



**NATIONAL ASSEMBLY FOR WALES COMMISSION**

**STANDARD CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES**

# 1 Definitions

## 1.1 In these Conditions:

**“Conditions”** (**“Amodau”**) means these terms and conditions;

**“Contract”** (**“Contract”**) means the contract between you and us for the provision of the Services. The Contract is made up of these Conditions together with any Schedules and any of the following that may apply: Purchase Order, Specification, Invitation to Quote or Invitation to Tender and any responses thereto, Contract Award Letter and any other documentation referred to in the Contract as forming part of the Contract;

**“Contract Award Letter”** (**“Llythyr Dyfarnu Contract”**) means the letter from us to you which accepts your quote or tender submission and concludes the Contract;

**“Contract Price”** (**“Pris y Contract”**) means the price payable by us to you for the provision of the Services as set out in the Contract, including any additional charges for additional Services;

**“Critical Functionality”** (**“Lefel Weithredu Gritigol”**) means the level of functionality that is specified in the Contract (including specified Service Levels), or can be considered as a core characteristic of the Services, below which operations are likely to be materially affected resulting in a critical failure of the Services;

**“Data Protection Impact Assessment”** (**“Aseiad o’r Effaith ar Ddiogelu Data”**) means an assessment by us of the impact of any envisaged processing on the protection of Personal Data;

**“Data Protection Legislation”** (**“Deddfwriaeth Diogelu Data”**) means (i) unless or until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998 and (iii) any guidance and/or codes of practice issued by the Information Commissioner from time to time in relation to it;

**“Data Subject Access Request”** (**“Cais am Fynediad at Ddata gan y Testun”**) means a request by, or on behalf of, a Data Subject (as defined in Condition 25.1) in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data (as defined in Condition 25.1);

**“FOIA”** (**“y Ddeddf Rhyddid Gwybodaeth”**) means the Freedom of Information Act 2000 and any subordinate legislation made thereunder together with any guidance and/or codes of practice issued by the Information Commissioner from time to time in relation to it and the Environmental Information Regulations 2004;

**“GDPR”** (**“GDPR”**) means the General Data Protection Regulation ((EU) 2016/679);

**“Intellectual Property Rights”** (**“Hawliau Eiddo Dealluso”**) means patents, trademarks, service marks, design rights, registered design rights, copyright, database rights, know-how, trade or business names, and other similar rights, arising in any country in the world, and includes applications for any of them;

**“Invitation to Quote/Invitation to Tender”** (**“Gwahoddiad i Roi Dyfynbris/Gwahoddiad i Dendro”**) means the invitation to quote or invitation to tender issued by us to you and comprising the Specification of the Services, these Conditions and any other accompanying documentation;

**“Key Personnel”** (**“Personél Allweddol”**) means those of your Personnel specified as such in the Contract as being essential to the proper provision of the Services, and also any of your Personnel which we notify to you in writing during the Contract are to be treated as Key Personnel;

**“Material Breach”** (**“Achos Sylweddol o Dorri'r Amodau”**) means a breach (including an anticipatory breach) which is not minimal or trivial in its consequences to the non-breaching party, and “material” is to be construed accordingly. In deciding whether any breach is material no regard will be had to whether it occurs by some accident, mishap, mistake or misunderstanding;

**“parties”** (**“partïon”**) means together the National Assembly for Wales Commission and the person, partnership or company who supplies the Services under the Contract, and a reference to “party” is to be interpreted as the context requires;

**“Personnel”** (**“Personél”**) means any person you use when providing the Services to us, for example, any employee, agency worker, temporary worker, sub-contractor or any employee of a sub-contractor;

**“Premises”** (**“y Safle”**) mean the National Assembly for Wales estate comprising the Senedd, Assembly Buildings and Pierhead Building, Cardiff Bay, Cardiff CF991NA and North Wales Visitor Centre Ground Floor, Princes Park, Princes Avenue, Colwyn Bay, LL29 8PL and any other building or premises set out in the Contract;

**“Proposal” (“Cynnig”)** means any proposal, tender response or like documentation provided to us by you and describing how you propose to deliver the Services;

**“Purchase Order” (“Archeb Brynu”)** means our form headed "Purchase Order" or a Contract Award Letter sent to you by us, and any accompanying Specification or documentation setting out our requirements for the Services (and any additional Services), which includes the Contract Price and Specification of the Services;

**“Replacement Supplier” (“Cyflenwr Newydd”)** means any person, partnership or company that provides services similar to and in substitution of the Services (or any part of them) on expiry or termination of this Contract (or any part of it);

**“Rules and Regulations” (“Rheolau a Rheoliadau”)** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which you are bound to comply;

**“Service Credits” (“Credydau Gwasanaeth”)** means the sums payable under any Service Credits regime set out in the Contract;

**“Service Levels” (“Lefelau Gwasanaeth”)** means any service levels set out in the Contract to which the Services are to be provided;

**“Service Implementation Plan” (“Cynllun Gweithredu'r Gwasanaeth”)** means any plan and timetable for the implementation of the Services included within or developed under the Contract and including any additional Services agreed under the Contract;

**“Service Managers” (“Rheolwyr Gwasanaeth”)** means the parties’ respective designated representatives from time to time who have the day-to-day responsibility for the performance of their respective obligations under the Contract and act as the principal point of contact between the parties;

**“Services” (“Gwasanaethau”)** means the services provided to us by you under the Contract, as more particularly described in the Specification;

**“Specification” (“Manyleb”)** means the description of the Services to be delivered by you under the Contract;

“we” (“*ni*”) means the National Assembly for Wales Commission, and “us” and “our” are also used in relation to the National Assembly for Wales Commission;

“Working Day” (“*Diwrnod Gwaith*”) means Monday to Friday, excluding any public holidays in England and Wales; and

“you” (“*chi*”) means you, the person, partnership or company who supplies us with Services under the Contract, and a reference to “your” will be interpreted accordingly.

- 1.2 A reference to a statute or a statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force under it.
- 1.3 In interpreting the Contract the following will take precedence in the stated order to the extent that any provision in them cannot be read and applied in conjunction with any provision in these Conditions:
  - 1.3.1 the Purchase Order;
  - 1.3.2 the Specification; and
  - 1.3.3 the Conditions.

## **2 Provision of the Services**

- 2.1 The Services must be provided by you:
  - 2.1.1 in accordance with the provisions of the Contract;
  - 2.1.2 in full conformance with Specification; and
  - 2.1.3 with reasonable skill and care;for the duration of the Contract.
- 2.2 The duration of the Contract (unless terminated earlier under Conditions 30, 31 or 33.2) is as set out in the Purchase Order.
- 2.3 You will start and complete and otherwise provide the Services in accordance with the Contract. Without affecting any of our other rights under the Contract, if at any time you fall behind the time specified in providing the Services you must use your best efforts to catch up with it, including (where this will help) by devoting additional resource to the provision of the Services at no additional cost to us.

- 2.4 If we ask you will give us detailed programmes of the order in which you will provide the Services and how you will provide the Services. We may tell you in what order to provide the Services and you will comply with that request. If we ask, you will also give us progress reports on the carrying out of the Services and will meet with us to discuss and review the Services provided.
- 2.5 If the provision of the Services will incorporate any materials, these must be of satisfactory quality, manufacture and design.
- 2.6 For those Services you perform at the Premises, you are deemed to have inspected the Premises before accepting a Purchase Order, or submitting a quote or tender as applicable and to be satisfied in relation to all matters connected with the provision of the Services at the Premises. At your request, we will grant you such access to the Premises as may be reasonable for this purpose.
- 2.7 For those Services you perform at your premises (or the premises of your Personnel) then if we ask, you will provide us with access to such premises to inspect them, and to observe work being performed there under the Contract. We will give you reasonable notice before making any such request, and will not ask for access other than during your normal working hours.
- 2.8 You acknowledge and confirm that you have had an opportunity to carry out a thorough due diligence exercise in relation to the Services and have asked us all the questions you consider to be relevant for the purpose of establishing whether you are able to provide the Services in accordance with the terms of the Contract, and you have entered into the Contract in reliance on your due diligence.
- 2.9 If you need to access our ICT infrastructure for the purpose of providing the Services you will comply in all respects with any access procedures and security requirements we set out in the Specification or otherwise notify to you.

### **3 Warranties**

- 3.1 You warrant, represent and undertake to us that:
  - 3.1.1 you have full capacity and authority and all necessary consents to enter into and to perform the Contract, and that the Contract has been signed on your behalf by someone who is authorised to do so;

- 3.1.2 you acknowledge we are entering into this Contract on the basis of your Proposal and that the Proposal is true, accurate and complete in all material respects, and is not misleading;
  - 3.1.3 the Services will meet the Specification in all respects; and
  - 3.1.4 in addition to your specific obligations as set out in the Contract, you will comply with all Rules and Regulations and hold any licence, permit and/or certificate required by law for the performance of the Contract.
- 3.2 We warrant, represent and undertake to you that we have full capacity and authority and all necessary consents to enter into the Contract, and that the Contract has been signed on our behalf by someone who is authorised to do so.

#### **4 Contractor Performance Management**

- 4.1 We may set out a detailed performance management process in the Contract, but if not, the requirements of this Condition will apply as a minimum.
- 4.2 You will be responsible for meeting any performance targets and providing the required information to us. We will be ultimately responsible for measuring your performance. You will at all times provide the output required with a high standard of care and accuracy.
- 4.3 You must effectively monitor your own performance to ensure that our requirements under the Contract are being fully met, except for any areas where it has been agreed that we will undertake the monitoring role.
- 4.4 If required by us, performance review meetings may take place and their requirement and frequency will be determined by our Service Manager.
- 4.5 If you are required to collate performance data then this must be in user-friendly management information reports. The format, content and frequency of these reports must be agreed with us and submitted at least 5 Working Days prior to each performance review meeting.
- 4.6 You will supply us with any management information as we may reasonably request from time to time, and will do so within 5 Working Days of any such request and at no charge to us.
- 4.7 We may request that you jointly develop a risk register with us at no charge. This would identify potential problems, and their causes, and assess the probability of occurrence of risks and their relative impacts.

We will then agree which party is best able to manage the risks, and devise strategies to minimise them. You will fully participate in this process and will fully, and diligently, manage all risks for which you are responsible.

## **5 Key Performance Indicators**

- 5.1 You will comply with any regime and measures we set out in the Contract or jointly agree with you for the delivery of the Services against Key Performance Indicators relating to the quality and standard of the work to be delivered under the Contract.

## **6 Value for money**

- 6.1 Where a Contract Price for additional services is to be agreed under the Contract, whether on a fixed price, time and materials or some other basis, you undertake to enter into discussions in good faith and act reasonably in attempting to reach agreement with us on any necessary changes to the Contract Price.
- 6.2 You recognise that as a public body we must seek to achieve value for money and to help us with this you will take all reasonable steps to gain and utilise efficiencies, which you will reflect in the Contract Price. In support of this, you will provide at no cost any documentation and information reasonably requested by us to ascertain the basis on which the Contract Price is calculated and whether value for money is being delivered.
- 6.3 Acting reasonably and in good faith you will discuss any cost saving suggestions we make and will be under a continuing obligation to identify to us cost saving opportunities and implement them where requested.
- 6.4 You will not be entitled to charge us for any work that we have demonstrated:
- 6.4.1 was nugatory or in respect of which it is not practically possible to ascertain what has been done in furtherance of the Services; and
  - 6.4.2 is a duplication of effort which is not capable of reasonable explanation by you. This will not apply to duplication where duplication of effort has been reasonably required and agreed by us.

## **7 Payment**

- 7.1 We will pay you the Contract Price for the Services, subject to your compliance with your obligations under the Contract.



- 7.2 You must issue us with a valid VAT invoice for the Contract Price or each instalment of such Contract Price, no earlier than the date on which payment of each sum becomes due, as specified in the Purchase Order. You must send your invoice to the Financial Services, National Assembly for Wales Commission, Cardiff Bay, Cardiff CF99 1NA. Each invoice must clearly identify the Purchase Order to which it relates. If a Purchase Order number is not clearly identified on each invoice, the invoice may be returned to you without payment.
- 7.3 If there is more than one invoice under the Purchase Order, for any reason, each invoice must identify the part of Services to which that invoice relates. The last invoice in respect of a Purchase Order must be clearly marked to show that it is the last.
- 7.4 Prices are exclusive of Value Added Tax unless otherwise stated in the Purchase Order. If any Value Added Tax is to be paid, you will show this separately on your invoices.
- 7.5 Unless otherwise stated in the Purchase Order, we will pay by BACS all undisputed invoices within 30 days of having received them provided that we are satisfied that any Services to which the invoice relates have been completed to our satisfaction.
- 7.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute will be paid and the dispute as to the sum that remains unpaid will be determined in accordance with the dispute resolution procedure in Condition 19.
- 7.7 Interest will be payable on the late payment of any undisputed Contract Price properly invoiced under the contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. You will not suspend the supply of the Services if any payment is overdue.
- 7.8 If we are late in paying an invoice please write to Accounts Payable, Financial Services, National Assembly for Wales Commission, Cardiff Bay, Cardiff CF99 1NA, and if it is not then paid, write to the Head of Finance, National Assembly for Wales Commission, Cardiff Bay, Cardiff CF99 1NA. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with your legal rights or our legal rights to dispute the sum due.
- 7.9 We may retain or set off any sums owed to us by you which have fallen due and payable against any sums due to you under the Contract or any other agreement under which you provide goods or services to us. If we wish to do this we will give notice to you within 30 days of receipt of the

relevant invoice, setting out our reasons for withholding or retaining the relevant sums.

- 7.10 You will make any payments due to us without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless you have a valid court order requiring an amount equal to the deduction to be paid by us to you.
- 7.11 You cannot claim any travel, accommodation, subsistence or other expenses unless these are expressly provided for in the Contract. Where they are provided for, you must follow any specified procedure and ensure any expenses you incur are both reasonable and you make every effort to keep them to a minimum.

## **8 Service Credits**

- 8.1 If the Contract contains a Service Credits regime and you fail to provide the Services in accordance with the relevant Service Levels, you will pay to us the Service Credits as calculated in accordance with that regime
- 8.2 Without affecting our rights under this Condition 8 or generally, we reserve the right in relation to performance of the Services to the standards required by the Service Levels, to remedy any defects in the provision of the Services itself relating to Critical Functionality or to appoint third parties to do so on 24 hours' notice to you, and in each case at your own risk and expense. You will endeavour to correct the defects within the 24 hour notice period.

## **9 Relationship**

- 9.1 You are and must at all times act as an independent contractor. You are not our partner, employee, agent or representative and you have no authority to act on our behalf. You will not act in any way which would give the impression that you are our partner, employee, agent or representative.
- 9.2 If you are an individual you will, if we ask, provide us with evidence of your self-employed status. We are entitled to assume you are self-employed, and you will make sure that we do not have to bear the cost of paying the Inland Revenue or any other Government Department any tax, national insurance or similar payments on the basis that you are not self-employed. If we have to make any such payment to the Inland Revenue or any other Government Department because they consider that in carrying out the Services you are not to be treated as self-employed, you will pay to us an amount equal to any money we have to pay (including and costs and expenses we incur).

## **10 Co-operation and governance**

- 10.1 You will either comply with any governance arrangements set out in the Contract or, if we request it, you will as a minimum appoint a Service Manager and we will do the same.
- 10.2 Any of your Personnel captured by the governance arrangements set out in the Contract, or your Service Manager, are classed as Key Personnel and you will not change any of them without prior consultation with us in accordance with Condition 11.7.
- 10.3 If not otherwise provided for in the Contract, and in addition to any request we make under Condition 2.4, your Service Manager will meet with and report to us on a six monthly basis if we require.

## **11 Your Personnel**

- 11.1 You will ensure that you make available adequate resources for the provision of the Services, and that your Personnel are competent, properly trained and suitably qualified to perform the Services.
- 11.2 You and your Personnel will at all times comply with our internal policies and procedures (including, but not limited to, those on security, conduct and health and safety), copies of which will be made available on request.
- 11.3 All your Personnel must be security cleared by us in accordance with our prevailing vetting procedures before they start work to deliver the Contract at the Premises. Security clearances must be renewed at such intervals as we may direct. Further information about our vetting requirements and procedures can be obtained from our Personnel Security Manager. We can ask for further information to advance the vetting process and you will provide that to us as soon as possible after we ask for it. We may refuse to grant any of your Personnel security clearance. If we do refuse security clearance you cannot use that as a reason to delay or stop carrying out the Services.
- 11.4 You will comply with, and will ensure that all your Personnel comply with, any instructions we issue to you relating to security and access to the Premises (including the carrying, display and return of security passes).
- 11.5 If we ask, you will give us a list of the names and addresses of your Personnel involved in providing the Services and the tasks which each person will be carrying out together with any other information or documents we may ask to see.
- 11.6 The Key Personnel will be made available by you to carry out the Services.

- 11.7 You will not make any change or replacement to Key Personnel (unless due to long term sickness, maternity/paternity/adoption leave, termination of employment, removal in accordance with Condition 11.11 or other extenuating circumstance) unless we have agreed to that change or replacement. Any replacement will be of at least equal status and equivalent experience and skills. You will notify us as soon as you become aware that any change or replacement to Key Personnel may be required.
- 11.8 You will ensure that whilst on the Premises your Personnel behave at all times in an appropriate manner and, in particular, will ensure that they are generally presentable and, where we require, dressed in uniforms, which are clean and in good repair. Any such uniforms (and any proposed changes to uniforms) must be approved by us in advance.
- 11.9 You will ensure that your Personnel working at the Premises do not smoke whilst on duty. In accordance with The Smoke-free Premises etc. (Wales) Regulations 2007 all enclosed or substantially enclosed areas within the Premises are non-smoking premises and smoking is strictly prohibited in those areas. Smoking is only permitted in certain outside areas which will be shown to your Personnel on request.
- 11.10 You will ensure that any of your Personnel working at the Premises only access those parts of the Premises where it is necessary for them to do so to provide the Services and then only at times when they are actually providing the Services.
- 11.11 We may at any time refuse to admit your Personnel to the Premises or require that any of your Personnel be removed from the Premises where their admission or continued presence would in our reasonable opinion be undesirable. Our decision as to whether your Personnel should be refused admission or removed from the Premises will be final and conclusive. You will be responsible for ensuring that the person leaves the Premises. You must get the person's security pass back if they have one, and return it to us. You will replace that person with somebody else who can carry out the Services to the standard required under the Contract and you must ensure that you still carry out the Services on time and as specified in the Contract.
- 11.12 We will not be liable for any costs or additional costs which you may incur because of your compliance with this Condition 11.

## **12 Equalities and Human Rights considerations**

- 12.1 We are an equal opportunities employer and service provider. You (and your Personnel) must also be an equal opportunities employer and service

provider and comply fully with applicable equal opportunities Rules and Regulations.

- 12.2 You will ensure that you do not discriminate against anyone unlawfully, or treat anyone unfairly, on the grounds of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, trade union membership/non-membership/activities, part-time status or any other grounds prohibited by any relevant equalities related Rules and Regulations. You will also make sure that anyone acting on your behalf and your Personnel involved in the Contract do not do so either, and that those involved in the management or operation of the Contract receive appropriate training on equal opportunities Rules and Regulations and associated good practice.
- 12.3 You should carry out appropriate monitoring of your equal opportunities policies and employment practices and provide us with evidence of this, if we ask.
- 12.4 You will take all reasonable steps to ensure that all goods and materials used in the provision of the Services under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.
- 12.5 You are encouraged to fill any Personnel vacancies through a recruitment process which accords with best equal opportunities practice.
- 12.6 You will provide the Services in such a way as to enable us to comply with our obligations in respect of the Welsh language under the Government of Wales Act 2006.
- 12.7 You will (and will use your reasonable endeavours to procure that your staff will) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract.
- 12.8 You will undertake, or refrain from undertaking, such acts as we request so as to enable us to comply with our obligations under the Human Rights Act 1998.

### **13 Employment Practices**

- 13.1 We are committed to ensuring fair and transparent employment practices are in place throughout the supply chain for this contract. Consequently, we will be seeking to work with you to monitor and ensure fair employment practices and, acting reasonably, we reserve the right to request changes to any of those practices we consider to be unfair.

## **14 Environment**

- 14.1 You will ensure that the provision of the Services comply with all relevant environmental Rules and Regulations.
- 14.2 If any goods or materials you use in providing the Services include any products derived from natural sources then you must make reasonable efforts to ensure that the natural resources used are from sustainable sources, and you must comply with EU and other applicable international Rules and Regulations.
- 14.3 Where possible, the goods and materials you use in providing the Services should incorporate materials that can be re-used, re-cycled or incinerated for energy recovery. You should make every effort to reduce the amount of materials used and ensure that all processes used in the provision of the Services minimises the impact on the environment.

## **15 Materials, plant and equipment for the Services**

- 15.1 Unless otherwise provided for in the Contract you will at your own expense, supply and maintain in a safe and serviceable condition, all the materials, plant and equipment you need to provide the Services.
- 15.2 If we require, you must get our permission before delivering to the Premises any materials, plant and equipment you will need to provide the Services. You will follow any instructions we give you about how materials, plant and equipment are to be delivered and at what times they may be delivered but, unless we say otherwise, you will deliver them between 0900 and 1700 hours.
- 15.3 You must tell us if you need to enter our Premises to deliver the materials, plant and equipment in connection with the Services. If we allow you to enter our Premises you will comply with any instructions we issue to you relating to the Premises, including instructions relating to security, access, and health and safety.
- 15.4 If you enter the Premises to deliver the materials, plant and equipment and cause any damage or injure someone, you will pay to us the amount of money we have to pay to fix or repair the damage (which may involve the buying of a replacement) or to compensate for the injury. You will also pay us any costs and expenses we may have which are related to our having to deal with the incident.
- 15.5 You will be responsible for the security of all materials, plant and equipment you use in providing the Services. We will not be liable if any property belonging to you or your Personnel is stolen, lost or damaged

unless you can show that such loss or damage was caused or contributed to by us.

- 15.6 You will remove from the Premises any materials, plant or equipment which we think are hazardous or dangerous and if we ask, you will replace them with a suitable substitute at your own expense.
- 15.7 You will make sure that all containers of hazardous materials (and any documents that relate to hazardous material) have prominent and suitable warnings and are handled by appropriately trained personnel who comply with all Rules and Regulations.
- 15.8 You must keep the Premises neat and tidy during the delivery of the Services and particularly when they are completed. You will remove at your own expense any plant, equipment, unused materials, packaging and waste as we direct.

## **16 Materials, equipment and documentation supplied to you**

- 16.1 If we provide you with materials, equipment or documentation (“**Our Materials**”) free of charge for you to provide the Services, Our Materials will still belong to us and will not become your property. Under no circumstances will you have a right to retain possession of them as security (a lien) or any other interest in Our Materials. If practicable, you will store them separately and, in any event, you will ensure they are clearly identified as belonging to us.
- 16.2 Our Materials will be deemed to be in good condition when received by you unless you notify us otherwise within 5 Working Days. You will keep them in good condition (excluding fair wear and tear) and you will use them only to provide the Services and for no other purpose.
- 16.3 If you or your Personnel damage or lose any of Our Materials that we provide, you will pay for the cost of repair or replacement.
- 16.4 If we ask for any of Our Materials to be returned, you will do this immediately. You will be liable for any cost associated with returning them up until they are received by us.
- 16.5 If you have any possession of any of Our Materials at the end of the Contract, you will return them to us immediately unless we tell you to dispose of them in some other way in which case you will comply with our instructions.

## **17 Health and Safety**

- 17.1 You will supply the Services in a safe manner and in a way which will not cause any risk to the health or safety of any of our employees and of any other persons.
- 17.2 You will comply with all relevant health and safety Rules and Regulations and our health and safety policies (which will be made available on request). You will ensure that your Personnel follow any instructions on health and safety we may issue to them.
- 17.3 You must ensure that all plant, equipment and materials used in the delivery of the Services is safe, complies with all relevant health and safety Rules and Regulations, and does not cause any risk to the health or safety of any of our employees and of any other person, including those working at and visiting the Premises.
- 17.4 You will immediately bring to our attention details of any health and safety hazard or any incident occurring in the performance of your obligations under the Contract at the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.5 You will ensure that you do not cause us to be in breach of any applicable health and safety Rules and Regulations.
- 17.6 If any action is taken against us or we incur any loss because you have not supplied the Services in a safe manner, or have breached or caused us to breach any applicable health and safety Rules and Regulations, you will pay to us whatever money we have to pay out in connection with that action and/or the amount of our loss. You will also pay us any costs and expenses that we may have in relation to the action or loss.
- 17.7 This Condition applies during the Contract and after it has ended.

## **18 Change control**

- 18.1 We may at any time request you to modify any requirement in relation to any aspect of the Services, including to reduce the Services or to provide additional services. The request will normally be in writing (“**the Change Notice**”) except in relation to minor or non-material changes, where the request may be given orally by us in accordance with Condition 18.8. The Change Notice will provide you with full particulars for any requested change and any further information you may reasonably require to enable you to provide a written estimate of the impact of the change (“**the Estimate**”).



- 18.2 As soon as practicable, and in any event within 10 Working Days of receipt of the Change Notice, you will deliver the Estimate to us, which will include details of:
- 18.2.1 any reduction or increase in the Contract Price in respect of the change; and
  - 18.2.2 any impact on the provision of the Services.
- 18.3 As soon as practicable after we receive the Estimate, the parties will discuss in good faith and agree the issues set out in the Estimate, including any change to the Contract Price. In such discussions we may modify the Change Notice, and you will advise us of any consequential changes to the Estimate.
- 18.4 If the contents of the Estimate are not agreed within 10 Working Days or such other reasonable period as we both agree then we will have the option of withdrawing the Change Notice or referring the matter for determination in accordance with the dispute resolution procedure in Condition 19.
- 18.5 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined in accordance with dispute resolution procedure, we will either:
- 18.5.1 confirm in writing our acceptance of the Estimate; or
  - 18.5.2 withdraw the Change Notice.
- 18.6 The change, including any adjustment to the Services and/or the Contract Price, will be implemented as soon as practicable.
- 18.7 If we do not confirm the Estimate in writing within 20 Working Days of the contents of the Estimate having been agreed or determined then the Change Notice will be deemed to have been withdrawn.
- 18.8 For the avoidance of doubt, you will comply with any minor or non-material changes to the Services which we may request. Such changes will be effective immediately in accordance with the terms of any oral or written notification provided by us to you, and will not be subject to the Change Control procedures set out in this Condition 18.

## **19 Dispute Resolution**

- 19.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (except in relation to any right we may have to terminate this Contract in accordance with Conditions 30,

31 or 33.2) (“**Dispute**”) then the parties will comply with the following procedure:

19.1.1 either party will give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documents. On service of the Dispute Notice, the respective Service Managers or, if none have been appointed, individuals occupying comparable roles, will attempt in good faith and acting reasonably to resolve the Dispute;

19.1.2 if the Dispute cannot be resolved for any reason within 10 Working Days of service of the Dispute Notice, the Dispute will be referred to the Director of Assembly Resources and an individual of comparable status that you nominate, who will attempt in good faith and acting reasonably to resolve it; and

19.1.3 if the Dispute cannot be resolved for any reason within a further 10 Working days, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (“**ADR notice**”) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 15 Working Days after the date of the ADR notice unless otherwise agreed between the parties.

19.2 The commencement of mediation will not prevent the parties commencing or continuing proceedings in relation to the Dispute under Condition 41 (which applies at all times).

## **20 Assignment and Sub-Contracting**

20.1 Unless we agree in writing, you are not allowed to sub-contract, transfer or assign the Contract or any part of it.

20.2 If you sub-contract any work under the Contract, you will still be responsible to us for carrying out the Contract. We can take action against you if your sub-contractor does not do what the sub-contractor is meant to do.

20.3 Where you enter into a sub-contract with a supplier or contractor for the purpose of delivering the Contract, you will ensure a term is included in the sub-contract that requires payment to be made of undisputed sums

by you to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements. You will also require that any sub-contractor includes a like provision in any contract it enters into with a supplier or contractor.

## **21 Indemnity**

- 21.1 You will indemnify and keep us indemnified against any and all claims and all liabilities, demands, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred by, us as a result of or in connection with the provision of the Services whether arising in tort (including negligence), default, fraud or breach of this Contract (“**Losses**”). This indemnity will not apply to the extent that the Losses are directly caused by or directly arise from our negligence or wilful misconduct.
- 21.2 For the avoidance of doubt, the indemnity in Condition 21.1 includes, but is not limited to losses we incur as a result of any other person making a claim against us that receipt of the Services breaches any Intellectual Property Rights to which that person is entitled.
- 21.3 The rights, powers and remedies in the Contract are cumulative and do not prevent us from pursuing any other rights, powers and remedies provided by law.
- 21.4 This Condition will apply during the Contract and after it has ended.

## **22 Limitation of liability**

- 22.1 Subject to Condition 22.5, neither party will be liable to the other party (as far as permitted by law) in connection with the Contract for:
  - 22.1.1 indirect or consequential losses, damage, cost or expenses;
  - 22.1.2 loss of actual or anticipated profits;
  - 22.1.3 loss of revenue;
  - 22.1.4 loss of contracts;
  - 22.1.5 loss of anticipated savings;
  - 22.1.6 loss of goodwill;
  - 22.1.7 loss of business opportunities; or
  - 22.1.8 loss of reputation;

whether or not such losses are reasonably foreseeable or the party in default or its agents had been advised of the possibility of the other incurring such losses. For the avoidance of doubt, sub-paragraphs (22.1.1) to (22.1.8) apply whether such losses are direct, indirect, consequential or otherwise.

- 22.2 Subject to Condition 22.5, your liability to us in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, will in no event exceed £5 million in aggregate.
- 22.3 Subject to Condition 22.5, our liability to you in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, will be limited to 110% of the Contract Price paid or payable in the 12 month period prior to the cause of action arising.
- 22.4 Each party will at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 22.5 Notwithstanding any other provision of the Contract neither party limits or excludes its liability for:
- 22.5.1 fraud or fraudulent misrepresentation;
  - 22.5.2 death or personal injury caused by its negligence;
  - 22.5.3 breach of any obligation as to title implied by statute; or
  - 22.5.4 any other act or omission, liability for which may not be limited under any applicable law.
- 22.6 This Condition will apply during the Contract and after it has ended.

## **23 Insurance**

- 23.1 You must insure yourself (and make sure that any sub-contractor insures itself) with a reputable insurance company to at least the minimum levels of insurance set out in Condition 23.2 in respect of all risks arising out of your performance of the Contract, as set out in the Specification. You must maintain (and ensure that any sub-contractor maintains) the relevant insurances for the duration of the Contract. If we ask, you will immediately show us the insurance policies or a broker's verification of insurance to demonstrate that the appropriate cover is in place, and evidence that the most recent premiums have been paid.
- 23.2 Minimum levels of insurance cover:
- 23.2.1 public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
  - 23.2.2 employer's liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims; and

- 23.2.3 professional indemnity insurance with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and will ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover.
- 23.3 If, for whatever reason, you fail to take out and maintain the insurances set out in this Condition 23, we may make alternative arrangements to protect our interests and may recover the costs of such arrangements from you.
- 23.4 This Condition applies during the Contract and after it has ended.

## 24 Freedom of Information

- 24.1 For the purposes of this Contract, the terms “**Information**” and “**Request for Information**” will have the meaning prescribed under FOIA.
- 24.2 We operate under a Code of Practice on Public Access to Information (“**the Code**”). To meet our responsibilities under the FOIA you acknowledge that we operate under the Code and are subject to the requirements of the FOIA, and you will assist and co-operate with us at your expense to enable us to comply with our Information disclosure requirements under FOIA (and as set out in this Condition 24).
- 24.3 You will:
  - 24.3.1 transfer any Request for Information to us as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
  - 24.3.2 provide us with a copy of all Information in your possession or power in the form that we require within 4 Working Days (or such other period as we may specify) of us requesting such Information;
  - 24.3.3 provide us with any reasons and supporting evidence you may wish us to take into account to enable us to consider the applicability of any exemptions under FOIA; and
  - 24.3.4 provide all necessary assistance as reasonably requested by us to enable us to respond to a Request for Information within the time for compliance set out in FOIA.
- 24.4 We will, after consulting with and considering your views, be responsible for determining at our absolute discretion whether any Information:

24.4.1 is exempt from disclosure in accordance with the provisions of FOIA; and

24.4.2 is to be disclosed in response to a Request for Information;

and in no event will you respond directly to a Request for Information unless expressly authorised to do so by us.

24.5 You acknowledge that we may be obliged under FOIA to disclose Information:

24.5.1 without consulting you; or

24.5.2 following consultation with you and having taken your views into account;

and in any event we will not be liable for any loss, damage or other detriment arising from the disclosure of any Information relating to this Contract under FOIA.

24.6 This Condition applies during the Contract and after it has ended.

## 25 Data Protection

25.1 For the purposes of this Contract, the terms “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**”, “**Processing**” and “**Special Categories of Data**” will have the meaning prescribed under the Data Protection Legislation and “**Process**” will be construed accordingly.

25.2 Both parties respectively will comply with all applicable requirements of the Data Protection Legislation. This Conditions 25 is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation.

25.3 You warrant, represent and undertake that you:

25.3.1 have and will continue to comply in all respects with your obligations as a Data Controller or Data Processor (whichever is applicable in the circumstances) under the Data Protection Legislation; and

25.3.2 have all necessary consents from the relevant Data Subjects to pass on their Personal Data (including Special Categories of Data) to us where required for the performance of the Contract and that we may Process that Personal data accordingly.

25.4 Despite the general obligation in Condition 25.2, where you are Processing Personal Data as a Data Processor on our behalf you will:

- 25.4.1 Process the Personal Data only in accordance with our instructions (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by us, unless you are required by the laws of any member of the European Union or by the laws of the European Union applicable to you to Process the Personal Data (**Applicable Laws**). Where you are relying on the Applicable Laws as the basis for Processing Personal Data, you must promptly notify us of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prevent you from so notifying us;
- 25.4.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the performance of your obligations under this Contract or as is required by law, and not sub-contract any Processing without our prior written consent;
- 25.4.3 implement appropriate technical and organisational measures, reviewed and approved by us if we so require, to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, corruption, damage, alteration or disclosure. Such measures must be appropriate to the harm that might result from any unauthorised or unlawful Processing or accidental loss, destruction, corruption, damage, alteration or disclosure having regard to the state of technological development and the cost of implementing any measures (such measures may include, where appropriate, pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of your systems and services; ensuring that availability of and access to the Personal Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by you);
- 25.4.4 promptly notify us of any breach of the measures referred to in Condition 25.4.3;
- 25.4.5 notify us immediately if you consider that any of our instructions could infringe the Data Protection Legislation;

- 25.4.6 take reasonable steps to ensure the reliability of your staff who may have access to the Personal Data and ensure that they:
  - 25.4.6.1 are aware of and comply with your duties under this Condition 25 and only Process Personal Data in accordance with the Contract;
  - 25.4.6.2 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless asked to do so by us in writing or otherwise as permitted by the Contract;
  - 25.4.6.3 are subject to ongoing confidentiality undertakings with you and are obliged to keep the Personal Data confidential; and
  - 25.4.6.4 have undergone adequate training in the use, care and protection of Personal Data; and
- 25.4.7 ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data between you and us for the duration and purposes of the Contract;
- 25.4.8 not disclose Personal Data to any third parties in any circumstances other than with our written consent or in compliance with a legal obligation imposed upon us;
- 25.4.9 not Process the Personal Data outside of the European Economic Area without our prior written consent and subject to any conditions we deem necessary, which include (amongst others if we so require) that:
  - 25.4.9.1 the parties have provided appropriate safeguards in relation to the transfer;
  - 25.4.9.2 the Data Subject has enforceable legal rights and effective legal remedies;
  - 25.4.9.3 you comply with your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and



- 25.4.9.4 you comply with reasonable instructions notified to you in advance by us to the Processing of the Personal Data; and
  - 25.4.10 assist us, at your own cost, in responding to any request from a Data Subject and ensuring compliance with our obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Information Commissioner or any other regulatory authority;
  - 25.4.11 notify us without delay on becoming aware of a Personal Data breach; and
  - 25.4.12 delete or return Personal Data and any copies to us on termination of the Contract if we ask you to do so, unless the Data Protection Legislation or an Applicable Law requires you to store the Personal Data.
- 25.5 You will provide us with all reasonable assistance in preparing a Data Protection Impact Assessment. Such assistance may, at our discretion, include:
- 25.5.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 25.5.2 an assessment of the necessity and proportionality in relation to the Services;
  - 25.5.3 an assessment of the risks to the rights and freedoms of the Data Subjects; and
  - 25.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 25.6 You will notify us immediately if you:
- 25.6.1 receive a Data Subject Access Request (or a purported Data Subject Access Request);
  - 25.6.2 receive a request to rectify, block or erase any Personal Data;
  - 25.6.3 receive any other request, complaint or communication relating to either your or our obligations under the Data Protection Legislation;

- 25.6.4 receive any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
- 25.6.5 receive a request from a third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
- 25.6.6 become aware of any event that results, or may result, in unauthorised access to Personal Data held by you under the Contract and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract (“**Data Loss Event**”).

The obligations to notify in this Condition 25.6 include the provision of further information to us in phases, as details become available.

25.7 Taking into account the nature of the Processing, you will provide us with full assistance in relation to either your or our obligations under Data Protection Legislation and any complaint, communication or request referred to in Conditions 25.6.1 to 25.6.5 inclusive (and, so far as is possible, within our timescales) including by promptly providing:

- 25.7.1 us with full details of the complaint, communication or request;
- 25.7.2 such assistance as is reasonably requested by us to enable us to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 25.7.3 us, at our request, with any Personal Data you hold in relation to a Data Subject;
- 25.7.4 assistance as requested by us following any Data Loss Event;
- 25.7.5 assistance as requested by us with respect to any request from the Information Commissioner’s Office or other regulatory authority, or any consultation by us with the Information Commissioner’s Office or other regulatory authority.

25.8 You will maintain complete and accurate records and information to demonstrate your compliance with this Condition 25.

25.9 You will permit us, given reasonable notice, to inspect and audit your Data Processing activities and will comply with all reasonable requests or directions to enable us to verify that you are in full compliance with your obligations under this Condition 25 and the Contract.

- 25.10 You will take reasonable precautions to preserve the integrity of all data you process and to prevent any corruption or loss of that data, including by making backup copies on media from which the data can be reloaded.
- 25.11 We do not consent to you appointing any third party processor of Personal Data under the Contract without our written consent. If we so consent, you confirm that you:
- 25.11.1 have provided us with full information in writing of the intended Processing to be carried out by the third party processor;
  - 25.11.2 have entered or (as the case may be) will enter with the third party processor a written agreement incorporating terms which are substantially similar to those set out in this Condition 25 and provide the same level of protection and assurance; and
  - 25.11.3 have and will provide us with such information about the third party processor as we may reasonably require.

You will remain fully liable under this Contract and the Data Protection Legislation for all acts and omissions of any third party processor appointed by you under this Condition 25.11.

- 25.12 You must designate a data protection officer pursuant to the Data Protection Legislation.
- 25.13 We may, at any time on not less than 30 Working Days' notice, revise this Condition 25 by replacing it with any applicable controller to processor (or vice versa) standard clauses or similar terms forming part of an applicable certification scheme (which will apply when incorporated by attachment into these Conditions).
- 25.14 Each of you and us agree to take account of any guidance issued by the Information Commissioner's Office. We may, on not less than 30 Working Days' notice to you, amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

25.15 This Condition applies during the Contract and after it has ended.

## **26 Confidentiality**

- 26.1 Unless we agree, all information which you obtain from us or becomes known to you in connection with this Contract must be kept confidential and must not be disclosed except as is necessary for the performance of the Contract. This does not apply to information which is already in the

public domain. You will take all reasonable precautions to prevent the loss of any confidential information including, without limitation, only taking copies of confidential information as are reasonably necessary for the performance of the Contract. You must inform us immediately if any of our confidential information is lost or mislaid by you.

- 26.2 You acknowledge that we are subject to obligations under FOIA and will assist and co-operate with us at your expense to enable us to comply with these disclosure requirements. Further detail about these obligations is set out in Condition 24. You acknowledge that we may be required to disclose information held by us in relation to your tender, the Contract or any other recorded information to anyone who makes a valid request under FOIA. Information held by us may only be withheld as a result of the exemptions in FOIA.
- 26.3 You may designate information provided to us as “confidential” or “commercially sensitive”, but you acknowledge that we may still be obliged to disclose such information in accordance with Conditions 26.2 and 24. We have an obligation under FOIA to maintain a publication scheme that sets out information routinely published. Contract award details, for contracts over £25K excluding VAT, are entered in our publication scheme and will be routinely published.
- 26.4 We may seek references from your Bank, from your current or past clients, or other referees which you give us.
- 26.5 We may disclose information relating to the Contract (including price information) to other public sector authorities. We may want to do this for the purpose of collaborative discussions, to ensure, for example, that best value for money is being obtained, and such disclosure will not be a breach of this Contract.
- 26.6 This Condition applies during the Contract and after it has ended.

## **27 Publicity**

- 27.1 You will not mention our name in connection with the Contract or disclose the existence of the Contract in any publicity material or any other publication unless we have previously agreed to this, and our Head of Procurement has approved what you want to do, in writing.
- 27.2 This Condition will apply during the Contract and after it has ended.

## **28 Audit and records**

- 28.1 You, and where relevant your Personnel, will maintain complete and accurate records of your performance of the Contract, including all

payments made by us to you in respect of the Services, for a minimum period of 6 years from the date of the last payment made by us to you under the Contract. If we ask on reasonable notice, you will give us, our auditors or any regulatory body access to your records, and where relevant those of your Personnel, for any purpose relating to the delivery of the Contract, and allow us or our auditors to take copies of those records as required.

28.2 We will use our reasonable efforts to ensure that the conduct of each audit does not unreasonably disrupt you or delay the provision of the Services.

28.3 This Condition applies during the Contract and after it has ended.

## **29 Intellectual Property Rights**

29.1 In the absence of a prior written agreement to the contrary, all Intellectual Property Rights in any items produced (in whatever form) by you for us in connection with the Services will belong to us and be our property. Where necessary to achieve this you will, free of charge, assign these Intellectual Property Rights to us, with full title guarantee and free from all third party rights. You will, if we ask, sign any document that we require as evidence of the transfer of Intellectual Property Rights to us under this Condition 29.

29.2 You will not breach any Intellectual Property Rights of any third party.

29.3 All Intellectual Property Rights in any pre-existing items provided by you to us in connection with the Services will remain your property (unless otherwise set out in the Contract or agreed between us). You will, free of charge, grant to us a royalty free non-exclusive licence to use all such Intellectual Property Rights to enable us to receive and use the Services.

29.4 If any claim is made against either party by someone alleging an infringement of Intellectual Property Rights, that party must tell the other promptly in writing if the claim might affect the use of the Services by or for us.

29.5 This Condition will apply during the Contract and after it has ended.

## **30 Termination on insolvency**

30.1 We may immediately terminate the Contract by telling you in writing:

30.1.1 if someone takes action against you which could lead to you being made bankrupt or insolvent or if you make, or propose to make, any arrangement with people who you owe money

which could be regarded as an "arrangement with creditors";  
or

30.1.2 if you are a company, if you are insolvent or any action is taken to wind up the company, or any person makes a proposal or application to appoint an official (such as an administrator, liquidator or receiver), or any such official is appointed to manage any of the affairs or assets of the company, or you make any arrangement with people who you owe money to which could be regarded as an "arrangement with creditors".

30.2 If we do take any of the above action it will not affect any other rights we may have against you in relation to the Contract.

## **31 Termination**

31.1 Without affecting any other rights or remedies to which we may be entitled under the Contract, we may terminate the Contract with immediate effect by giving you notice in writing if:

31.1.1 you have breached the Contract in any material way and the breach is not in our opinion capable of remedy or you do not remedy the breach at your own expense and to our reasonable satisfaction within 5 Working Days of receipt of our notification in writing telling you that you have breached the Contract;

31.1.2 without affecting our rights under Condition 31.1.6, you repeatedly breach any of the terms of the Contract in such a manner as to reasonably justify the opinion that your conduct is inconsistent with you having the intention or ability to give effect to the terms of the Contract;

31.1.3 any act, omission or conduct by you or your Personnel may, in our reasonable opinion, bring us into disrepute;

31.1.4 you (if an individual or Key Personnel) become mentally or physically incapable of completing the Contract, either through illness or some other reason;

31.1.5 you are in breach of Condition 3.1.2;

- 31.1.6 subject to Condition 8, you commit a Material Breach of any Service Level or if you persistently breach the Service Levels or any of them;
- 31.2 In addition, we may terminate the Contract at any time for any reason by giving you 60 days' notice in writing.
- 31.3 In any case where we are entitled to terminate the Contract other than under Condition 30 or 31.2, we will be entitled to choose to terminate the Contract only in relation to the Services directly affected by the circumstances giving rise to our right to terminate. If we tell you in the notice of termination that we send to you that we are only terminating the Contract in relation to such Services, the Contract will terminate in relation to those Services, but will otherwise remain in full force and effect.
- 31.4 This Condition applies during the Contract and after it has ended.

## **32 Consequences of termination or expiry**

- 32.1 If the Contract terminates, any rights of action or remedies that may have arisen beforehand or which may arise as a result of the termination will not be affected.
- 32.2 If we terminate the Contract (or any part of the Contract) other than under Condition 30 or 31.2 we may, without affecting any other rights or remedies to which we may be entitled, instruct somebody else to perform the Contract (or relevant part of it) and:
  - 32.2.1 we will be allowed to use any materials you have left at the Premises, without charge; and
  - 32.2.2 if we do instruct somebody else to complete the Services, we will not pay you any money until the Services have been completed. We will deduct what we have had to pay somebody else to complete the Services from the money we are due to pay to you. If the money we pay to somebody else to complete the Services is more than we would have paid to you under the Contract, we will not pay you anything further and if this is the case, you will pay us the difference; and
  - 32.2.3 you will provide all reasonable co-operation at your own expense to facilitate and assist us with any alternative arrangements we make for performance of the Contract.

- 32.3 If the Contract (or any part of the Contract) expires or is terminated for any reason you will:
- 32.3.1 provide all reasonable assistance and co-operate with us without charge, including in the development of an exit plan, to facilitate the smooth and effective migration of the Services, any work in progress and all relevant data back to us or a Replacement Supplier;
  - 32.3.2 at our request return all our property (including any equipment, materials, documents, data, information and anything else we may specify);
  - 32.3.3 assign or novate at no premium any equipment or hardware leases and related support agreements to us or any Replacement Supplier if we require;
- 32.4 If we terminate the Contract, you will provide us with a termination report on the work done under the Contract if we request, and that termination report will include your recommendations to us based on that work.

32.5 This Condition applies during the Contract and after it has ended.

### **33 Corrupt gifts or payments**

- 33.1 You must not do anything that gives or offers any kind of inducement or reward to any of our employees in relation to the Contract or any other contract. It may be a criminal offence to do any of those things and you should therefore make sure you are aware of and comply with the Bribery Act 2010. You must not offer any of our employees any kind of corporate hospitality.
- 33.2 We may immediately terminate the Contract by written notice if you breach Condition 33.1
- 33.3 This Condition applies during the Contract and after it has ended.

### **34 Waiver**

- 34.1 A waiver of any right or remedy under the Contract or law is only effective if given in writing and will not be considered a waiver of any subsequent breach or default. No failure or delay by either one of us to exercise any right or remedy provided under the Contract or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.



## **35 Remedies**

- 35.1 The rights and remedies each of us is entitled to under the Contract are cumulative and not exclusive of any rights and remedies provided for by the law or otherwise.

## **36 Severability**

- 36.1 Notwithstanding that the whole or any part of any provision of this Contract may prove to be illegal or unenforceable, the other provisions of this Contract and the remainder of the provision in question will remain in full force and effect.

## **37 Third Party Rights**

- 37.1 A person who is not a party to this Contract will not have any rights to enforce its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 37.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

## **38 Notices**

- 38.1 Any notice to be sent by you or by us in connection with the Contract can be sent by first class pre-paid letter or by fax. Notices should be sent to the address or fax number for each party shown in the Purchase Order. Either party can change the address or fax number for notices by telling the other in writing the new address or fax number, but the previous address or fax number will continue to remain valid for 7 days after the change is notified.
- 38.2 If sent to the correct address, a notice will be treated as received 48 hours after sending if a letter, or 24 hours after transmission if a fax.

## **39 Contract Variation**

- 39.1 No variation of this contract will be valid unless confirmed in writing by authorised signatories of both parties.

## **40 Entire Agreement**

- 40.1 This Contract and any documents referred to in it constitute the whole agreement between the parties and supersede and extinguishes all

previous contracts, agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

40.2 Each party acknowledges that, in entering into this Contract and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) of any person (whether a party to this Contract or not) other than as expressly set out in this Contract or those documents.

40.3 Each party agrees that it will have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

#### **41 Governing Law and Jurisdiction**

41.1 The Contract is made under the law of England and Wales as it applies in Wales, and the English and Welsh courts sitting in Wales will have authority to settle any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims).