

SCHEDULE 5 – CALL-OFF TERMS AND CONDITIONS

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

Precedent

This document intentionally includes Drafting Notes (DN) to support the buying organisations complete the Call-off Terms and Conditions at call-off.

THIS AGREEMENT IS DATED [DATE]

PARTIES

- (1) [insert full details of participating organisation] (**Customer**), which term includes any successor to it in the exercise of its statutory functions and its permitted assignees; and
- (2) [insert full details of supplier, including company number, registered office etc] (**Supplier**) *[DN: The Customer can only contract with a legal entity (or one or more legal entities). This could be a sole trader, legal partnership, limited company, etc. The Customer may require a consortium to form a legal entity (such as a company) prior to contracting with it. Where the consortium is a legal entity, no changes are required to the drafting of these terms and conditions.]*

However, where the relationship between consortium members is purely contractual, the optional clauses indicated below should be included.

Generally, if no legal partnership or company has been set up, the Customer will expect to contract with one member of the consortium, which will act as the lead member in submitting the tender. The other members of the consortium will be Sub-Contractors if they are providing services which form part of the contract. In this instance, the relationship between each of the parties to the consortium is purely contractual. The consortium agreement will appoint one of the members to act as the lead member, which will enter into the main contract with the Customer. The lead member will be responsible for any breaches of contract by its Sub-Contractors.]

the Customer and the Supplier are each referred to as a “**Party**” and together, the “**Parties**”.

BACKGROUND

- (A) The Welsh Ministers placed a Contract notice [REFERENCE] on [DATE] in the Official Journal of the European Union seeking expressions of interest from potential framework providers for the provision of Goods [(divided into Lots)] to the Participating Organisations under a framework agreement.
- (B) Following receipt of expressions of interest, the Welsh Ministers invited potential service providers (including the Supplier) on [DATE] to tender for the provision of [DESCRIPTION] goods.
- (C) On the basis of the Supplier's Tender, the Welsh Ministers selected the Supplier to enter a framework agreement to provide services to Participating Organisations who will place Orders for the Goods in accordance with the Framework Agreement.

(D) [The Supplier is part of a consortium.] *[DN: You may wish to provide brief details of the consortium here.]*

(E) This Call-Off Contract sets out the procedure for Ordering Goods, the main terms and conditions for the provision of Goods and the obligations of the Supplier under the framework agreement.

(F) The Customer is a Participating Organisation, as specified in the OJEU Notice. It has selected the Supplier to provide the Goods and the Supplier is willing and able to provide the Goods in accordance with the terms and conditions of this Call-Off Contract.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 For the purposes of this Agreement except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria means such criteria as the Customer has specified as must be met by the Goods before the Customer will take delivery of the Goods;

Affected Party means the Party seeking to claim relief in respect of a Force Majeure Event;

Agreement shall have the meaning given in Clause 4.1;

Award Letter means the letter sent by the Customer to the Supplier notifying it that its tender has been successful and it has been awarded a contract for the supply of goods;

Confidential Information means information listed in the FOI Schedule, which is considered by the Supplier to be confidential under Section 41 of the FOIA, and any information designated as confidential by the Customer, the disclosure of which would be considered by the Supplier to constitute an actionable breach of confidence (without prejudice to the Customer's obligations under the FOIA);

Confidentiality Undertaking means an undertaking not to use or disclose any Confidential Information received save as strictly

required to fulfil the purposes of this Agreement (including, without limitation, its re-tender);

Contracting Authority

means any contracting authority as defined in the Public Contracts Regulations 2015;

Contract Period

means the period calculated in accordance with Clause 3;

Data Controller

shall have the meaning given in section 1 of the Data Protection Act 1998;

Data Processor

shall have the meaning given in section 1 of the Data Protection Act 1998;

Data Protection Legislation

(i) the General Data Protection Regulation (EU) 2016/679 (GDPR), and any applicable national implementing Laws as amended from time to time
(ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR;

Data Loss

any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach

Data Subject Access Request

a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the

Employment Liabilities

Data Protection Legislation to access their Personal Data

means all claims; demands, penalties, actions, proceedings, damages, compensation, protective awards, court or tribunal orders or awards, fines, costs, expenses, notice pay, pension liabilities and all other losses and liabilities (including legal and other professional expenses on an indemnity basis);

Environmental Information Regulations

the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

Equipment

The Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Agreement;

FOIA

means the Freedom of Information Act 2000, the Environmental Information Regulations and any subordinate legislation made under or in connection with the Act or the Regulations from time to time in force, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the Act or the Regulations;

Force Majeure Event

means an event occurring after the date of this Agreement of war, armed conflict, acts of terrorism, riots, fire, flood, storm, earthquake, or disaster or such other similar events which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Agreement but excluding any industrial dispute relating to the Supplier, the Staff or any other failure in the Supplier or any Sub-Contractor's supply chain;

Good Industry Practice

means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading supplier within the relevant industry or business sector of goods (and of any services associated with the supply of such goods) of a similar type to the Goods and associated services to be supplied under this Agreement;

Goods

means any Goods supplied or to be supplied by the Supplier in accordance with this Agreement, together with any services associated with the supply of such Goods including (but not limited to) delivery, installation, testing, maintenance, repair, removal and/or disposal;

Health and Safety Regime

means the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work etc Act 1974, the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Food Safety Act 1990 the Environment Act 1995, the Water Industry Act 1991, and the Water Resources Act 1991 (including in each case any associated regulations, guidance or approved codes of practice), and any similar or analogous health, safety or environmental Legislation which has as its aim the protection of persons or the environment or the prevention or reduction of risk of harm or injury to persons or the environment, or relating to the health and safety of the Goods or their use, as is in force from time to time;

Holding Company

shall have the meaning given in section 1159 of the Companies Act 2006;

Information

shall have the meaning given under section 84 of the Freedom of Information Act 2000 and/or Regulation 2 of the Environment Information Regulations;

Intellectual Property Rights

means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, trade secrets and rights in confidential information

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

Invitation to Tender

means the invitation to tender issued by the Customer for the supply of the Goods;

Legislation

means:

(a) any applicable statute or proclamation or any delegated or subordinate legislation;

(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;

(c) any applicable guidance, direction or determination with which the Customer and/or the Supplier is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Customer; and

(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales,

In each case in force or applicable in both England and Wales, or in Wales only;

Order

means an order for the Goods placed by the Customer in accordance with Clause 6 of this Agreement;

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| Order Number | means the official number allocated by the Customer to an Order; |
| Parent Company | shall have the meaning given in section 1162 and Schedule 7 of the Companies Act 2006; |
| PCR 2015 | means the Public Contracts Regulations 2015; |
| Personal Data | shall have the meaning given in section 1 of the Data Protection Act 1998; |
| Premises | means the location where the Goods are to be supplied as set out in the Order Form; |
| Price | means the price or prices specified in the Order; |
| Prohibited Act | <p>the following constitute Prohibited Acts:</p> <p>(a) directly or indirectly to offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act 2010;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Customer; or</p> <p>(iv) defrauding, attempting to defraud or conspiring to defraud the Customer;</p> |

Protective Measures

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it

Relevant Authority

means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Welsh Ministers, the government of the United Kingdom or of the European Union;

Relevant Transfer

shall have the meaning set out in TUPE;

Replacement Supplier

any third party supplier of the Goods appointed by the Customer to supply any services that are substantially the same as or similar to any of the Goods which the Customer receives in substitution for any of the Goods following the expiry, termination or partial termination of the Contract;

Requests for Information

shall have the meaning set out in section 8 of the FOIA and/or Regulation 5 of the Environmental Information Regulations and includes any apparent request for such Information;

Samples

means any samples submitted to the Customer as part of the procurement process leading to the award of this Agreement;

Special Conditions

means any special conditions either referred to the Invitation to Tender or set out in Schedule 3 hereto;

Specification

means the specification attached to the Invitation to Tender;

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| Staff | means all servants, suppliers, officers, partners, employees, workers, agents, consultants and contractors of whatever nature of the Supplier and/or of any Sub-Contractor. |
| Staff Terms and Conditions | means the terms and conditions under which the Staff are employed or engaged by the Supplier or Sub-Contractor. |
| Staff Vetting Procedures | the Participating Organisations' procedures and departmental policies for the vetting of personnel for: <ul style="list-style-type: none"> (a) eligibility to work in the UK; (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure; |
| Sub-Contract | any contract between the Supplier and a third party [(including a consortium agreement)] pursuant to which the Supplier agrees to source the provision of the performance of any of the Supplier's obligations under this Agreement; |
| Sub-Contractor | means any third party with whom the Supplier enters into a Sub-Contract [(including a consortium agreement)] or its employees or agents and any third party with whom that third party enters into a Sub-Contract or its employees or agents for the performance of any part of the Supplier's obligations under this Agreement; |
| Sub-processor | any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement |
| Tender | means the tender submitted by the Supplier in response to the Invitation to Tender; |
| TUPE | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended; |

VAT

means value added tax chargeable under the Value Added Tax Act 1994;

Welsh Language Obligations

means the obligations of the Customer in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards which apply to the Customer under the Welsh Language (Wales) Measure 2011 (whether or not a compliance notice has been given to the Customer) or any specific obligations in respect of the use of the Welsh language in connection with the provision of Goods which are notified to the Supplier from time to time by the Customer; and

Working Days

means Monday to Friday 9.00 a.m. to 4.30 p.m. excluding any statutory public holidays in Wales

- 1.2 In this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 1.3 A reference to any statute, statutory instrument, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, statutory instrument, enactment, order, regulation or instrument as subsequently amended, replaced or re-enacted and as in force at the relevant time.
- 1.4 A reference to a Party shall include that Party's personal representatives and permitted assigns.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.
- 1.7 A reference to any document shall be construed as a reference to the document as at the date of execution of this Agreement.

- 1.8 Each Party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Agreement.
- 1.9 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 shall include the Schedules.
- 1.10 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2 PRELIMINARIES

- 2.1 The terms of this Agreement shall apply to all Orders made by the Customer.
- 2.2 The Supplier shall, if required to do so by the Customer, enter into a form of supplementary agreement determined by the Customer to reflect the relevant requirements of any Invitation to Tender and (as appropriate) the offers or proposals set out in any Tender submitted in response to it [including, without limitation, a consortium agreement].
- 2.3 If required to do so by the Customer, the Supplier shall provide the names and addresses of two substantial sureties who are satisfactory to the Customer and who are prepared to guarantee the due performance of this Agreement. *[DN: note that if guarantees are required, the provisions of this Agreement will require amendment to include a form of guarantee and ancillary rights if such a guarantee is not provided by the Supplier (e.g. termination)]*
- 2.4 [Where the Supplier is part of a consortium, the Supplier shall ensure that each member of the consortium is prepared to guarantee the due performance of this Agreement if required to do so by the Customer.] *[DN: note that if guarantees are required, the provisions of this Agreement will require amendment to include a form of guarantee and ancillary rights if such a guarantee is not provided by the Supplier (e.g. termination)]*

3 COMMENCEMENT AND DURATION

[DN: the provisions of this clause must be clear. If the agreement is being procured on the basis that the Customer can make various Orders over a period of say 4 years (e.g. as a framework), the overall duration of the agreement (or the 'term') should be set out here. On present drafting, each new Order creates a new Agreement].

- 3.1 This Agreement shall take effect on the date specified in the Order.
- 3.2 This Agreement shall expire on the date specified in the Order subject to:

- 3.2.1 the rights of termination contained in the Agreement; and
- 3.2.2 Clause 6.11.

4 SCOPE

- 4.1 This Agreement shall comprise the following:
 - 4.1.1 the Terms and Conditions;
 - 4.1.2 the Special Conditions, and supplementary agreement pursuant to Clause 2.2, if any;
 - 4.1.3 the Specification;
 - 4.1.4 the Schedules (if any);
 - 4.1.5 the Invitation to Tender and the Tender;
 - 4.1.6 the Order; and
 - 4.1.7 any other document which is agreed in writing by the Parties to be incorporated into and form part of this Agreement.
- 4.2 The documents listed in Clause 4.1 above shall be read together and construed so as to be consistent with one another so far as possible. In the event of any unavoidable conflict or inconsistency between any of the various documents forming part of this Agreement the following order of precedence shall apply:
 - 4.2.1 the Special Conditions, and/or supplementary agreement pursuant to Clause 2.2;
 - 4.2.2 the Terms and Conditions;
 - 4.2.3 the Specification;
 - 4.2.4 the Schedules (if any);
 - 4.2.5 the Invitation to Tender and the Tender;
 - 4.2.6 the Order; and
 - 4.2.7 any other document which is agreed in writing by the Parties to be incorporated into and form part of this Agreement (which does not, for the avoidance of doubt, include any terms and conditions issued by the Supplier).

[DN: note that use of a precedence clause requires careful consideration in each contract; there are, for example, circumstances when documents purposefully create conflicts and a precedence clause such as this one can negate this.]

- 4.3 If there shall be a conflict between the provisions of this Agreement (including any of the documents listed in Clause 4.1) and any terms and conditions issued by the Supplier then the terms and conditions contained in this Agreement shall prevail and the Supplier in executing this Agreement hereby confirms acceptance of this condition.

5 ENTIRE AGREEMENT

[DN: note that this is a wide-ranging entire agreement clause; they are not always suitable for inclusion in every agreement and due consideration must be given before the clause is included by the contracting Customer.]

- 5.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral relating to its subject matter.
- 5.2 Each Party acknowledges that in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 5.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

6 SUPPLY AND DELIVERY

- 6.1 The Customer may at any time during the Contract Period order Goods from the Supplier by giving an Order to the Supplier and the Supplier shall supply such Goods in accordance with the Customer's Order.
- 6.2 Each Order shall: *[DN: the ordering process should be set out in full in the Agreement]*
- 6.2.1 be given in writing or, if given orally, shall be confirmed in writing within [2] Working Days;
- 6.2.2 specify the type and quantity of the Goods ordered; and
- 6.2.3 specify the date [by OR on] which the Order is to be delivered (the "**Delivery Date**") and the delivery location (the "**Delivery Location**").

- 6.3 The Customer shall assign an Order Number to each Order and notify such Order Numbers to the Supplier. Each Party shall use the relevant Order Number in all subsequent correspondence relating to the Order.
- 6.4 The Supplier shall, at its own expense and risk, supply and deliver each Order to the Delivery Location [on OR by] the Delivery Date, in accordance with the provisions of this Agreement and the relevant Order.
- 6.5 Delivery of an Order shall be complete on the completion of unloading of the Order at the Delivery Location stated in the Order. In the event that the Customer has elected to collect the Goods, the Order shall be complete when the Goods are loaded onto the Customer's vehicle.
- 6.6 Except where otherwise provided in the Order, delivery shall include the unloading, stacking or installation of the Goods by the Supplier or the Staff at such place as the Customer or other duly authorised person shall reasonably direct.
- 6.7 Each Order shall be accompanied by a delivery note or delivery notes giving full particulars thereof, quoting the Order Number, the date of the Order and the type and quantity of Goods included in the Order. Where the Goods are to be supplied by weight and are not weighed at the place of delivery, the Supplier shall provide to the Customer at the time of delivery a weight ticket.
- 6.8 Where the Goods are sold by weight, the weight of all packing materials shall be deducted from the gross weight of the Goods and the Customer shall pay only for the net weight thereof and shall not be liable for the return of any such packing materials.
- 6.9 At any time prior to despatch of the Goods, the Customer may cancel or amend any of the requirements set out in an Order including, but not limited to, any of the following:
- 22.8.1 the quantity of the Goods required;
 - 22.8.2 the Delivery Date; and/or
 - 22.8.3 the Delivery Location;
- 6.10 If the Customer amends or cancels an Order pursuant to Clause 6.9, its liability to the Supplier shall be limited to payment to the Supplier of all direct costs reasonably incurred by the Supplier in fulfilling the Order up to the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this Agreement, the Customer shall have no liability to the Supplier in respect of it.

- 6.11 If the Contract Period expires before the supply or delivery of any Goods comprised in an Order, the Supplier shall remain liable for the completion of the Order. The terms and conditions of this Agreement shall continue in full force and effect in respect of such completion.
- 6.12 Clause 6.7 shall survive the termination or expiry of this Agreement.

7 THE GOODS

- 7.1 The Supplier shall at its own cost ensure that all Goods supplied to the Customer pursuant to this Agreement shall:
- 7.1.1 conform to the Specification;
 - 7.1.2 be compliant with any requirement of any Legislation (including, but not limited to, (i) being of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended) and (ii) conforming to all applicable statutory and regulatory requirements);
 - 7.1.3 conform to any relevant British Standard, specification or code of practice or European Union equivalents;
 - 7.1.4 be compliant with any policies, rules, codes of practice, procedures and standards with which the Supplier is required to comply;
 - 7.1.5 conform to any Acceptance Criteria that are specified by the Customer;
 - 7.1.6 [be free from defects in design, material and workmanship and remain so for [12] months after Delivery];
 - 7.1.7 be of satisfactory quality and fit for any purpose for which such Goods are commonly used or which is made known to the Supplier in writing by the Customer;
 - 7.1.8 correspond in all respects with any Samples; and
 - 7.1.9 be provided in accordance with the terms set out in this Agreement.
- 7.2 In addition to the obligations imposed on the Supplier pursuant to Clause 7.1, the Supplier shall also:
- 7.2.1 ensure that the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition;

- 7.2.2 obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with the terms of this Agreement; and
- 7.2.3 comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Goods.
- 7.3 The Supplier's premises shall be available at all reasonable times for inspection by a representative of the Customer with or without a prior appointment and during such inspections the Supplier shall allow the representative of the Customer to examine any Goods to be supplied under the provisions of this Agreement or to take samples of all or any Goods for the purpose of testing or analysis to determine compliance with the Specification.
- 7.4 If, following an inspection pursuant to Clause 7.3, the Customer reasonably considers that the Goods are not or are not likely to be as warranted under Clause 7.1, without prejudice to any other right or remedy available to it, the Customer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under clause 7.1.

8 ACCEPTANCE AND DEFECTIVE GOODS

- 8.1 The Customer shall not be deemed to have accepted any Goods until [it has had [5] Working Days 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].
- 8.2 Where under the terms of this Agreement any Acceptance Criteria have been specified, the Customer shall not be obliged to accept the Goods unless and until the Supplier has demonstrated that all Acceptance Criteria for the Goods have been met and the Customer has issued an acceptance certificate.
- 8.3 The Customer shall be under no obligation to accept or pay for any Goods supplied in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days [of Delivery] and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are expressly accepted in writing by the Customer.
- 8.4 The Customer shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Order.

- 8.5 The Customer shall not be obliged to accept delivery by instalments. If the Customer specifies or agrees to delivery by instalments in the relevant Order, delivery of any instalment later than the date specified or agreed for its delivery in the Order shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Order without further liability to the Customer.
- 8.6 Time of delivery shall be of the essence with regard to the Supplier's obligations under this Agreement and if the Supplier fails to deliver the Goods [on OR by] the Delivery Date, the Customer may, without prejudice to any other rights and remedies of the Customer:
- 8.6.1 release itself from any obligation to accept and pay for the Goods;
 - 8.6.2 obtain substitute goods from another supplier and, subject to Clause 38, recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute goods (including, but not limited to, increased administration costs and costs of delay and disruption thereby incurred by the Customer);
 - 8.6.3 subject to Clause 38, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date; and/or
 - 8.6.4 may terminate the Agreement,
- [provided that the Supplier shall have no liability for any failure or delay in delivery an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this Agreement.]
- 8.7 If any Goods supplied to the Customer pursuant to an Order do not comply with any of the provisions of Clause 7.1 or are otherwise not in accordance with the requirements of this Agreement, without affecting any other right or remedy available to it, the Customer may reject the Goods.
- 8.8 In any case of rejection of the Goods by the Supplier for whatever reason:
- 8.8.1 the Supplier shall promptly and at its own expense remove the rejected Goods and replace the same, as the Customer shall direct, with Goods which comply with all requirements of this Agreement and are to the satisfaction of the Customer; and

- 8.8.2 if any payment has been made by the Customer in respect of the rejected Goods, the Customer may require the Supplier to repay the price of the rejected Goods in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Goods);
- 8.8.3 the Customer may obtain substitute goods from another supplier and, subject to Clause 38, recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute goods (including, but not limited to, increased administration costs and costs of delay and disruption thereby incurred by the Customer).
- 8.9 The Customer's rights and remedies under this Agreement are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with samples implied into this Agreement by the Sale of Goods Act 1979.

9 REPLACEMENT AND REPAIR

- 9.1 Notwithstanding acceptance by the Customer, and without prejudice to any other right of the Customer under this Agreement or at law, the Supplier shall, at the Customer's option, promptly repair or replace, at the Supplier's expense and to the satisfaction of the Customer, any Goods which are notified by the Customer as being defective within a reasonable period of time (dependent on the nature of the Goods) from the date when the Goods have been put into operational use either following delivery or following repair, modification or replacement of the Goods or any part thereof pursuant to this Clause 9.
- 9.2 In addition to the remedies under Clause 9.1 and without prejudice to any of its other rights, the Customer shall have the right to recover from the Supplier all costs and expenses arising from the defective Goods including, but not limited to those of:
- 9.2.1 removing the Goods;
 - 9.2.2 carriage and storage of the Goods;
 - 9.2.3 testing the Goods; and
 - 9.2.4 reinstalling and re-commissioning the Goods.

10 DEFAULT

- 10.1 In the event of the Supplier being unable to supply the Goods in accordance with the foregoing conditions or within the time specified for delivery in the Order, the Supplier shall immediately notify the Customer's [NAME PERSON] of its inability to do so and the reasons therefor and the Customer, without prejudice to any other right or remedy to which it may be entitled, shall be at liberty to terminate the Agreement either wholly, or to the extent of such default and to purchase from an alternative supplier such other goods or materials of the same or similar description to make good the default, as the Customer may reasonably decide. The Customer may recover from the Supplier any additional costs of purchasing the goods and materials or their equivalent from an alternative supplier together with any additional costs (including but not limited to increased administration costs, and costs of delay and disruption) thereby incurred by the Customer.
- 10.2 The Supplier shall be liable to make good and pay all damages, costs, charges and expenses arising out of the breach of contract or negligence of itself and/or its Staff arising out of the performance of this Agreement howsoever such damages, costs, charges and expenses arise.
- 10.3 The Supplier shall make good or replace with all possible speed any Goods which are or which become subject to defects arising from defective design, materials or workmanship of the Goods within twelve (12) months of either:
- 10.3.1 delivery and acceptance of such Goods by the Customer; or
 - 10.3.2 any making good or replacement of such Goods by the Supplier (whichever shall be the later).
- 10.4 The Supplier must meet any costs incurred as a result of such making good or replacement under Clause 10.3 above. In this Clause 10, "making good" means bringing the Goods into a condition which fully meets all the obligations of the Supplier under this Agreement, and "replacement" means replacement with Goods of at least equal quality which fully meet all the Supplier's obligations under this Agreement.
- 10.5 If the Supplier makes good or replaces any portion of the Goods supplied, the provisions of this Agreement shall apply in full to the portion made good or replaced as if that portion had been supplied on the date of replacement or renewal.
- 10.6 For the purpose of this Agreement the expression "additional costs" shall include (without limitation) the reasonable cost to the Customer of the time spent by its officers in terminating this Agreement and in making alternative arrangements for the provision of the Goods, any additional costs of the Goods, and the costs of any delay or disruption.

11 TITLE AND RISK

11.1 Title in any Goods shall, without prejudice to the Customer's right to reject the Goods if they are defective, pass to the Customer on Delivery.

11.2 The risk in the Goods shall pass to the Customer on acceptance by the Customer.

12 PROVISION AND REMOVAL OF EQUIPMENT

12.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Goods.

12.2 The Supplier shall not deliver any Equipment nor begin any work on the Goods on the Premises without obtaining prior written Approval.

12.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Customer's default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.

12.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

12.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

12.5.1 remove from the Premises any Equipment that in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Agreement; and

12.5.2 replace such item with a suitable substitute item of Equipment.

12.6 On completion of the Goods, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

13 CHARGES AND PAYMENTS

13.1 The charges payable by the Customer in respect of Goods shall be determined by reference to the Price for the Goods specified in [Schedule 1]. ***[DN: a price list must be established for each procurement and set out in the Agreement. The charges payable for each Order should then be calculated by reference to the Price List].***

- 13.2 The Price payable by the Customer in respect of each Order shall be specified in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Order.
- 13.3 The Price is inclusive of the costs of packaging, insurance, delivery, installation and carriage of the Goods.
- 13.4 Where Goods are sold by weight, the weight of all packing materials shall be deducted from the gross weight of the Goods and the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are properly chargeable on a supply of Goods.
- 13.5 The Prices are exclusive of VAT. The Customer shall pay the Value Added Tax on the charges at the rate and in the manner prescribed by law, from time to time.
- 13.6 All invoices submitted by the Supplier to the Customer shall be valid VAT invoices and shall contain the Order Number(s) to which the invoice relates and shall be denominated in sterling.
- 13.7 The Supplier shall ensure that all invoices clearly show the following information (where applicable):
- 13.7.1 name and address of the Supplier;
 - 13.7.2 the period to which the payment relates;
 - 13.7.3 the hourly rate for any services including premium rates for weekends, evenings etc.
- 13.8 [The Supplier shall use best endeavours during the Contract Period to reduce its manufacturing, supply and other costs for the Goods.]
- 13.9 [The Supplier agrees that if at any time during the Contract it sells any Goods to a comparable customer for less than the Price then in force for the relevant Goods, it shall reduce the relevant Price to match the lower price for as long as the lower price is available and shall refund the Customer difference between the Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price.] *[DN: this clause may be seen to be anti-competitive. Please use it with care and seek advice if you are unsure]*
- 13.10 The Supplier shall be entitled to invoice the Customer for each Order on or at the time of Delivery. Each invoice shall quote the relevant Order Number(s). Where the Supplier submits an invoice to the Authority in accordance with this Clause, the Customer will consider and verify that invoice in a timely fashion.

- 13.11 In the event of the submitted invoice being incorrect, the Customer may return the invoice to the Supplier as a query, and/or raise any query or request for information, and the Supplier shall answer any such request within five (5) Working Days. The period for payment shall not commence until the date of receipt of an accurate invoice by the Finance Section of the Customer. Payment of invoices by the Customer for Goods supplied shall be made, in the discretion of the Customer, either by way of the BACS system or the Welsh Purchase Card from Barclaycard. Where the Welsh Purchase Card is the preferred method of payment, the Provider shall be solely responsible for the payment of the merchant fee levied by the card provider and the Provider shall not recover this merchant fee from the Customer.
- 13.12 Payment shall be made within thirty (30) days of receipt by the Customer (at its nominated address for invoices) of a valid and agreed invoice from the Supplier.
- 13.13 If the Customer disputes any invoice or other statement of monies due, the Customer shall promptly 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 the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with Clause 46. Where only part of an invoice is disputed, the undisputed amount shall be paid in accordance with the terms of this Agreement. The Supplier's obligations to supply the Goods shall not be affected by any payment dispute.
- 13.14 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- 13.14.1 a provision that where the Sub-Contractor submits an invoice to the Supplier, the Supplier shall consider and verify that invoice in a timely fashion;
 - 13.14.2 a provision that the Supplier shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Supplier has determined that the invoice is valid and agreed; and
 - 13.14.3 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clauses 13.14.1 and 13.14.2 of this Agreement.
- 13.15 In this Clause 13, "Sub-Contract" means a Sub-Contract at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

[DN: This clause is based on guidance issued by the Crown Commercial Service and Cabinet Office in relation to regulation 113 of the Public Contracts Regulations 2015, which requires contracting authorities to include in all public contracts provisions requiring prompt payment. If no suitable provision is included in a relevant public contract, the terms set out in regulation 113(6) will be implied into that public contract.]

14 WARRANTIES AND REPRESENTATIONS

14.1 The Supplier warrants and represents that:

- 14.1.1 it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- 14.1.2 the Goods shall (to the extent required under this Agreement) be supplied, installed, tested and commissioned [and thereafter maintained and repaired] by appropriately experienced, qualified and trained personnel in accordance with Good Industry Practice;
- 14.1.3 as at the Commencement Date, all information contained in its Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to the execution of this Agreement; and
- 14.1.4 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- 14.1.5 it shall not take any action nor shall it make any omission in terms of which the reputation of the Welsh Ministers is placed into disrepute.

15 [LEGISLATIVE CHANGE

15.1 Subject to the content of the remainder of this clause the Supplier shall bear the cost of complying with all Legislation and any amendments thereto. In the event that a change in Legislation necessitates a material change to the performance of this Agreement and provided that such change could not have reasonably been foreseen by the Supplier at the date of the Agreement the Parties shall enter into negotiations in good faith to make such adjustments to the Price as may be necessary to compensate the Supplier for any additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Customer may at its discretion terminate this Agreement in whole or in part.]

16 ALTERATION OF PLACE OF MANUFACTURE

16.1 Where the Supplier has stated that the Goods will be manufactured at a particular place or places, it shall not alter such place or places without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed) and any such alteration shall not have any financial consequences to the Customer.

17 FRAUD

17.1 The Supplier must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Customer.

17.2 Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Customer the Supplier shall immediately inform the Customer.

18 SUPPLIER'S STAFF AND THE TRANSFER OF UNDERTAKINGS

18.1 The Customer reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Customer any Supplier Staff, whose admission would be, in the opinion of the Customer, undesirable or unnecessary.

18.2 If and when directed by the Customer, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Customer, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Customer may reasonably require.

- 18.3 The Supplier and its Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time and notified to the Supplier for the conduct of personnel when at or within the boundary of the Premises.
- 18.4 The decision of the Customer as to whether any person is to be refused admission to any premises occupied by or on behalf of the Customer and as to whether the Supplier has failed to comply with Clause 18.2 shall be final and conclusive.
- 18.5 If the Supplier shall fail to comply with Clause 18.2 or fails to do so within a reasonable time of written notice so to do then the Customer may terminate this Agreement in accordance with Clause 40 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall afterwards accrue to either Party.
- 18.6 The Supplier acknowledges that each member of the Staff engaged in the performance of the Goods shall have full authority to act on behalf of the Supplier for all purposes in connection with the Agreement provided always that if the Customer shall at any time be dissatisfied for any reason with the performance of any person engaged in carrying out the Goods, the Supplier shall, if the Customer so requires, provide a competent substitute to carry out the Goods at no additional cost to the Customer.
- 18.7 The Supplier shall replace any of the Staff who the Customer reasonably decides have failed to carry out their duties with reasonable care and skill. Following the removal of any of the Staff for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Goods. The Customer shall have no liability to the Supplier or the Staff for any losses of any nature whatsoever arising out of the operation of this clause.
- 18.8 The Supplier shall maintain up to date personnel records on the Staff engaged in the provision of the Goods and, on request, provide reasonable information to the Customer on the Staff. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 18.9 The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Supplier at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Goods who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Goods.

19 [NON-SOLICITATION

19.1 For the duration of the Agreement and for a period of 12 Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Goods without that other Party's prior written consent.]

20 POLICIES

20.1 The Supplier shall comply with and shall ensure the Staff comply with all the of the Customer's published policies and with any further rules, codes of practice, procedures and standards which the Customer notifies to the Supplier. The Customer shall throughout the Term ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Supplier.

21 INDUSTRIAL ACTION

21.1 The Supplier shall immediately inform the Customer of any actual or potential industrial action by Staff, whether such action be by its own Staff or others, which affects or might affect its ability at any time to deliver the Goods in accordance with the requirements of the Agreement.

21.2 In the event of industrial action by Staff, the Supplier shall seek the Customer's approval to any revised proposals to deliver the Goods.

21.3 If the Supplier's proposals referred to in clause 21.2 are considered insufficient or unacceptable by the Customer, then the Customer may terminate this Contract in whole or in part in accordance with Clause 41.1.1.

22 THE TRANSFER OF UNDERTAKINGS

[DN: Ensure that you obtain detailed legal advice regarding the application of TUPE to the agreement. The circumstances of each transaction will affect TUPE differently]

22.1 The Parties acknowledge and agree that because this is an agreement for the supply of goods, TUPE will not apply either as a result of the parties entering into this Agreement or upon the termination or expiry of this Agreement in whole or in part for whatever reason.

22.2 Without prejudice to paragraph 22.1, however, should any person transfer or allege (or it is determined by a court of competent jurisdiction) that his or her employment has been transferred to the Supplier pursuant to TUPE as a result of the parties entering into this Agreement (or if it is claimed or determined that his or her employment would have so transferred had he or she not resigned or his or her employment been terminated) then the Supplier shall indemnify and keep indemnified the Customer against any Employment Liabilities arising out of any acts or omissions in relation to such persons prior to, on or after the Commencement Date or any other matter, event or circumstances occurring prior to, on or after the Commencement Date including (without limitation) any failure by the Supplier to comply with its obligations TUPE.

22.3 Without prejudice to paragraph 22.1, if on the termination or expiry of this Agreement there is a relevant transfer for the purposes of TUPE or should any person transfer or allege (or it is determined by a court of competent jurisdiction) that his or her employment has been transferred to the Customer or a Replacement Supplier (as the case may be) pursuant to TUPE or if it is claimed or determined that his or her employment would have so transferred had he or she not resigned or his or her employment been terminated (“the Relevant Transfer”) then the Customer or Replacement Supplier shall be entitled (but not obliged) to terminate the employment of such person and the Supplier shall indemnify and keep indemnified the Customer or Replacement Supplier (as the case may be) against:

22.3.1 all Employment Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Customer or Replacement Supplier; and

22.3.2 any and all employment costs associated with the employment of such person by the Customer or Replacement Supplier up to the date of termination of such person’s employment.

22.4 Further, where the Customer or Replacement Supplier decides not to terminate the employment of such person pursuant to paragraph 22.3 the Supplier shall indemnify and keep indemnified the Customer or Replacement Supplier (as the case may be) against any Employment Liabilities arising out of any acts or omissions in relation to such persons on or before the date of the Relevant Transfer or any other matter, event or circumstances occurring on or before the Relevant Transfer including (without limitation) any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE.

23 DISRUPTION

23.1 The Supplier shall (and shall ensure that its Staff, and shall procure that any Sub-Contractors, will) take all reasonable care at all times not to disrupt the operations of the Customer, its employees or any contractor or other person employed by the Customer.

24 DISCRIMINATION AND EQUALITY

24.1 The Supplier shall ensure that it complies with all relevant requirements of all current equalities legislation, regulations and duties including but not limited to the Equality Act 2010 and all other similar Legislation (“**equality legislation**”) in force from time to time together with any guidance or Codes of Practice issued by the Equality and Human Rights Commission and shall in addition discharge its obligations under this Agreement and provide the Goods in a manner consistent with the Customer’s equalities policies.

24.2 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

24.3 The Supplier shall provide any information reasonably requested by the Customer in respect of such equality legislation in so far as it relates to the performance of this Agreement.

24.4 The Customer is required by the Welsh Language Act 1993 as amended together with the Welsh Language (Wales) Measure 2011 to maintain a Welsh Language Scheme. The Supplier shall comply with the Customer’s Welsh Language Scheme as updated from time to time and notified to the Supplier in writing.

24.5 The Supplier shall take all reasonable steps to secure the observance of Clause 24 by all servants, employees or agents of the Supplier and all Staff and any Sub-Contractors employed in performance of this Agreement.

25 HEALTH AND SAFETY

25.1 The Supplier shall:

25.1.1 comply with all relevant parts of the Health and Safety Regime;

25.1.2 in relation to all persons likely to be affected by the execution of this Agreement and/or by use, handling or otherwise coming into contact with the Goods take all such steps as may be reasonably practicable to ensure their health and safety; and promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of this Agreement;

- 25.1.3 notify the Customer immediately in the event of any incident occurring in the performance of this Agreement on the Customer's premises where that incident causes any personal injury or damage to property that could give rise to personal injury;
- 25.1.4 ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 174) is made available to the Customer on request.
- 25.2 The Customer shall (and shall procure that its Sub-Contractors) use reasonable endeavours to notify the Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of its Staff or any persons engaged by the Supplier in the performance of this Agreement at the premises and shall instruct such persons in connection with any necessary associated safety measures.

26 HUMAN RIGHTS

- 26.1 The Supplier shall not (and shall ensure that its Staff shall not) do or permit or allow anything to be done which may result in the Customer acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.
- 26.2 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.
- 26.3 The Supplier shall undertake, or refrain from undertaking, such acts as the Customer requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

27. PROTECTION OF PERSONAL DATA

- 27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is

authorised to do is listed in a Schedule 3 by the Customer and may not be determined by the Supplier.

27.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation

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

27.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

27.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services

27.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and,

27.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;

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

27.4.1 process that Personal Data only in accordance with the instructions of the Customer and as set out within Schedule 3, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

27.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the;

27.4.2.1 nature of the data to be protected

27.4.2.2 harm that might result from a Data Loss Event ;

27.4.2.3 state of technological development; and

27.4.2.4 cost of implementing any measures

27.4.3 ensure that :

27.4.3.1 the Staff do not process Personal Data except in accordance with this

Agreement (and in particular Schedule 3);

27.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

27.4.3.2.1 are aware of and comply with the Supplier's duties under this clause

27.4.3.2.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

27.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and

27.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data.

27.4.3.3 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

27.4.3.3.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46) as determined by the Customer

27.4.3.3.2 the Data Subject has enforceable rights and effective legal remedies;

27.4.3.3.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

27.4.3.3.4 the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data

27.4.4 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required

by Law to retain the Personal Data

- 27.5 Subject to clause 27.6, the Supplier shall notify the Customer immediately
 - 27.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request
 - 27.5.2 receives a request to rectify, block or erase any Personal Data
 - 27.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation
 - 27.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement
 - 27.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law
 - 27.5.6 becomes aware of a Data Loss Event
- 27.6 The Supplier's obligation to notify under clause 27.5 shall include the provision of further information to the Customer in phases, as details become available
- 27.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 27.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
 - 27.7.1 the Customer with full details and copies of the complaint, communication or request;
 - 27.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation
 - 27.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 27.7.4 assistance as requested by the Customer following any Data Loss Event;
 - 27.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 27.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer

than 250 staff, unless:

- 27.8.1 the Customer determines that the processing is not occasional;
 - 27.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 27.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 27.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor
- 27.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation
- 27.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 27.11.1 notify the Customer in writing of the intended Sub-processor and processing
 - 27.11.2 obtain the written consent of the Customer
 - 27.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 28 such that they apply to the Sub-processor; and
 - 27.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require
- 27.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor
- 27.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 27.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

26.3.1

28 FREEDOM OF INFORMATION

- 28.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.
- 28.2 The Supplier shall (and shall procure that its Sub-Contractors shall):
- 28.2.1 transfer the Request for Information to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - 28.2.2 provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer requesting that Information; and
 - 28.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5(2) of the Environment Information Regulations.
 - 28.2.4 For the purposes of this clause 28.2, "**reasonable assistance**" shall include the redaction of documentation within five (5) days of a request from the Welsh Ministers to do so.
- 28.3 The Customer shall be responsible for determining in its absolute discretion whether any Information:
- 28.3.1 is exempt from disclosure under the FOIA; and
 - 28.3.2 is to be disclosed in response to a Request for Information.
- 28.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 28.5 The Supplier shall ensure all information submitted in connection with tendering process or in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

28.6 The Supplier acknowledges that any lists or schedules provided by it as part of the tendering process outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with this Clause 28.

28.7 [Any failure to agree between the Customer and the Supplier arising out of or in connection with the disclosure of information under the FOIA shall be referred to the Information Commissioner for determination and resolution prior to any disclosure.]

29 ENVIRONMENTAL REQUIREMENTS

29.1 The Supplier shall:

29.1.1 have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Legislation including The Producer Responsibility (Packaging Waste) Regulations 1997 – 2007 together with any amendments, additions or re-enactments that may take place from time to time;

29.1.2 perform the Agreement in such a way as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

29.1.3 during the execution of the Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.

29.1.4 in the event that the Supplier believes that a change to this Agreement or a change to the Specification would reduce the overall environmental impact of this Agreement (for example by the increased use of re-cycled or re-furnished or otherwise environmentally friendly materials, or by the production of Goods with a longer life span, or that a change would result in increased energy efficiency or reduce in other ways the impact on the environment) the Supplier must notify the Customer in writing (whether or not this change would affect the Price payable for the Goods). The Customer may in its discretion consider the proposed change and may request a Variation in accordance with Clause 30;

29.1.5 immediately after delivery, the Supplier shall remove all packaging relating to the Goods which is no longer required by the Customer. The Customer may recycle, re-use or dispose of any packaging left at its premises.

29.2 Nothing in this Clause 29 shall relieve the obligations of the Supplier to comply with all applicable Legislation and Good Industry Practice.

30 CONFIDENTIALITY

30.1 The Supplier acknowledges that any Confidential Information obtained from or relating to the Customer, its employees or agents is the property of the Customer.

30.2 Each Party:

30.2.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

30.2.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

30.3 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Agreement:

30.3.1 is given only to such of the staff and professional advisers or consultants or Sub-Contractors engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement;

30.3.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisers or consultants or Sub-Contractors otherwise than for the purposes of the Agreement.

30.4 Where it is considered necessary in the opinion of the Customer, the Supplier shall ensure that staff or such professional advisers or consultants or Sub-Contractors sign a Confidentiality Undertaking before commencing work in connection with the Agreement.

30.5 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Agreement.

30.6 The provisions of Clauses 30.1 to 30.5 shall not apply to any Confidential Information received by one Party from the other:

- 30.6.1 which is or becomes public knowledge (otherwise than by breach of this Clause);
- 30.6.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- 30.6.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 30.6.4 is independently developed without access to the Confidential Information; or
- 30.6.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA pursuant to Clause 28.
- 30.7 Nothing in this Clause shall prevent the Customer:
- 30.7.1 disclosing any Confidential Information for the purpose of:
- (i) the examination and certification of the Customer's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources; or
- 30.7.2 disclosing any Confidential Information obtained from the Supplier:-
- (i) to any other department, office or agency of the Government; or
 - (ii) to any person engaged in providing any goods or services to the Customer for any purpose relating to or ancillary to the Agreement. Provided that in disclosing information under this Clause the Customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a Confidentiality Undertaking is given where appropriate.
- 30.8 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 30.9 In the event that the Supplier fails to comply with this Clause 30 the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.

31 PUBLICITY

- 31.1 Except with the written consent of the Customer the Supplier shall not make any press announcements or publicise this Agreement in any way but the Customer shall be at liberty to make any press announces or publicise this agreement without obtaining the consent of the Supplier.
- 31.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 31.1 by all their servants, employees, agents and consultants and the Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause 31.1 by its Staff and any Sub-Contractors.
- 31.3 Neither Party shall use business logos or publicise the logos of the Party's either in print or electronically without the express written consent of the other Party such consent shall not be unreasonably withheld or delayed.
- 31.4 Notwithstanding the provisions of Clause 31.1, the Customer shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Customer, including any examination of this Agreement by the Audit Commission and the Customer's external Auditors and the provisions of FOIA.
- 31.5 The Parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Confidential Information) in its relevant reports to Parliament to the extent permitted by law.

32 VARIATIONS

- 32.1 Variations of a minor or temporary nature may be required to the Goods from time to time and such Variations shall be agreed in writing between the Customer and the Supplier. The Supplier shall comply with such minor or temporary Variations, which shall normally be accommodated at no extra cost to the Customer, provided they do not involve additional cost to the Supplier. If such extra cost is incurred the Supplier shall provide written evidence to the Customer and the Parties shall then agree such additional costs. If the Parties cannot reach agreement on such costs within a reasonable time, then the Customer may at its discretion terminate the Agreement in whole or in part. The Customer shall not as a result of such termination be in breach of this Agreement or be under any liability to the Supplier (whether in contract, tort, legitimate expectation, restitution, statutory duty or in any other way whatsoever).

33 INTEREST

33.1 If the Customer 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 [5%] per cent per annum above the base rate for the time being of [Bank] base rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The Parties agree that this rate is a substantial remedy in accordance with section 9 of the Late Payments of Commercial Debts (Interest) Act 1998.

34 SET OFF

34.1 The Customer may at any time set off any liability of the Supplier to Customer against any liability of the Supplier to the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.

34.2 Any exercise by the Customer of its rights under this Clause 34 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

35 COMPLIANCE WITH VALUE ADDED TAX AND OTHER TAX REQUIREMENTS

35.1 The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

35.2 Failure to comply will constitute a material breach of this Agreement and the Customer may exercise the rights and provisions conferred by Clause 40.

35.3 The Supplier shall furnish to the Customer the name, and if applicable, the VAT registration number of any Sub-Contractor prior to the commencement of any work under this Agreement by such Sub-Contractor.

35.4 Upon a request by the Customer, the Supplier shall not employ or will cease to employ any Sub-Contractor which the Customer believes is not complying with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

36 INSURANCE

[DN: This clause must be reviewed for suitability before any issue of the agreement. There is no 'one size fits all' insurance clause and it is essential that the rationale behind including such a clause and any liabilities that the Customer may seek to limit are appropriately considered]

36.1 The Supplier shall hold and shall ensure that all Sub-Contractors involved in the provision of the Goods shall maintain the following insurance cover:

36.1.1 public liability including products liability; and

36.1.2 employer's liability

in each case with the minimum level of indemnity set out in the Invitation to Tender or any part of this Agreement, and if no level is specified, then a minimum level of indemnity set at [five million pounds (£5,000,000)] or such higher level as is consistent with Good Industry Practice and any applicable Legislation.

- 36.2 Such insurance (except employer's liability insurance) to be held by the Supplier or by any Sub-Contractor involved in the provision of the Goods may be limited in respect of any one claim (but shall not be limited in any other respect), PROVIDED THAT any such limit shall in any event be at least [one million pounds (£1,000,000)]. This Clause shall not be construed as imposing any limit of liability on the Supplier or any Sub-Contractor.
- 36.3 Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Agreement.
- 36.4 The Supplier shall from time to time and upon being given not less than two (2) Working Days' notice when so required by the Customer produce the relevant policy of insurance and receipts for premiums or other satisfactory evidence of insurance cover.
- 36.5 If the Supplier or any Sub-Contractor fails or is unable to maintain insurance in accordance with this Clause 36, or fails to provide evidence in accordance with Clause 36.4, the Customer may (so far as it is able), purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.
- 36.6 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 this clause 36.
- 36.7 The Supplier shall ensure that the Customer's interest is noted on each insurance policy, or that a generic interest clause has been included.

37 INDEMNITY

- 37.1 The Supplier shall indemnify the Customer against all direct liabilities, costs, expenses, damages and losses (including but not limited to any legal and other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- 37.1.1 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;

37.1.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, 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 Sub-Contractors; and

37.1.3 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

37.2 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

38 LIMITATION OF LIABILITY

38.1 Nothing in this Agreement shall limit or exclude the liability of either Party for:

38.1.1 death of or personal injury to any individual resulting from negligence;

38.1.2 fraud or fraudulent misrepresentation; or

38.1.3 any other act or omission, liability for which may not be limited under any applicable law.

38.2 Subject always to Clause 38.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed [five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not)] arising during the period of the Agreement.

38.3 Without prejudice to the Customer's obligation to pay the charges as they fall due, the Customer's liability under this Agreement shall be limited to [[] of total Price payable for the Services] pursuant to this Agreement.

38.4 Subject always to Clause 38.2, in no event shall either Party be liable to the other for:

38.4.1 indirect or consequential loss or damage; and/or

38.4.2 loss of profits; and/or

38.4.3 loss of business; and/or

38.4.4 loss of revenue; and/ or

38.4.5 loss of goodwill,

save as expressly provided for under the terms of this Agreement.

[DN: always give consideration to the heads of loss which the contracting authority wishes to exclude from the scope of liability of the provider. Take advice if you are unsure as to how this clause operates]

38.5 The provisions of Clause 38.4 shall not be taken as limiting the right of the Customer to claim from the Supplier for any:

38.5.1 additional operational and administrative costs and expenses; and/or

38.5.2 any costs or expenses rendered worthless; and/or

38.5.3 loss or damage resulting directly from the default of the Supplier.

38.6 The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.

38.7 The Parties expressly agree that should any limitation or provision contained in this Clause 38 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Clause 38.

39 FORCE MAJEURE

39.1 Subject to the remaining provisions of this Clause 39 either Party to this Agreement may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.

39.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

39.3 A Party cannot claim relief if the Force Majeure Event does not affect the Affected Party's performance of its obligations under this Agreement.

- 39.4 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under an agreement with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 39.5 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 39.6 As soon as practicable following the Affected Party's notification, the Parties shall discuss in good faith and endeavour to agree a means of performing the Agreement so far as reasonably possible for the duration of the Force Majeure Event. In the event that the Parties fail to agree a means of performing the Agreement within two (2) months from the date of the Affected Party's notification, the Customer may in its absolute discretion elect to terminate the Agreement in whole or in part.
- 39.7 The Affected Party shall use all reasonable endeavours to continue to perform, or resume performance of this Agreement for the duration of such Force Majeure Event and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 39.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 39.9 In the event that the Force Majeure Event continues for a period of two (2) months from the date of the Affected Party's notification, the Customer may in its absolute discretion elect to terminate the Agreement in whole or in part.

40 CORRUPT GIFTS, PAYMENTS OF COMMISSION AND PREVENTION OF BRIBERY

- 40.1 The Supplier:
- 40.1.1 shall not, and shall procure that any Staff shall not, in connection with this Agreement commit a Prohibited Act;

- 40.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Agreement;
- 40.2 The Supplier shall:
- 40.2.1 if requested, provide the Customer with any reasonable assistance to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- 40.2.2 within [14] Working Days of the Date of Commencement, and annually thereafter, certify to the Customer in writing (such certification to be signed by a senior officer of the Supplier) compliance with this clause 40 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 40.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.
- 40.4 If any breach of clause 40.1 is suspected or known, the Supplier must notify the Customer immediately.
- 40.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of clause 40.1, the Supplier must respond promptly to the Customer's enquiries, cooperate with any investigation, and allow the Customer to audit books, records and any other relevant documentation. This obligation shall continue for [six] years following the expiry or termination of this Agreement.
- 40.6 The Customer may terminate this Agreement by written notice with immediate effect if the Supplier or Staff (in all cases whether or not acting with the Supplier's knowledge) breaches clause 40.1.
- 40.7 Any notice of termination under clause 40.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and

(c) the date on which this Agreement will terminate.

40.8 Despite Clause 46, any dispute relating to:

(a) the interpretation of clause 40; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Customer and its decision shall be final and conclusive.

40.9 Any termination under clause 40.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer and the Parties agree that the Customer may recover from the Supplier the amount or value of any gift, consideration or commission given in contravention of this Clause 40, together with all costs to the Customer of terminating and entering into an alternative with another supplier including associated cost of any re-tendering or re-advertising.

41 TERMINATION

41.1 Without affecting any other right or remedy available to it, the Customer may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

41.1.1 any of the circumstances detailed in Clause 8.5 and/or 8.6 (Delivery and Carriage), Clause 10 (Default), Clause 18.5 (Staff), Clause 21.2 (Industrial Action), Clause 30.9 (Confidentiality) and/or Clause 40 (Corrupt Gifts) arise; or

41.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company provided that the Customer shall only be permitted to exercise its rights pursuant to this Clause 41.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Customer has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or

- 41.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or
- 41.1.4 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction; or
- 41.1.5 the Supplier commits a breach of its obligations under this Agreement (other than as a consequence of a breach by the Customer of its obligations under this Agreement) which breach results in the criminal investigation, prosecution and conviction of the Supplier or any Sub-Contractor under the Health and Safety Regime (a “**Health and Safety Conviction**”); or
- 41.1.6 the Supplier commits a material breach of the terms of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so; or
- 41.1.7 the Supplier commits a series of breaches of this Agreement which when taken together amount to a material breach of this Agreement; or

- 41.1.8 the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- 41.1.9 The Agreement has been subject to substantial modification as to its scope and value such that a new procurement exercise would be required to be conducted in accordance with the provisions of Regulation 72(9) of PCR 2015; or
- 41.1.10 The Supplier, at the time that the Tender was awarded to the Supplier, had been convicted of any one or more of the mandatory grounds for exclusion from participation in the Tender as those grounds are set out in Regulation 57 of PCR 2015; or
- 41.1.11 The Tender should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union (**the TFEU**) and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

41.2 For the purposes of clause 41.1 "**Material Breach**" shall mean a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Customer would otherwise derive from:

- 41.2.1 a substantial portion of this Agreement; or
- 41.2.2 any of the obligations set out in clauses [NUMBERS] , over the term of this Agreement.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap mistake or misunderstanding.

41.3 Without affecting any other right or remedy available to it, the Customer may terminate this Contract by giving to the Supplier six (6) month's prior notice in writing.

41.4 Without prejudice to Clauses 41.1 and 41.3 and without affecting any other right or remedy available to it, the Customer may by notice in writing terminate this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 15.1 (Legislative Change), Clauses 39.6 and 39.9 (Force Majeure) and/or Clause 50.1 (Severability) arise; and:

41.5 Without affecting any other right or remedy available to it, the Supplier may by notice in writing served in accordance with Clause 49.3 terminate this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 50.1 (Severability) arise.

41.6 Without prejudice to Clauses 41.5 and without affecting any other right or remedy available to it, the Supplier may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

41.6.1 the Customer has failed to pay any sum which is properly due and owing to the Supplier (such sum not being in dispute) by the due date under Clause 13.12; and

41.6.2 which sum amounts to at least [fifteen per cent (15%)] of the total Price; and

41.6.3 the Supplier has given to the Customer at least thirty (30) days' written notice that such sum is overdue for payment and clearly stating the Supplier's intention to terminate the Agreement if such sum is not paid; and

41.6.4 the Customer has not paid within the time specified in the Supplier's notice under Clause 41.6.3 above.

42 CONSEQUENCES OF TERMINATION

42.1 The termination or expiry of this Agreement or any Order shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

42.2 [In the event of any termination of this Agreement (and/or of any Order), any Orders which at the date of termination have yet to be discharged shall be terminated and the Customer shall, in respect of any non-discharged Orders, be entitled without prejudice to the Customer's other rights and remedies, to obtain a refund of any payments made by the Customer in respect of any Goods which have not been provided by the Supplier in accordance with the terms of the non-discharged Order.]

42.3 In the event of the termination of this Agreement by either Party, the provisions of this Clause and Clauses 27 (Protection of Personal Data), 33 (Interest), 34 (Set Off), 36 (Insurance), 37 (Limitation of Liability), 40 (Corrupt Gifts and Payment of Commission), 30 (Confidentiality), 58 (Law and Jurisdiction) and 28 (Freedom of Information) shall survive the termination of this Agreement.

42.4 Where the Customer re-lets the Agreement or any part of it to an alternative supplier the Supplier shall make good to the Customer all loss damages and expenses it may incur or be liable to in consequence of such re-letting.

43 ASSIGNMENT AND SUB-CONTRACTING

43.1 This Agreement is personal to the Supplier.

- 43.2 The Supplier shall not assign, novate, or otherwise dispose of this or any or all of its rights under this Agreement or any part of it without the previous consent in writing of the Customer acting in its absolute discretion.
- 43.3 The Supplier shall not sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the Customer. [The Supplier may sub-contract the performance of its obligations under this Agreement to any consortium member identified in its Tender provided that the Supplier complies with all provisions of this Clause.] *[DN: This optional wording can be included where the Customer has selected a consortium and is willing to consent to the Supplier sub-contracting the performance of its obligations to each of the members of the consortium are detailed in the Tender. If it is omitted, the Customer will need to give prior written consent to the Supplier to sub-contract with each consortium member.]* Where such consent is granted and in the event that the Supplier enters into any Sub-Contract in connection with this Agreement, the Supplier shall:
- 43.3.1 remain responsible to the Customer for the performance of its obligations under this Agreement, notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions and neglects of its Sub-Contractors;
- 43.3.2 impose obligations on its Sub-Contractor in the same terms imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; *[DN: You will need to satisfy yourself that either (a) the consortium agreement imposes obligations on the members of the consortium in the same terms as this agreement imposes on the Contractor or (b) there are sub-contracts in place between the Supplier and each consortium member that impose obligations in the same terms as this agreement.]*
- 43.3.3 provide a copy, at no charge to the Customer, or any such Sub-Contract (including, without limitation, any consortium agreement) on receipt of a request for such by the Customer; and
- 43.3.4 ensure that a term is included in the Sub-Contract which requires the Supplier to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid and agreed invoice as defined by the terms of the supply contract or Sub-Contract (as appropriate).
- 43.4 Subject to Clause 43.5, the Customer shall be entitled to:
- 43.4.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part of it to any Contracting Authority; and

43.4.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Customer.

43.5 This Agreement is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

43.6 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Customer.

44 JOINT AND SEVERAL LIABILITY

44.1 Where the Supplier is more than one person, each of those persons shall be jointly and severally liable for the Supplier's obligations and liabilities arising under this Agreement. The Customer may take action against, or release or compromise the liability of, or grant any time or other indulgence to, any one of the persons comprising the Supplier without affecting the liability of any other of them.

44.2 [Where the Supplier is part of a consortium, the Supplier shall ensure that its consortium arrangements provide that each member of its consortium is jointly and severally liable for the Supplier's obligations and liabilities arising under this Agreement.]

[DN: The Customer will not have a contractual relationship with the other consortium members. This clause obliges the Supplier to ensure that each member of its consortium is jointly and several liable for the Supplier's obligations under this Agreement. This is appropriate if in the Tender the consortium members have promised to do the same thing (i.e. supply services to the Customer).]

45 DAMAGE

45.1 Where the Supplier causes damage to any property (whether tangible or otherwise) of the Customer or of third parties in the performance of this Agreement the Supplier shall make good the said damage forthwith at the Supplier's own risk and expense to the Customer's satisfaction.

46 DISPUTE RESOLUTION PROCESS

- 46.1 The Parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days from the date notified in writing by one party to the other in which details of the dispute are specified, and failing which, unless the Parties agree another period of time, any such dispute may, upon agreement of the Parties be dealt with as set out in sub-clause 46.2.
- 46.2 If the dispute cannot be resolved by the Parties' representatives nominated under Clause 46.1, within twenty one (21) days or such other period as shall be agreed by the parties the dispute may be referred to mediation under the supervision of the Centre for Effective Dispute Resolution of 70 Fleet Street, London, EC47 1EU ("**CEDR**"). Mediation shall commence by either Party serving on the other written notice ("**Mediation Notice**") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to CEDR for the appointment of a mediator.
- 46.3 The mediation shall be conducted using a sole mediator in or substantially in accordance with CEDR's recommended agreement for the time being in use. The mediator must be a CEDR accredited mediator agreed between the Parties, or in default of agreement within fourteen (14) days of notice of either Party calling upon the other to engage in mediation, appointed by CEDR (provided that both parties have agreed in principle to mediation).
- 46.4 The Parties agree to co-operate fully and promptly and in good faith with CEDR and/or the mediator in the performance of their obligations under this Clause. Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the matters in dispute. All negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings
- 46.5 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representatives of each of the Parties, shall remain binding on the Parties.
- 46.6 Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.
- 46.7 If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute may be referred to the Courts in accordance with Clause 58 below.

- 46.8 In the event that mediation does not resolve all matters in dispute within a period of fifty-six (56) days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Agreement or generally at law.
- 46.9 Nothing in this Agreement shall be taken to prevent or constrain either Party from seeking an injunction or other urgent.
- 46.10 Each Party's respective obligations under this Agreement shall not cease or be delayed by this dispute resolution procedure.

47 MISTAKES IN INFORMATION

- 47.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information in any form whatsoever supplied to the Customer and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.
- 47.2 Whilst the Customer shall endeavour to ensure the accuracy of all drawings, documentation and information in any form whatsoever ("**material**") provided by it to the Supplier, the Customer shall be under no liability whatsoever for the content of such material, and the Supplier acknowledges that it is solely responsible for making its own enquiries and conducting all due diligence to verify the accuracy of such material, and further that the Supplier shall have no remedy against the Customer for any mistake, error or omission in such material, whether in breach of contract, negligence or in any other way whatsoever.

48 INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

- 48.1 It shall be a condition of this Agreement that, except to the extent that the Goods incorporate designs furnished by the Customer, the Goods will not infringe any Intellectual Property Right of any third party and the Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of or in connection with any breach of this Clause 48.
- 48.2 All Intellectual Property Rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:
- 48.2.1 provided or made available to the Supplier by the Customer shall remain the property of the Customer;

- 48.2.2 prepared or provided by or for the Supplier for use, or intended use, in relation to the performance of this Agreement shall be the subject of a perpetual, irrevocable, royalty free licence to the Customer (which shall carry the right to grant sub-licences) to use the Goods for all purposes reasonably contemplated by, connected with or ancillary to this Agreement, including (without limitation) their repair and maintenance.
- 48.3 At the termination of the Agreement the Supplier shall immediately return to the Customer all materials, work or records held in connection with this Agreement, including any back up media.
- 48.4 The provisions of this Clause 48 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

49 NOTICES

- 49.1 Except as expressly provided otherwise in this Agreement, no communication from one Party to the other shall have any validity under this Agreement unless it is made in writing.
- 49.2 The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Clause 49.1.
- 49.3 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email and confirmed by registered first class post or recorded delivery to the address provided by the Party concerned.
- 49.4 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time then notice is left at the proper address;
 - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Working Day after posting;
 - (c) if sent by email, shall be deemed to be served on the day of the transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next Working Day, provided that no error report is generated and confirmation by registered post or recorded delivery is sent the same day.

- 49.5 Unless otherwise agreed in writing between the Parties, for the purposes of Clause 49.3 above the address and contact details of the Supplier shall be as set out in the contact form in the Invitation to Tender and the Customer's details shall be as referred to in the Award Letter.
- 49.6 The Parties agree that this Clause 48 does not apply to the service of any proceedings or other documents in any legal action.

50 SEVERABILITY

- 50.1 If any provision or part-provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated.
- 50.2 In the event of a severed term being so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 50.3 If no agreement has been reached between the Parties within twenty (20) Working Days of commencement, either Party may by notice to the other terminate the Agreement and neither Party shall bear any liability to the other in respect of such termination (but without prejudice to any other provisions of this Agreement).

51 WAIVER

- 51.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under this Agreement or by law, shall not constitute a waiver of that or any other right or remedy and shall not cause a diminution of the obligations established by this Agreement.
- 51.2 Waiver of any default shall not constitute a waiver of any subsequent default.
- 51.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 49.

52 REMEDIES CUMULATIVE

52.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

53 AMENDMENTS TO THIS AGREEMENT

53.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Customer (the “**Authorised Representative**”) and by a duly authorised representative of the Supplier (the “**Supplier Representative**”) on behalf of the Supplier.

53.2 Orders placed under this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the duly Authorised Representative of the Customer on behalf of the Customer and by a duly authorised Supplier Representative on behalf of the Supplier.

54 THIRD PARTY RIGHTS

54.1 Save as otherwise expressly provided elsewhere in this Agreement, a person who is not a Party to this Agreement shall not have any rights under or in connection with it and shall not be entitled to enforce any part of it.

55 NO AGENCY OR PARTNERSHIP

55.1 The Supplier is not and shall not in any circumstances hold itself out as being the servant or agent of the Customer. The Supplier shall not hold itself out as being authorised to enter in any contract on behalf of the Customer or in any way bind the Customer to the performance, variation, release or discharge of any obligation to a third party. The Staff shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of the Customer.

55.2 Nothing in this Agreement shall construed as constituting a partnership between the Parties.

56 COUNTERPARTS

56.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has signed at least one counterpart.

57 COSTS

57.1 Except as provided expressly in this Agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Agreement and any documents referred to in it.

58 LAW AND JURISDICTION

58.1 This Agreement is a contract made in Wales and the applicable law shall be governed and construed in accordance with the laws of England and Wales, as it applies in Wales. Subject to Clause 46, the Parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales sitting in the locality of the Customer, or at Cardiff.

Precedent

Precedent

Precedent

SCHEDULE 3 - DATA PROTECTION

Processing, Personal Data and Data Subjects Data Processing Schedule

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

| Description | Details |
|--|---|
| Subject matter of the processing | [The Customer will set out a high level, short description of what the processing is about i.e. its subject matter] |
| Duration of the processing | [The Customer will clearly set out the duration of the processing including dates] |
| Nature and purposes of the processing | [The Customer shall cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.] |
| Type of Personal Data | Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc] |
| Categories of Data Subject | [Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc] |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | [The Customer shall set out how long the data will be retained for, how it is to be returned or destroyed] |

Precedent