OF GOODS**

- 3.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and the Goods Specification;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by NRC, expressly or by implication, and in this respect NRC relies on the Supplier's skill and judgment;
  - (c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 NRC shall have the right to inspect and test the Goods at any time before delivery.
- 3.3 If following such inspection or testing NRC considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, NRC shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this agreement, and NRC shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

#### **4. DELIVERY OF GOODS**

- 4.1 The Supplier shall ensure that:
  - (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
  - (b) if the Supplier requires NRC to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note with the Goods. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
  - (a) on the date specified by NRC;
  - (b) to NRC's premises or such other location as is set out in the Order or as instructed by NRC before delivery ("**Delivery Location**");
  - (c) during NRC's normal hours of business on a Business Day, or as instructed by NRC.
- 4.3 Time shall be of the essence in respect of any date specified by NRC pursuant to clause 4.2.
- 4.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

- 4.5 The Supplier shall not deliver the Goods in instalments without NRC's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle NRC to the remedies set out in clause 7.1.
- 4.6 Title and risk in the Goods shall pass to NRC on completion of Delivery.
- 4.7 Notwithstanding any apparent satisfaction of NRC following any inspection or testing carried out prior to Delivery in accordance with clauses 3.2 to 3.4, under no circumstance shall NRC be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 4.8 If the parties dispute whether any Goods comply with clause 3.1, either party may refer the matter for determination in accordance with clause 19.

## **PART B**

### **5. SUPPLY OF SERVICES**

- 5.1 The Supplier shall from the Commencement Date and for the duration of this agreement provide the Services to NRC in accordance with the terms of this agreement.
- 5.2 The Supplier shall meet any performance dates for the Services notified to the Supplier by NRC. Time shall be of the essence in respect of such dates.
- 5.3 In providing the Services, the Supplier shall (and will procure that its employees, agents and sub-contractors shall):
- (a) co-operate with NRC in all matters relating to the Services, and comply with all instructions of NRC;
  - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this agreement;
  - (d) replace any personnel whom NRC reasonably decides are unsuitable or who have failed to carry out their duties with reasonable care and skill and, following removal of such personnel, ensure that such person is replaced promptly with another person with the necessary training and skills to provide the Services;

- (e) conduct enhanced level vetting of all individuals used in the provision of the Services through Access NI if requested by NRC and make the results of such vetting available to NRC upon request;
- (f) ensure that no person used in the provision of the Services has a criminal record identifying offences which would make it unsuitable for them to be or to potentially be in contact with children or vulnerable adults;
- (g) ensure that to the extent required from time to time Independent Safeguarding Authority registrations are completed and maintained in relation to all individuals engaged in the provision of the Services;
- (h) ensure that the Services, Service Levels and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by NRC;
- (i) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (j) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to NRC, will be free from defects in workmanship, installation and design;
- (k) observe all of NRC's health and safety rules, regulations and policies and any other security requirements or other policies that apply at any of NRC's premises;
- (l) notify NRC as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services or any breach of security or breach of policy relating to NRC or its premises;
- (m) hold all materials, equipment and tools, drawings, specifications and data supplied by NRC to the Supplier ("**NRC Materials**") in safe custody at its own risk, maintain NRC Materials in good condition until returned to NRC, and not dispose or use NRC Materials other than in accordance with NRC's written instructions or authorisation; and
- (n) not do or omit to do anything which may cause NRC to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, including, without limitation, anything that may jeopardise the lease under which NRC's occupies its premises, and the Supplier acknowledges that NRC may rely or act on the Services.

## 6. CHANGE CONTROL

- 6.1 Change Requests may be originated either by NRC or by the Supplier.
- 6.2 Where the Supplier originates a Change Request it shall provide, with the Change Request details of the impact which the proposed change will have upon:

- (a) the Services;
  - (b) any systems or operations of NRC which operate in conjunction with or are otherwise affected by, the Services;
  - (c) the Charges; and
  - (d) the other terms of this agreement.
- 6.3 Where NRC originates a Change Request, the Supplier shall provide NRC, within 5 Business Days of receiving the Change Request, details of the impact which the proposed change will have:
- (a) upon the Services;
  - (b) any systems or operations of NRC which operate in conjunction with or are otherwise affected by, the Services;
  - (c) the Charges; and
  - (d) the other terms of this agreement.
- 6.4 Save where otherwise stated herein, neither party shall be obliged to agree a Change Request originated by the other.
- 6.5 If either party is unwilling to accept a Change Request suggested by the other (or any term of any proposed Change Order) then the other party may require the disagreement to be dealt with in accordance with the Dispute Resolution Procedure in clause 19.
- 6.6 The costs of implementing a Change Order shall be borne as set out therein.
- 6.7 Where the Change Request is originated by NRC and relates to the cessation of the provision of the Services at any particular campus detailed in the Specification by reason of NRC no longer providing educational or training programmes at such campus, then the Supplier shall not be entitled to reject the Change Request and the Supplier will automatically cease to provide those Services detailed in such Change Request from the date stipulated in the Change Request provided always that the Supplier shall have received not less than 30 days notice thereof.

## **PART C**

### **7. NRC REMEDIES**

- 7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, NRC shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate this agreement with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by NRC in obtaining substitute goods and/or services from a third party;
- (d) where NRC has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by NRC which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, NRC shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate this agreement with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by NRC in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by NRC arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

7.3 These provisions of clause 7.2 shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.4 If the Supplier has performed Services that do not comply with the undertakings set out in clause 5.3, then, without limiting its other rights or remedies, NRC shall have one or more of the following rights:

- (a) to reject the Deliverables (in whole or in part)
- (b) to terminate this agreement with immediate effect by giving written notice to the Supplier;

- (c) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (d) to require the Supplier to provide a full refund for the Services;
- (e) to recover from the Supplier any expenditure incurred by NRC in obtaining substitute services from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by NRC arising from the Supplier's failure to supply Services in accordance with clause 5.3.

7.5 NRC's rights under this agreement are in addition to its rights and remedies implied by statute and common law.

## **8. NRC'S OBLIGATIONS**

NRC shall:

- (a) co-operate with the Supplier in all matters relating to the supply of Goods and/or Services; and
- (b) provide the Supplier with reasonable access at reasonable times to NRC's premises for the purpose of supplying the Goods and/or Services, such rights of access to terminate upon termination of this agreement.

## **9. CHARGES AND PAYMENT**

9.1 In the case of Goods, the Price at Part 2 of Schedule 1 shall be inclusive of the costs of packaging, insurance and carriage of the Goods and the Supplier shall invoice NRC on or at any time after completion of delivery

9.2 In the case of Services, the Price the Price at Part 2 of Schedule 2 shall be inclusive of every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and the Supplier shall invoice NRC on completion of the Services.

9.3 In consideration of the supply of Goods and/or Services by the Supplier, NRC shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

9.4 All amounts payable by NRC under this agreement are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under this agreement by the Supplier to NRC, NRC shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods

and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 9.5 If NRC fails to pay any amount properly due and payable by it under this agreement, the Supplier shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the base rate for the time being of Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that NRC disputes in good faith.
- 9.6 If NRC disputes any invoice or other statement of monies due, NRC shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of NRC giving notice to the Supplier, the dispute shall be resolved in accordance with clause 19. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 9.43. The Supplier's obligations to supply the Products shall not be affected by any payment dispute. NRC's failure to make a payment that is disputed shall not be deemed to be a breach of this agreement.
- 9.7 NRC may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier under this agreement against any amount payable by NRC to the Supplier under this agreement (including any sum that the Supplier is liable to pay to NRC in respect of any breach of the agreement).
- 9.8 The Supplier shall at all times during this agreement use all reasonable endeavours to ensure that NRC receives the benefit of reduced third party costs and charges relevant to the supply of Goods and/or Services (including, without limitation, endeavouring to source consumables and sundries from suppliers with competitive rates). Where the Supplier identifies such a potential benefit, it shall promptly inform NRC and shall advise NRC whether, in the Supplier's opinion, the implementation of any change necessary to enable NRC to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price). If NRC shall conclude that the implementation of the necessary change is desirable, the Supplier shall implement the change. Where the achievement of the benefit by NRC would necessitate the making of a Change Request, the procedures in the Change Control Procedure shall apply but (for the avoidance of doubt) the Supplier shall not be entitled to object to the proposed change. Any benefits arising from any such change as is referred to in this Clause (including any consequent reductions in the Charges) shall accrue solely to NRC (subject to any costs reasonably incurred by the Supplier in implementing the necessary change being taken into account).

## **10. INSURANCE**

10.1 During this agreement and for a period of one year afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance for not less than £2 million per claim; and
- (b) product liability insurance for not less than £2 million for claims arising from any single event and not less than £20 million in aggregate for all claims arising in an year.

The Supplier shall ensure that NRC's interest is noted on each insurance policy, or that a generic interest clause has been included.

10.2 On taking out and on renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to NRC. On NRC's written request, the Supplier shall provide NRC with copies of the insurance policy certificates and details of the cover provided.

10.3 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this agreement which they are contracted to fulfil.

10.4 The Supplier shall:

- (a) do nothing to invalidate any insurance policy or to prejudice NRC's entitlement under it; and
- (b) notify NRC if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

10.5 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 10.1.

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 In respect of the Goods and any goods that are transferred to NRC as part of the Services under this agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to NRC, it will have full and unrestricted rights to sell and transfer all such items to NRC.

11.2 The Supplier assigns to NRC, with Legal and Beneficial Title, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

- 11.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 11.4 The Supplier shall, promptly at NRC's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as NRC may from time to time require for the purpose of securing for NRC the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to NRC in accordance with clause 11.2.
- 11.5 All NRC Materials are the exclusive property of NRC.

## **12. INDEMNITY**

- 12.1 The Supplier shall keep NRC indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by NRC as a result of or in connection with:
- (a) any claim made against NRC by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or performance of the Services, to the extent that the defect in the Goods or the performance of the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - (b) any claim made against NRC in connection with any damage to NRC's premises and their contents caused by persons entering the premises under the authorisation of the Supplier;
  - (c) any claim made against NRC by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or subcontractors; and
  - (d) any claim made against NRC for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.
- 12.2 This clause 12 shall survive termination of this agreement.

## **13. CONFIDENTIALITY**

Except as required by law both parties shall procure that all confidential information disclosed by one party to the other in accordance with this agreement or which may at

any time until termination of this agreement come into the other party's knowledge, possession or control shall not be used for any purposes other than those required or permitted by this agreement and shall remain confidential and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this agreement and then only under appropriate confidentiality provisions approved by the other party. For the purposes of this agreement information relating to the business of NRC, its business systems, business processes and client/student and supplier lists are hereby deemed to be confidential information. These obligations of confidentiality shall cease to apply to any particular item of confidential information once it becomes public knowledge other than by any act or default of either party.

#### **14. NRC DATA**

- 14.1 The Supplier shall take all necessary steps to ensure that data or information belonging to NRC which comes into its possession or control in the course of this agreement is protected in accordance with all of NRC's applicable policies and procedures from time to time and in particular the Supplier shall not:
- (a) use the data or information nor reproduce the data or information in whole or in part in any form except as may be required by this agreement; or
  - (b) disclose the data or information to any third party or persons not authorised by NRC to receive it, except with the prior written consent of NRC; or
  - (c) alter, delete, add to or otherwise interfere with the data or information (save where expressly required to do so by the terms of this agreement).
- 14.2 To the extent that any data or information belonging to NRC is personal data within the meaning of the Data Protection Act 1998:
- (a) the Supplier will process such data and information only in accordance with NRC's instructions;
  - (b) the Supplier will not transmit such data and information to a country or territory outside the European Economic Area without NRC's express consent; and
  - (c) the Supplier will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to NRC as data controller.
- 14.3 The Supplier shall indemnify NRC against all costs, claims, damages and expenses arising from any breach of the provisions of this clause 14.

**15. LICENCES, PERMISSIONS, ETC**

The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this agreement in respect of the supply of Goods and/or Services.

**16. COMPLIANCE WITH RELEVANT LAW**

The Goods and/or Services to be supplied to NRC under this agreement (including the procurement and supply of any consumables, equipment or other items procured for the provision of the Services) shall be supplied by the Supplier in compliance with all relevant legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by the Supplier shall be the best practice of the relevant industry. In all cases the costs of compliance shall be borne by the Supplier and the Supplier hereby indemnifies NRC against all losses, costs, expenses, damages, liabilities, demands, claims, actions and proceedings which NRC may incur arising out of any breach by the Supplier of the provisions of this clause.

**17. TERMINATION**

17.1 Without limiting its other rights or remedies, NRC may terminate this agreement with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach;
- (b) a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or assets;
- (c) the Supplier ceases or threatens to cease to carry on business in the United Kingdom; and
- (d) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which NRC reasonably objects.

17.2 Without limiting its other rights or remedies, NRC may terminate this agreement:

- (a) in respect of the supply of Services, by giving the Supplier three months written notice; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case NRC shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at

the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

- 17.3 In any of the circumstances in these Conditions in which NRC may terminate this agreement, where both Goods and Services are supplied, NRC may instead terminate part of this agreement in respect of the Goods, or in respect of the Services, and this agreement shall continue in respect of the remaining supply.

## 18. CONSEQUENCES OF TERMINATION

On termination of this agreement or any part of it for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to NRC all Deliverables, whether or not then complete, and return all NRC Materials. If the Supplier fails to do so, then NRC may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this agreement;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 19. DISPUTE RESOLUTION PROCEDURE

- 19.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it ("**Dispute**") then, except as expressly provided in this agreement, the parties shall follow the dispute resolution procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documentation. On service of the Dispute Notice the appointed relationship manager of the Supplier and the manager with responsibility for managing the contract for NRC shall attempt in good faith to resolve the Dispute;
- (b) if the relationship manager of the Supplier and the manager with responsibility for managing the contract for NRC are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the managing director of the Supplier and the Director of Finance of NRC who shall attempt in good faith to resolve it; and

- (c) if the managing director of the Supplier and the Director of Finance of NRC are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the Dispute Resolution Service of the Law Society of Northern Ireland. Unless otherwise agreed between the parties, the mediator shall be nominated by the Law Society. To initiate the mediation, a party must serve notice in writing (“**Mediation Notice**”) to the other party requesting a mediation. A copy of the Mediation Notice should be sent to the Law Society. The mediation will start not later than 14 days after the date of the Mediation Notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

19.2 No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

## **20. PREVENTION OF CORRUPTION**

20.1 The Supplier shall not offer or give or agree to give any person at NRC any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done forborne to do any act in relation to the obtaining or execution of this agreement or any other contract for NRC and/or for showing or forbearing to show favour or disfavour to any person in relation to this agreement or any other contract for NRC.

20.2 The Supplier shall not enter into this agreement or any other contract with NRC in connection with which commission has been paid or agreed to be paid by it, or on its behalf, or to its 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 NRC.

20.3 Any breach of this clause by the Supplier or by anyone employed by it or acting on his behalf (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by anyone employed by it acting on his behalf, (either with or without the knowledge of the Supplier) under the Prevention of Corruption Acts, 1889 to 1916, in relation to this agreement or any other contracts with NRC, shall entitle NRC to determine this agreement or such contracts and recover from the Supplier the amount of any loss resulting from such determination and/or to recover from the Supplier the amount of value of any such gift, consideration or commission.

20.4 Any dispute, difference or question arising in respect of either the effect or the interpretation of this clause or the amount recoverable hereunder by NRC from the Supplier or the right of NRC to determine the agreement, or the amount or value of

any such gift, consideration or commission shall be decided by NRC whose decision shall be final and conclusive.

## **21. AUDIT**

21.1 The Supplier shall keep and maintain until six years after the agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the agreement including:

- (a) the Goods and/or Services provided under it;
- (b) all payments made to NRC; and
- (c) all payments made by NRC.

21.2 The Supplier shall allow NRC and any auditors of or other advisers to NRC access to any of the Supplier's premises, personnel and relevant records as may be reasonably required in order to:

- (a) fulfil any legally enforceable request by any Regulatory Body; or
- (b) undertake verifications of the accuracy of any sums payable by or to NRC pursuant to this agreement or identify suspected fraud; or
- (c) undertake verification that the Goods and/or Services are being provided in accordance with this agreement.

21.3 NRC shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services by the Supplier and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.

21.4 Subject to NRC's obligations of confidentiality, the Supplier shall provide NRC (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

21.5 NRC shall provide at least 5 Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.

21.6 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 21, unless the audit identifies a material default of the Supplier's obligations under this agreement, in which case the Supplier shall reimburse NRC for all its reasonable costs incurred in the course of the audit.

21.7 If an audit identifies that:

- (a) NRC has overpaid any sum due to the Supplier in respect of this agreement, the Supplier shall pay to NRC the amount overpaid within 7 Business Days from the date of receipt of an invoice or notice to do so; and
- (b) the Supplier has underpaid any sum due to NRC in respect of this agreement, the Supplier shall pay to NRC the amount underpaid within 7 Business Days from the date or receipt of an invoice or notice to do so.

## **22. ANTI-DISCRIMINATION**

- 22.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 22.2 The Supplier shall take all reasonable steps to secure the observance of clause 22.1 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in performance of this agreement.

## **23. HUMAN RIGHTS**

- 23.1 The Supplier shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement.
- 23.2 The contractor shall undertake, or refrain from undertaking, such acts as the NRC requests so as to enable NRC to comply with its obligations under the Human Rights Act 1998.

## **24. EQUALITY OF OPPORTUNITY**

- 24.1 The Supplier shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, section 75 of the Northern Ireland Act 1998, 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 their best endeavours to ensure that in their employment policies and practices and in the delivery of the services required of the Supplier under this agreement they have due regard to the need to promote equality of treatment and opportunity between:
  - (a) persons of different religious beliefs or political opinions;
  - (b) men and women or married and unmarried persons;

- (c) persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);
- (d) persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- (e) persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- (f) persons of different ages; and
- (g) persons of differing sexual orientation,

and the Supplier shall use all reasonable endeavours to ensure the observance of the provisions of the above clause by all servants, agents, employees, sub-consultants and subcontractors of the Supplier.

## **25. FREEDOM OF INFORMATION**

25.1 The Supplier acknowledges that NRC is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIR**) and shall assist and co-operate with NRC (at the Supplier's expense) to enable NRC to comply with these information disclosure requirements.

25.2 The Supplier shall ensure that it, and its sub-contractors, shall:

- (a) transfer a request for information to NRC as soon as practicable after receipt and in any event within two working days of receiving a request for information;
- (b) provide NRC with a copy of all information in its possession or power in the form that NRC requires within 5 working days (or such other period as NRC may specify) of NRC requesting that information; and
- (c) provide all necessary assistance as reasonably requested by NRC to enable it 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 EIR.

25.3 NRC shall be responsible for determining at its absolute discretion whether the commercially sensitive information and/or any other information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or EIR;
- (b) is to be disclosed in response to a request for information; and
- (c) in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by NRC.

25.4 The Supplier acknowledges that NRC may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public

authorities' functions under Part 1 of FOIA (issued under Section 45 of the FOIA, November 2004), be obliged under the FOIA or EIR to disclose information:

- (a) without consulting with the Supplier; or
- (b) following consultation with the Supplier and having taken its views into account.

25.5 The Supplier shall ensure that all information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit NRC to inspect such records as requested from time to time.

## **26. SOCIAL SECURITY SYSTEM**

26.1 The Supplier 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 Supplier 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.

26.2 The Supplier shall prepare and maintain such records of his staff and all other persons engaged in the performance of this agreement by the Supplier as NRC may from time to time require.

26.3 Without prejudice to Clause 26.2 the Supplier shall forthwith on demand by NRC furnish NRC with the names, addresses and national insurance numbers of all persons employed by it under the contracts of service and shall forthwith on demand furnish NRC with the names, addresses, periods of employment and exemption certificates of all persons employed by it under contracts for services.

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

## **27. ENVIRONMENTAL ISSUES AND SUSTAINABILITY**

27.1 The Supplier acknowledges NRC's commitment to managing its own sustainability impacts and to using environmentally and socially responsible goods and services in line with government policy and guidance and the Supplier shall and shall procure that its employees, agents and sub-contractors shall do likewise.

27.2 For the purposes of clause 27.1 the Supplier shall and shall procure that its employees, agents and sub-contractors shall:

- (a) observe all relevant guidance issued from time to time; and
- (b) as far as is reasonably practicable, use materials that are environmentally preferable throughout the entire product cycle which for these purposes means materials that do not pollute or unnecessarily contribute to the waste stream, do not adversely affect health, and do not deplete limited natural resources. By way of example the Supplier shall at all times be mindful of the need for waste prevention, recyclability and the use of recycled content.

## 28. GENERAL

### 28.1 Limitation of liability:

- (a) Without prejudice to clause 28.1(b), NRC's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the amount of the Price which remains unpaid, and any interest due on such amount pursuant to clause 9.5. NRC shall not be liable for any special, indirect or consequential damage or loss suffered by the Supplier that arises under or in connection with this agreement.
- (b) Nothing in this agreement shall limit or exclude liability for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation.

### 28.2 Force majeure:

- (a) Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this agreement if and to the extent such delay or failure is caused by a Force Majeure Event. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than four weeks, NRC shall have the right, without limiting its other rights or remedies, to terminate this agreement with immediate effect by giving written notice to the Supplier.
- (b) A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:
  - (i) notify the other party of the nature and extent of such Force Majeure Event; and
  - (ii) use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.
- (c) For the purposes of this clause 28.2, a **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil

unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

**28.3 Assignment and subcontracting:**

- (a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement without the prior written consent of NRC.
- (b) NRC may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under this agreement and may subcontract or delegate in any manner any or all of its obligations under this agreement to any third party or agent.

**28.4 Notices:**

- (a) Any notice or other communication required to be given to a party under or in connection with this agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 28.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this agreement shall not be validly served if sent by e-mail.

**28.5 Waiver and cumulative remedies:**

- (a) A waiver of any right under this agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

- 28.6 **Severance:**
- (a) If a court or any other competent authority finds that any provision (or part of any provision) of this agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
  - (b) If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 28.7 **No partnership:** Nothing in this agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 28.8 **Further assurance:** Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this agreement and the transactions contemplated by it.
- 28.9 **Entire agreement:** This agreement and the documents referred to in it constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 28.10 **Third parties:** A person who is not a party to this agreement shall not have any rights under or in connection with it.
- 28.11 **Variation:** Any variation, including any additional terms and conditions, to this agreement shall only be binding when agreed in writing and signed by NRC.
- 28.12 **Governing law and jurisdiction:** This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Northern Irish law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Northern Ireland.

This agreement has been entered into on the date stated at the beginning of it.

## Schedule 1 Goods

### **Part 1 - Specification**

[INSERT DETAILS OF GOODS SPECIFICATION]

### **Part 2 – Price**

[INSERT DETAILS OF GOODS PRICE]

## Schedule 2 Services

### **Part 1 - Specification**

[INSERT DETAILS OF SERVICES SPECIFICATION]

### **Part 2 – Price**

[INSERT DETAILS OF SERVICES PRICE]

Signed by: [NAME]  
for and on behalf of [NAME OF  
SUPPLIER]

---

Signed by:  
Mr Trevor Neilands, Director/ Chief  
Executive,  
for and on behalf of Northern Regional  
College.

---

## **Annex A. ITT**

## **Annex B. Response**