



**THE SENEDD COMMISSION  
STANDARD CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS**

## CONDITIONS OF CONTRACT FOR GOODS

**These Conditions may only be varied with the written agreement of the Parties. No terms or conditions put forward at any time by you form any part of the Contract.**

### 1. DEFINITIONS

#### 1.1 In these Conditions:

‘Commencement Date’ means the date specified in the Purchase Order or if none as specified in the Tender Documents or the date otherwise agreed in writing between the Parties;

‘Compulsory Policies’ means our policies from time to time, as set out in the Tender Documents or notified to you by us in writing;

‘Condition’ means a condition within these Conditions;

‘Confidential Information’ means information (however it is conveyed or on whatever media it is stored), the disclosure of which would constitute an actionable breach of confidence, and which has either been designated as confidential by either Party in writing or which ought to be considered as subject to a duty of confidentiality and includes but is not limited to information which relates to the business, affairs, properties, assets, trading-practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party;

‘Contract’ means the contract between us and you consisting either of (i) the Purchase Order and these Conditions; or (ii) the Tender Documents and these Conditions (and any other documents (or parts thereof) specified in the Tender Documents);

‘Contract Period’ means the period of duration of the Contract specified in the Purchase Order or the Tender Documents (as appropriate);

‘Contract Price’ means the monies payable by us to you for the provision of the Goods and/or Services as set out in the Contract;

‘Data Processor’ has the same meaning as set out in the Data Protection Legislation;

‘Data Protection Legislation’ means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended;

‘Default’ means any breach of an obligation of either Party under the Contract (including but not limited to a repudiatory breach or a breach

of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;

'FOIA' means the Freedom of Information Act 2000 and any subordinate legislation made thereunder together with any guidance and/or codes of practice issued by the Information Commissioner from time to time in relation to it and the Environmental Information Regulations 2004;

'Goods' means any such goods as are to be supplied to us by you (or by any of your sub-contractors) pursuant to or in connection with the Contract;

'Intellectual Property Rights' means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain rights, trade or business names, moral rights and any other similar rights or obligations whether registrable or not in any country (including but not limited to the UK) and the right to sue for passing off;

'Parties' means together us and you, and a reference to 'Party' is to be interpreted as the context requires;

'Personal Data' has the same meaning as set out in the Data Protection Legislation.

'Premises' means the location where the Goods are to be delivered and/or Services are to be performed, as specified in the Contract;

'Process', 'Processing', 'Processed' or similar has the same meaning as set out in the Data Protection Legislation;

'Purchase Order' means the purchase order (if any) issued by us to you for the purchase of the Goods and (if applicable) Services;

'Relevant Requirements' means all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

'Services' means the services (if any) to be provided as specified in the Specification and where the context so admits, includes any materials, articles and Goods to be supplied thereunder;

'Specification' means the specification for the Services we require you to perform as provided to you, whether attached to a Purchase Order or set out in Tender Documents;

'Staff' means all persons employed by you to perform the Contract together with your servants, agents and sub-contractors used in the performance of the Contract;

'Tax' means Value Added Tax, customs duties and any other applicable taxes or duties;

‘Tender Documents’ means the documents as listed in the letter issued by us to you after a competitive tender awarding the Contract to you;

‘UK GDPR’ has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

‘we’ means the Senedd Commission or any designated representative of it, and ‘us’. ‘our’ or ‘ourselves’ are also used in relation to the Senedd Commission or any designated representative of it;

‘Working Days’ means Monday to Friday, excluding any public holidays in England and Wales; and

‘you’ means you, the person, partnership or company who supplies us with Goods and (if applicable) Services under the Contract, and a reference to ‘your’ and ‘yours’ will be interpreted accordingly.

- 1.2 In these Conditions a reference to any statute, enactment, order, regulation or other similar instrument (**‘legislation’**) will, unless the context requires otherwise, be construed as a reference to such legislation as amended by any subsequent legislation or as contained in any subsequent re-enactment thereof.
- 1.3 Unless the context otherwise requires, words denoting the singular includes the plural and vice versa, and references to any person includes natural persons, partnerships, firms, corporations and other incorporated bodies and all other legal persons of whatever kind and however constituted, and words denoting any gender includes the masculine, the feminine and the neuter.
- 1.4 The use of headings and bold type in the Contract are for convenience only and will not affect the interpretation of any provision of the Contract.
- 1.5 Unless the context otherwise requires, a reference to any document will be construed as a reference to the document as at the date of execution of the Contract.
- 1.6 References to Conditions are, unless otherwise provided, references to conditions of the Contract.
- 1.7 Any reference to ‘approval’ by us means approval in writing.
- 1.8 A reference to writing or written does include email.
- 1.9 In interpreting the Contract the following will take precedence in the stated order to the extent that any provision in them cannot be read and applied in conjunction with any provision in these Conditions:
  - 1.9.1 the Purchase Order;
  - 1.9.2 the Tender Documents;
  - 1.9.3 the Specification; and

1.9.4 the Conditions.

## 2. DURATION

- 2.1 The Contract takes effect on the Commencement Date and expires automatically on expiry of the Contract Period, unless it is otherwise terminated in accordance with these Conditions, or otherwise lawfully terminated, or extended in accordance with Condition 2.2.
- 2.2 If provided for in the Contract, subject to satisfactory performance by you during the Contract Period, we may extend the Contract for such further period as set out in the Contract. We will give you notice if we wish to do so no less than twenty-eight (28) days before the end of the Contract Period. The provisions of the Contract will continue to apply throughout any extended period.

## 3. PREMISES ASSESSMENT

- 3.1 You are deemed to have inspected our Premises before tendering so as to have understood the nature and extent of the Goods to be provided and/or the Services to be carried out and that you are satisfied in relation to all matters connected with the Goods, Services and our Premises. Any cost incurred by us due to your failure to inspect the Premises or understand the nature and extent of the Goods and/or Services in accordance with this Condition 3 will be borne by you.
- 3.2 We will, at your request, grant such access as may be reasonable for this purpose of inspection as set out in Condition 3.1.
- 3.3 Without limiting Condition 25 if any access for whatever reason is necessary to Premises which are owned, or managed or controlled, by us, you and your Staff will at all times comply with our own and our employees' reasonable requirements as regards security.

## 4. THE GOODS

- 4.1 The Goods will be to our reasonable satisfaction and will conform in all respects with any particulars specified in the Contract and with any variations thereto.
- 4.2 The Goods will conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force including (not limiting the foregoing) the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.3 The Goods will be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to you by us and we rely on your skill and judgement in the supply of the Goods and the execution of the Contract.
- 4.4 The Contract incorporates the rules relating to sale by sample.
- 4.5 If Goods are being sold in bulk the bulk of the Goods will correspond with

the sample in quality.

- 4.6 The Goods will be free from any defect making their quality unsatisfactory, whether apparent or not on reasonable examination

## **5. APPOINTMENT FOR SERVICES**

- 5.1 This Condition 5 applies if the Tender Documents or a Purchase Order require the provision of the Services.

- 5.2 We appoint you to provide the Services:

5.2.1 promptly and in a professional and courteous manner so as to reflect and promote our image;

5.2.2 strictly in accordance with the Specification and all the provisions of the Contract;

5.2.3 in accordance with all applicable laws and regulations, codes of practice and good industry practice;

5.2.4 in accordance with our policies (including any racial discrimination and equal opportunities policies), rules, procedures and quality standards as amended from time to time.

- 5.3 You accept the terms of the appointment as provided in Condition 5.2.

## **6. PERFORMANCE OF THE SERVICES**

- 6.1 This Condition 6 applies if the Tender Documents or a Purchase Order require the provision of the Services.

- 6.2 You will provide at your own expense all Staff, equipment, tools, appliances, materials or items for the provision of the Services.

- 6.3 If the Contract provides for performance of the Services in stages, you undertake to perform the Services in strict compliance with the timetable for stages as provided in the Contract.

- 6.4 In addition to any more specific obligations imposed by the terms of the Contract, it is your duty to provide the Services using the degree of skill, care and diligence reasonably to be expected of a contractor carrying on the same trade business or profession as you and who is experienced in providing services of similar value, nature, scope and complexity to the Services.

- 6.5 You will allocate sufficient resources to ensure that you can deliver the Services. You will ensure that all your obligations to be performed under the Contract are performed and rendered by suitably experienced, qualified and trained Staff using all due skill, care and diligence. You will use reasonable efforts to avoid the Services disrupting our activities.

- 6.6 You will institute and maintain a properly documented system of quality

control (which will comply with any more detailed requirements set out in the Specification) to ensure that the Services are performed in accordance with the provisions of the Contract.

- 6.7 In addition to any other of our rights under the Contract, we will be entitled to inspect and examine the provision of Services being carried out at the Premises without notice at any time. You will provide to us all such facilities as we may require for such inspection and examination.
- 6.8 For those Services performed at your premises (or the premises of your Staff) then you will upon written request from us provide our authorised representatives with access to such premises to inspect them, and to observe work being performed there under the Contract. We will give reasonable notice before making any such written request and will request access other than during your normal working hours.
- 6.9 If any part of the Service is found to be defective or different in any way from the Contract, or not in compliance with the provisions of the Contract, you will at your own expense re-perform the Services in question (without additional remuneration) within such time as we may reasonably specify failing which we will be entitled to procure performance of the defective Services from a third party or to execute the tasks in question itself.
- 6.10 In addition to our rights in Condition 6.9 (and without limiting Condition 22.6) we may withhold payment for partially performed or undelivered Services which will not limit us from using our other rights under the Contract.
- 6.11 If the cost to us of executing or procuring the performance of the defective Services as referred to in Condition 6.9 exceeds the amount that would have been payable to you for such Services, the excess will be paid by you to us on demand in addition to any other sums which may be payable by you to us.
- 6.12 You will co-operate with us (and third-party suppliers) in connection with the delivery of the Services and will ensure that your Staff comply with any of our reasonable instructions.

## **7. STATUTORY OBLIGATIONS**

In performing the Contract, you will comply with all applicable statutory obligations for the time being in force including, but without prejudice to the generality of the foregoing, those relating to health, safety and welfare, environment, employment, data protection, and discrimination. You will take all reasonable steps to ensure the observance of these provisions by all your Staff employed or engaged in the execution of the Contract. You will indemnify us against all actions, claims, losses, demands, costs and expenses which we may suffer or incur as a result of or in connection with any breach of any statutory obligation.

## **8. TIME OF PERFORMANCE**

- 8.1 This Condition 8 applies if the Purchase Order requires the provision of services in connection with the supply of the Goods.

- 8.2 You will begin performing the Services on the date stated in the Specification and will complete the Services by the date stated in the Specification or continue to perform the Services for the period stated in the Specification (whichever is applicable). Time of performance is of the essence of the Contract. We may by written notice require you to execute the Services in such order as we may decide. In the absence of such notice, you will submit detailed programmes of work and progress reports as we may require from time to time.

## **9. DELIVERY**

- 9.1 The Goods will be delivered to the place or places named in the Contract during our normal working hours. Any access to Premises and any labour and equipment that may be provided by us in connection with delivery will be provided without acceptance by us of any liability whatsoever and you will indemnify us and our employees, servants, agents or sub-contractors in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which we and our employees, servants, agents or sub-contractors may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission by you or your Staff.
- 9.2 Where the Contract requires the delivery of the Goods via the Royal Mail or a carrier approved by us, we require written proof that each consignment of Goods has been delivered to or picked up by the Royal Mail or a carrier approved by us, to the agreed time schedule. This will be supplied to us within seven (7) days of completion of each distribution.
- 9.3 All items for delivery will be held at your warehouse or as specified in the Contract.
- 9.3 You may occasionally be required to pick-up and deliver items to us free of additional charge.

## **10. COMPULSORY POLICIES**

You will comply with our Compulsory Policies and any modifications to them as notified to you in writing from time to time.

## **11. PROPERTY AND RISK IN GOODS**

- 11.1 Risk in the Goods without prejudice to any of our rights or remedies (including our rights and remedies under Condition 37 (Alternative Contractor)) passes to us at the time of delivery but (without prejudice to Condition 12.2 and Condition 13) remains with you if we discover damage to the Goods after delivery and we notify you of the same within five days of delivery. The Goods become our property at the time of delivery.
- 11.2 You warrant that you will pass full title guarantee in the Goods to us when title passes under Condition 11.1.

## **12. INSPECTION, REJECTION AND GUARANTEE OF GOODS**



- 12.1 You will permit us or our authorised representatives to make any inspections or tests we may reasonably require and you will afford all reasonable facilities and assistance free of charge. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections will constitute a waiver by us of any of our rights or remedies in respect of the Goods.
- 12.2 We may by written notice to you reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice will be given within a reasonable time after delivery to us of the Goods concerned. If we reject any of the Goods pursuant to this Condition 12 we will be entitled (without prejudice to our other rights and remedies) either:
- 12.2.1 to have the Goods concerned as quickly as possible either repaired by you or (as we elect) replaced by you with Goods which comply in all respects with the requirements specified in the Contract; or
- 12.2.2 to obtain a refund from you in respect of the Goods concerned.
- 12.3 Any Goods rejected or returned by us as described in this Condition 12 will be returned to you at your risk and expense.
- 12.4 The guarantee period applicable to the Goods will be as set out in the Specification or Contract or if there is none specified then it will be twelve (12) months from putting into service or eighteen (18) months from delivery, whichever is the shorter (subject to any alternative guarantee arrangements agreed in writing between the Parties). If we within such guarantee period or within thirty (30) days thereafter give notice in writing to you of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use you will (without prejudice to any other rights and remedies which we may have) as quickly as possible remedy such defects (whether by repair or replacement as we elect) without cost to us.

### **13. DAMAGE IN TRANSIT**

- 13.1 On dispatch of any consignment of Goods you will send to us a delivery note specifying the means of transport, the place and date of dispatch, the order number, type and quantity of the Goods.
- 13.2 In the case of damage to such Goods in transit we will within thirty (30) days of delivery give notice to you that the Goods have been damaged. You will free of charge and as quickly as possible either repair or replace (as we elect) such Goods as may either be damaged in transit.
- 13.3 In the case of non-delivery we will (provided that you have been advised of the dispatch of the Goods) within ten (10) days of the notified date of delivery give notice to you that the Goods have not been delivered.
- 13.4 You will take out and maintain with an insurer of repute carrying on business in the UK full goods in transit insurance of up to £20,000.00 per vehicle and will provide to us upon our reasonable request evidence that

such policy is being maintained in the form of a broker's letter or similar, together with receipts or other evidence of payment of the last premium due thereunder.

#### **14. LABELLING AND PACKAGING**

- 14.1 The Goods will be packed and marked in a proper manner and in accordance with our requirements (if any) and any statutory requirements and any requirements of the carriers. In particular the Goods will be marked with an order number, the net, gross and tare weights, the name of the contents will be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) will bear prominent and adequate warnings. You will indemnify us and our employees, servants, agents or sub-contractors against all actions, suits, claims, demands, losses, charges, costs and expenses which we and our employees, servants, agents or sub- contractors may suffer or incur as a result of or in connection with any breach of this Condition 14.
- 14.2 All packaging materials will be considered non-returnable unless your advice note states that such materials will be charged for unless returned. We accept no liability in respect of the non-arrival at your premises of empty packages returned by us unless you notify us of such non-arrival within ten (10) days of receiving notice from us that the packages have been dispatched.
- 14.3 Maximum use will be made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications. Packaging will be capable of recovery for reuse or recycling. Packaging specifications should be reviewed periodically to ensure that no unnecessary limitations on the use of recycled materials exist.

#### **15. MONITORING OF CONTRACT PERFORMANCE**

You will comply with such monitoring arrangements as may be set out in the Contract and in any event will provide such data and information relating to performance of the Services as we may reasonably require from time to time. In the event you consider (acting unreasonably) that you are unable to perform the Services as required by the Contract, you will notify us as soon as possible in writing setting out the reasons for this.

#### **16. AUDIT**

- 16.1 You, and where relevant your Staff, will maintain complete and accurate records of your performance of the Contract, including all payments made by us to you in respect of the Goods or the Services (or both), for a minimum period of 6 years from the date of the last payment made by us to you under the Contract. If we ask on reasonable notice, you will give us, our auditors or any regulatory body access to your records, and where relevant those of your Staff, for any purpose relating to the delivery of the Contract, and allow us or our auditors to take copies of those records as required.
- 16.2 We will use reasonable efforts to ensure that the conduct of each audit

does not unreasonably disrupt you or delay the any performance of the Contract by you.

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

## 17. SUSTAINABILITY AND ENVIRONMENT

17.1 You will, when working at the Premises, perform the Contract in accordance with our environmental policy as notified to you from time to time.

17.2 You will ensure that the provision of the Goods or the Services (or both) comply with all relevant environmental laws and statutory codes of practice and good industry practice.

17.3 If any Goods (or materials you use in providing the Services) include any products derived from natural sources then you will make reasonable efforts to ensure that the natural resources used are from sustainable sources, and you will comply with all applicable laws.

17.4 If reasonably possible the Goods (and materials used in providing the Services) will incorporate materials that can be re-used, re-cycled or incinerated for energy recovery. You will make every effort to reduce the amount of materials used and ensure that all processes used in the provision of the Goods or the Services (or both) minimises the impact on the environment.

## 18. NO SMOKING

We have a no smoking policy in all our Premises. You will ensure that your Staff observe the no smoking policy whilst carrying out any Services at our Premises. Any failure by your Staff to comply with our no smoking policy will result in your Staff being asked to leave our Premises and any loss resulting from this action will be borne by you.

## 19. CHANGE CONTROL

19.1 We may at any time request that you modify any requirement in relation to any aspect of the Contract, including to reduce or increase the quantity and quality of the Goods or to reduce or increase the Services or to provide additional services. The request will normally be in writing ('the **Change Notice**') except in relation to minor or non-material changes, where the request may be given orally by us in accordance with Condition 19.8. The Change Notice will provide you with full particulars for any requested change and any further information you may reasonably require to enable you to provide a written estimate of the impact of the change ('the **Estimate**'). You will base the Estimate on the pricing contained in your response to the Tender Documents.

19.2 As soon as practicable, and in any event within fourteen (14) days of receipt of the Change Notice, you will deliver the Estimate to us, which will include details of:

19.2.1 any reduction or increase in the Contract Price in respect of the

change; and

19.2.2 any impact on the provision of the Services.

19.3 As soon as practicable after we receive the Estimate, the Parties will discuss in good faith and agree the issues set out in the Estimate, including any change to the Contract Price. In such discussions we may modify the Change Notice, and you will advise us of any consequential changes to the Estimate.

19.4 If the contents of the Estimate are not agreed within fourteen (14) days or such other reasonable period as both Parties agree then we will have the option of withdrawing the Change Notice or referring the matter for determination in accordance with the dispute resolution procedure in Condition 53.

19.5 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined in accordance with dispute resolution procedure, we will either:

19.5.1 confirm in writing our acceptance of the Estimate; or

19.5.2 withdraw the Change Notice.

19.6 The change, including any adjustment to the Goods or the Services (or both) and/or the Contract Price, will be implemented as soon as practicable.

19.7 If we do not confirm the Estimate in writing within thirty (30) days of the contents of the Estimate having been agreed or determined then the Change Notice will be deemed to have been withdrawn.

19.8 For the avoidance of doubt, you will comply with any minor or non-material changes to the Goods or Services (or both) which we may request. Such changes will be effective immediately in accordance with the terms of any oral or written notification provided by us to you and will not be subject to the Change Control procedures set out in this Condition 19.

## 20. **CONFLICTS OF INTEREST**

20.1 You will take appropriate steps to ensure that neither you nor any member of your Staff is placed in a position where there is or may be an actual conflict, or a potential conflict, between you or your Staff's pecuniary or personal interests and the duties owed to us under the Contract. The Parties agree this is an important term of the Contract.

20.2 You will disclose to us full particulars of any such conflict of interest which may arise as soon as possible after becoming aware of it.

## 21. **CONTRACT PRICE**

21.1 In consideration of the performance of your obligations under the Contract, we will pay the Contract Price.

21.2 In the event that the cost to you of performing your obligations under the Contract increases or decreases as a result of any new legislation or regulation being made after the commencement of the Contract Period, any variation to the Contract Price will be assessed on an individual basis. Such variation will not be allowed in relation to legislation or regulations enacted after the commencement of the Contract Period but which were made public prior to the commencement of the Contract Period. The impact of any such variation on your costs will be deemed to have been included in the Contract Price.

## 22. PAYMENT AND TAX

22.1 We will pay you, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Goods and/or Services provided in accordance with the Contract.

22.2 Payment will be made in cleared funds within thirty (30) days of receipt and agreement of invoices, submitted monthly in arrears, for Goods supplied and Services provided to our satisfaction.

22.3 Each invoice will contain all appropriate references and a detailed breakdown of the Goods and/or Services and will be supported by any other documentation required by us to substantiate the invoice.

22.4 Where you enter into a sub-contract with a contractor for the purpose of performing the Contract, you will cause a term to be included in such sub-contract which requires payment to be made by you to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

22.5 Tax, where applicable, will be shown separately on all invoices as a strictly net extra charge.

22.6 We may reduce payment in respect of any Goods and/or Services which you have either failed to provide or have provided inadequately, without prejudice to any other of our rights and remedies.

22.7 Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute will be paid and the dispute as to the sum that remains unpaid will be determined in accordance with the dispute resolution procedure in Condition 53.

22.8 Interest will be payable on the late payment of any undisputed Contract Price properly invoiced under the Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. You will not suspend the supply of the Services if any payment is overdue.

22.9 If we are late in paying an invoice please write to us at this address: Accounts Payable, Financial Services, Senedd Commission, Welsh Parliament, Cardiff Bay, Cardiff CF99 1SC. If it is not then paid within a reasonable time write to the Head of Finance, Senedd Commission, Welsh Parliament, Cardiff Bay, Cardiff CF99 1SC. This procedure is without prejudice to either Party's legal rights to dispute the sum due.

## 23. RECOVERY OF SUMS DUE TO US

- 23.1 Wherever under the Contract any sum of money is recoverable from or payable by you (including any sum which you are liable to pay to us in respect of any breach of the Contract), we may unilaterally deduct that sum from any sum then due, or which at any later time may become due to you under the Contract or under any other agreement or contract with us.
- 23.2 Any overpayment to you by us, whether of the Contract Price or of Tax, will be a sum of money recoverable by us from you.
- 23.3 You will make any payments due to us without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.

## 24. PRICE ADJUSTMENT ON EXTENSION OF THE CONTRACT PERIOD

- 24.1 The Contract Price will be firm for the initial Contract Period. In the event of an extension being considered beyond the Contract Period in accordance with Condition 2.2 ('**Extended Contract Period**'), the Parties will review the Contract Price prior to expiry of the initial Contract Period.
- 24.2 Any claim for increase or decrease in the Contract Price during the Extended Contract Period will only be considered if supported by an appropriate index already agreed between the Parties, for the period in question, such index to be determined by negotiation or mediation in default of agreement between the Parties.
- 24.3 Following agreement in writing with us, you may increase or decrease the Contract Price to be charged for the Extended Contract Period.

## 25. YOUR STAFF

- 25.1 We reserve the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any Premises occupied by or on behalf of us:
- 25.1.1 any member of your Staff; or
- 25.1.2 any person employed or engaged by a sub-contractor, agent or servant of yours,
- whose admission or continued presence would be, in our opinion undesirable.
- 25.2 You and all your relevant Staff may be required to be security cleared by us in accordance with our prevailing vetting procedures before work starts to deliver the Contract at our Premises. Security clearances will be renewed at such intervals as we may direct. Further information about our vetting requirements and procedures will be provided upon request. We can ask for further information to advance the vetting process and you will provide that to us as soon as possible after we ask for it. We may refuse

to grant you or any of your Staff security clearance. If we do refuse security clearance you cannot use that as a reason to delay or stop carrying out the performance of the Contract.

- 25.3 You and your Staff will when present at any Premises occupied by or on behalf of us comply fully with any rules, regulations and requirements (including without limitation those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at those Premises. This may include but is not limited to security checks on you and your Staff.
- 25.4 If you or your Staff fail to comply with Condition 25.3, we (whose decision will be final and conclusive) may decide that such failure is prejudicial to our security requirements and if you do not comply with the provisions of Condition 25.3 within a reasonable time of written notice from us to do so then we may terminate the Contract provided always that such termination will not prejudice or affect any right of action or remedy which has accrued or will thereafter accrue to us.
- 25.5 If and when instructed by us, you will give to us a list of names and addresses of all persons who it is expected may require admission in connection with the Contract to any Premises occupied by or on behalf of us, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as we may reasonably require.
- 25.6 You will take the steps reasonably required by us to prevent unauthorised persons being admitted to the Premises. If we give you notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, you will take all reasonable steps to comply with such notice and if required by us, you will replace any person removed under this Condition 25 with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 25.7 Our decision as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether you have furnished the information or taken the steps required by this Condition 25 will be final and conclusive.
- 25.8 We have no liability in respect of any claim made or any award of compensation in respect of redundancy or unfair or wrongful dismissal to any of your employees in respect of his or her service with you and arising from the operation of our security measures.
- 25.9 You agree to notify us of any impending disputes with your employees which could affect the operation of the Contract.

## 26. HEALTH AND SAFETY

- 26.1 You will promptly notify us of any health and safety hazards which may arise in connection with the performance of the Contract.

- 26.2 We will promptly notify you of any health and safety hazards which may exist or arise at our Premises and which may affect you in the performance of the Contract.
- 26.3 While on our Premises, you will comply with any health and safety measures implemented by us in respect of staff and other persons working on those Premises.
- 26.4 You will notify us immediately in the event of any incident occurring in the performance of the Contract on our Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 26.5 You will take all necessary measures to comply with all applicable laws (including regulations and codes of practice) from time to time relating to health and safety as they relate to the performance of the Contract and (without limiting this) which may apply to Staff and other persons working on the Premises in the performance of the Contract.
- 26.6 You will provide promptly to us upon our request in writing evidence of compliance with Condition 26.5

## 27. **PREVENTING BRIBERY**

- 27.1 You will and will procure that all persons associated with you or involved in the provision of the Goods or Services (or both) will:
- 27.1.1 comply with the Relevant Requirements and not do, or omit to do, any act that may cause or lead us to be in breach of any of the Relevant Requirements;
  - 27.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such an activity, practice or conduct had been carried out in the UK;
  - 27.1.3 have and will maintain in force throughout the period of this Contract your own policies and procedures including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;
  - 27.1.4 promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of the Contract; and
  - 27.1.5 immediately notify us in writing if a foreign public official becomes an officer or employee or acquires a direct or indirect interest in your business.
- 27.2 You will indemnify us in respect of any breach by you of this Condition 27.

## 28. **FRAUD**

- 28.1 You will safeguard our funding of the Contract against fraud generally



and, in particular, fraud on the part of your Staff, or your directors and contractors.

28.2 You will notify us immediately if you have reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## 29. **WELSH LANGUAGE**

You will provide the Goods or Services (or both) in such a way as to enable us to comply with our obligations in respect of the Welsh language under the Government of Wales Act 2006, the Welsh Language (Wales) Measure 2011 and our Welsh Languages Scheme.

## 30. **CONFIDENTIALITY**

30.1 You acknowledge that any Confidential Information obtained from or relating to us and our employees, servants, agents or sub-contractors, is our property.

30.2 Subject to Condition 30.7 each Party will:

30.2.1 maintain in confidence any information or materials provided to it directly or indirectly by the other Party under, or in anticipation of the Contract, taking such reasonable security measures as it takes to protect its own confidential information and trade secrets;

30.2.2 treat all Confidential Information obtained as secret and confidential and safeguard it accordingly, and only use it for the purpose of the Contract;

30.2.3 not disclose any Confidential Information to any other person other than to its Staff who have accepted obligations of confidentiality equivalent to this Condition 30 and who need to have access to such information or materials in connection with the performance of the Contract.

30.3 Without prejudice to Condition 30.2.3 of the Contract neither Party will disclose any Confidential Information to any other person whatsoever without the prior written consent of the Party supplying it.

30.4 You will provide all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (without our prior approval in writing) or used other than for the purpose of the Contract by your Staff.

30.5 Without prejudice to the generality of the foregoing neither you nor any of your Staff will use the Confidential Information for the solicitation of business from us, our employees, servants, agent or sub-contractors.

30.6 Where it is considered necessary in our opinion, you will ensure that your Staff or any other person engaged by you in connection with the Contract will sign a confidentiality undertaking in a form specified by us before commencing work in connection with the Contract.

- 30.7 The provisions of this Condition 30 will not apply to any information which:
- 30.7.1 is or becomes public knowledge (otherwise than by breach of the Contract); or
  - 30.7.2 is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; or
  - 30.7.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
  - 30.7.4 is independently developed without access to the Confidential Information; or
  - 30.7.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure including any of our requirements for disclosure under the FOIA and pursuant to Condition 33 (Freedom of Information).
- 30.8 Nothing in this Condition 30 will prevent you from:
- 30.8.1 disclosing any Confidential Information which is required to be disclosed by an order of court or other competent tribunal or required to be disclosed by any applicable legal requirement; or
  - 30.8.2 disclosing such Confidential Information as is strictly necessary for the purpose of obtaining legal advice or for the examination or preparation of your accounts to your legal advisors and accountants, provided that such legal advisors and accountants are bound by a professional duty of confidence.
- 30.9 Nothing in this Condition 30 will prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 30.10 In the event that you fail to comply with this Condition 30, we reserve the right to terminate the Contract by notice in writing with immediate effect.
- 30.11 The provisions of this Condition 30 apply during the continuance of the Contract and indefinitely after its termination howsoever arising.

## 31. **PUBLICITY**

- 31.1 You will not mention our name in connection with the Contract or disclose the existence of the Contract in any publicity material or any other publication unless we have previously agreed to this, and our duly authorised representative gives their prior approval, of what you wish to do, in writing.
- 31.2 This Condition 31 applies during the Contract and after it has ended.

## 32. DATA PROTECTION

32.1 In order for you to perform your obligations under the Contract and for us to continue to carry out our functions effectively whilst being a Party to the Contract, it may be necessary for either Party to Process Personal Data of the other. In your case this may relate to our officers and employees or other individuals with whom we have a relationship and in relation to us this may relate to you or your Staff or sub-contractors or other individuals with whom you have a relationship. Unless the Contract requires otherwise and separate written data processing arrangements apply between the Parties the terms of this Condition 32 apply to the Processing of personal Data.

32.2 As regards Condition 32.1 we acknowledge and agree:

32.2.1 that you may use such Personal Data (**'Our Personal Data'**) as is reasonably required for the performance of your obligations under the Contract (**'Your Permitted Purpose'**);

32.2.2 that we are responsible for ensuring that we collect any necessary permission, provide any necessary notice and do all such other things as are required under Data Protection Legislation in order for you to use Our Personal Data for Your Permitted Purpose; and

32.2.3 we will, with respect to our rights and obligations under the Contract with regard to Our Personal Data, at all times comply with Data Protection Legislation and will not perform any obligation under the Contract in such a way as to cause either Party to breach any of its obligations under Data Protection Legislation.

32.3 As regards Condition 32.1 you acknowledge and agree:

32.3.1 that we may use such Personal Data (**'Your Personal Data'**) as is reasonably required for the performance of our obligations under the Contract (**'Our Permitted Purpose'**);

32.3.2 that you are responsible for ensuring that you collect any necessary permission, provide any necessary notice and do all such other things as are required under Data Protection Legislation in order for us to use Your Personal Data for Our Permitted Purpose; and

32.3.3 you will, with respect to your rights and obligations under the Contract with regard to Your Personal Data, at all times comply with Data Protection Legislation and will not perform any obligation under the Contract in such a way as to cause either Party to breach any of its obligations under Data Protection Legislation.

## 33. FREEDOM OF INFORMATION

33.1 For the purposes of the Contract, the terms **'Information'** and **'Request'**

**for Information'** will have the meaning prescribed under FOIA.

33.2 We operate under a Code of Practice on Public Access to Information ('the **Code**'). To meet our responsibilities under the FOIA you acknowledge that we operate under the Code and are subject to the requirements of the FOIA, and you will assist and co-operate with us at your expense to enable us to comply with our Information disclosure requirements under FOIA (and as set out in this Condition 33).

33.3 You will:

33.3.1 transfer any Request for Information to us as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;

33.3.2 provide us with a copy of all Information in your possession or power in the form that we require within 4 Working Days (or such other period as we may specify) of us requesting such Information;

33.3.3 provide us with any reasons and supporting evidence you may wish us to take into account to enable us to consider the applicability of any exemptions under FOIA; and

33.3.4 provide all necessary assistance as reasonably requested by us to enable us to respond to a Request for Information within the time for compliance set out in FOIA.

33.4 We will, after consulting with and considering the views of the Consultant, be responsible for determining at our absolute discretion whether any Information:

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

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

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

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

33.5.1 without consulting you; or

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

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

33.6 This Condition 33 applies during the Contract and after it has ended.

#### **34. EQUAL OPPORTUNITIES AND HUMAN RIGHTS ACT**

- 34.1 You will (and will use your reasonable endeavours to procure that your Staff will) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 34.2 You will undertake, or refrain from undertaking, such acts as we request so as to enable us to comply with our obligations under the Human Rights Act 1998.
- 34.3 We are an equal opportunities employer and service provider. You will also be an equal opportunities employer and service provider and comply fully with applicable equal opportunities laws.
- 34.4 You should carry out appropriate monitoring of your equal opportunities policies and employment practices and provide us with evidence of this, if we request it in writing.
- 34.5 You will take all reasonable steps to ensure that the Goods (and materials used in the provision of the Services) are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.

#### **35. INTELLECTUAL PROPERTY RIGHTS**

- 35.1 It is a condition of the Contract that, except to the extent that the Goods are made up in accordance with designs furnished by us, none of the Goods and/or Services will infringe any Intellectual Property Rights of any third party and you will fully indemnify us against all actions, suits, claims, demands, losses, charges, costs and expenses which we may suffer or incur as a result of or in connection with any breach of this Condition 35.
- 35.2 You will obtain our approval before using any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. Where such approval is given by us, you will procure that the owner of the rights grants to us a non-exclusive licence or, if you are a licensee of those rights, will grant to us an authorised sub-licence to use, reproduce, modify, adapt and enhance the material subject to such rights. Such licence will be perpetual and irrevocable and will be granted at no cost to us.
- 35.3 All Intellectual Property Rights in any specifications, instructions, plans, drawings, patterns, models, designs or other material:
  - 35.3.1 furnished to or made available to you by us pursuant to the Contract remains our property;
  - 35.3.2 prepared by or for you for use, or intended use, in relation to the performance of the Contract are hereby assigned to and vest in the Crown absolutely, and without prejudice to Condition 30 (Confidentiality) you will not and will procure that your Staff will not (except to the extent necessary for the implementation of the Contract) without our prior written approval use or disclose any such Intellectual Property Rights or any other information

(whether or not relevant to the Contract) which you may obtain pursuant to the Contract except information in the public domain otherwise than in breach of this provision, and in particular (but without prejudice to the generality of the foregoing) you will not refer to us or the Contract in any advertisement without our prior written approval.

- 35.4 You will forthwith notify us if any claim or demand is made or action brought against you for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract. You will at your own expense conduct any litigation arising therefrom and all negotiations in connection therewith provided always that you will consult us on all substantive issues which arise during the conduct of such litigation and negotiations and will, in such conduct, take due and proper account of our interests.
- 35.5 We will at your request afford to you all reasonable assistance for the purpose of contesting any claim or demand made or action brought against us or you for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and will be repaid all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in doing so.
- 35.6 We will not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by us or you in connection with the performance of the Contract.
- 35.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in your reasonable opinion is likely to be made, you will at your own expense and subject to our approval (not to be unreasonably withheld or delayed) either:
- 35.7.1 modify any or all of the Goods and/or Services without reducing the quality or fitness for purpose of the same, or substitute alternative Goods and/or Services of equivalent quality and fitness for purpose, so as to avoid the infringement or alleged infringement, provided that the Contract will apply *mutatis mutandis* to such modified Goods and/or Services or to the substituted Goods and/or Services; or
  - 35.7.2 procure a licence to use the Intellectual Property Rights which are the subject of the infringement or alleged infringement, on terms which are acceptable to us.
- 35.8 The foregoing provisions of this Condition 35 does not apply insofar as any such claim or demand or action is in respect of:
- 35.8.1 any use by or on behalf of us of Goods and/or Services in combination with any item not supplied or authorised by you (acting reasonably in giving such authorisation) where such use of the Goods and/or Services directly gives rise to the claim,

- demand or action; or
- 35.8.2 the use by us of the Goods and/or Services in a manner not reasonably inferred from the Specification; or
- 35.8.3 our unreasonable refusal to accept modified or substitute Goods and/or Services pursuant to Condition 35.7.1.
- 35.9 If you have availed yourself of the rights to modify or substitute the Goods and/or Services or to procure a licence and such exercise of the said rights have avoided any claim, demand or action for infringement, then you will have no further liability under this Condition 35 in respect of the said claim, demand or action.
- 35.10 If a modification or substitution in accordance with Condition 35.7.1 is not possible so as to avoid the infringement and you have been unable to procure a licence in accordance with Condition 35.7.2, Condition 35.1 applies.
- 35.11 The foregoing states your entire liability with regard to the infringement of any Intellectual Property Right in connection with the performance of the Contract.
- 35.12 At the termination of the Contract you will immediately return to us all materials, work or records held, including any back up media.
- 35.13 The provisions of this Condition 35 apply during the continuance of the Contract and indefinitely after its termination or expiry howsoever arising.

## **36. INDEMNITY AND INSURANCE**

- 36.1 You will indemnify and keep indemnified us and our employees, servants, agents or sub-contractors against all actions, suits, claims, proceedings, damages, demands, costs (including but not limited to legal costs), expenses and any other liabilities whatsoever arising out of or in connection with the Contract and your performance thereof in respect of any death or personal injury, or loss or damage to property which is caused directly or indirectly by any act or omission of yours or your Staff.
- 36.2 You will further indemnify and keep indemnified us, and our employees, servants, agents or sub-contractors against any expenditure relating to the repair of our Premises or replacement of equipment arising as a result of negligence or Default on the part of you or your Staff.
- 36.3 The indemnity in Condition 36.1 does not apply to actions, claims, proceedings, damages, demands, costs, expenses and any other liabilities arising out of the death or personal injury to persons not employed by you or loss or damage to property owned by persons not employed by you to the extent that such death or injury or loss or damage to property was caused by our wilful act or omission or by any of our employees, servants, agents or sub-contractors. For the purpose of this Condition 36.3 a person will be considered as employed by you if they were so employed at the date or dates they suffered death or injury or loss or damage to their property.

- 36.4 You will (to the extent that such policies of insurance are generally available) effect and maintain with an insurer of repute carrying on business in the UK a policy or policies of insurance providing the level of cover specified in the Contract or if none, an adequate level of cover in respect of all risks which may be incurred by you arising out of your performance of the Contract, including (without limitation) death or personal injury or loss of or damage to property. Such policies will include (but not be limited to):
- 36.4.1 cover in respect of any financial loss arising from any advice given or omitted to be given by you; and
  - 36.4.2 public liability and product liability insurance to include any liabilities (whether arising in contract, tort or otherwise) it may have to us under the Contract including cover for loss or damage to our Premises or any of our property from time to time in the custody or control of you,
- 36.5 With regard to the insurance required of you under Condition 36.4 (and without detracting from the obligations in that Condition) the minimum levels of insurance cover required is as follows:
- 36.5.1 public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims; and
  - 36.5.2 employer's liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims; and
  - 36.5.3 product liability insurance with a limit of indemnity of not less than £500,000; and
  - 36.5.4 to the extent Services are being provided under the Contract (and we require professional indemnity insurance as stated in the Purchase Order or Tender Documents) then with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and you will ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover.
- 36.6 You will produce to us upon request evidence that all insurance policies referred to in this Condition 36 are being maintained in the form of a broker's letter or similar, together with receipts or other evidence of payment of the last premium due thereunder.
- 36.7 The terms of any insurance or the amount of cover will not relieve you of any liabilities under the Contract. It will be your responsibility to determine the amount of insurance cover that will be adequate to enable you to satisfy any liability referred to under Conditions 36.1 and 36.2.
- 36.8 Where relevant to this Condition 36 you will notify us immediately on becoming aware of any fact or matter which could render us liable to prosecution.



## 37. ALTERNATIVE CONTRACTOR

- 37.1 We reserve the right without incurring liability to you to use an alternative contractor at any time during the currency of the Contract due to your inability to provide any of the Goods and/ or Services to our satisfaction for any reason outside our control.
- 37.2 In accordance with Condition 6.11 in the event that we incur charges over and above the Contract Price as a result of using an alternative contractor we may at our discretion elect that those charges are met by you.

## 38. TERMINATION

- 38.1 We may terminate the Contract by notice in writing to you with immediate effect where:
- 38.1.1 you undergo a change of control, construed in accordance with the definition of 'control' contained in Section 1124 of the Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Contract; or
  - 38.1.2 you are an individual or a firm and if a petition is presented for your bankruptcy or a criminal bankruptcy order is made against you or any partner of the firm, or you make any composition or arrangement with or for the benefit of creditors, or make any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage your or the firm's affairs; or
  - 38.1.3 you are an individual, you die or you become the subject of a court order (or you have a deputy appointed) under section 16 of the Mental Capacity Act 2005; or
  - 38.1.4 you are a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by a genuine amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any Party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager, or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
  - 38.1.5 you are unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986; or
  - 38.1.6 any similar event occurs under the law of any other jurisdiction to which you are subject;

38.1.7 you are in breach of Condition 27.1.

38.2 In respect of termination for a change in control, we may only exercise our right under Condition 38.1 within six (6) months after a change of control occurs and will not be permitted to do so where it has agreed in advance to the particular change of control that occurs.

38.3 You will notify us in writing immediately upon the occurrence of any of the events described in Condition 38.1.

38.4 We may terminate the Contract, or terminate the provision of any part of the Contract, by written notice to you with immediate effect if you commit a Default and if:

38.4.1 you have not remedied the Default to our satisfaction within thirty (30) days, or such other period as we may specify, after issue of a written notice specifying the Default and requesting it to be remedied; or

38.4.2 the Default is not capable of remedy; or

38.4.3 the Default is a repudiatory breach of the Contract.

38.5 We may terminate the Contract by written notice to you with immediate effect if any of the events in regulation 73 (1) (a) to (c) of the Public Contracts Regulations 2015 occur.

38.6 In the event that through any Default of yours, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded to be unusable, you will be liable for the cost of reconstitution of that data and will provide a full credit in respect of any charge levied for its transmission.

### **39. EFFECT OF TERMINATION FOR DEFAULT**

Where the Contract is terminated in accordance with Condition 38, or for Default or breach of any other obligation under the Contract, thereupon, without prejudice to any other of our rights, we may ourselves procure the Goods and/or complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to you) all materials, plant and equipment on the Premises belonging to you, and we will not be liable to make any further payment to you until the Goods have been delivered and/or the Services have been completed in accordance with the requirements of the Contract, and will be entitled to deduct from any amount due to you any extra costs in respect thereof incurred by us (including our own costs). If the total of such extra costs to us exceeds the amount (if any) due to you, the difference is recoverable by us from you.

### **40. BREAK**

40.1 In addition to our rights of termination under Condition 38, we will be entitled to terminate the Contract by giving to you not less than thirty (30)

days' notice to that effect.

- 40.2 Upon receiving notice under Condition 40.1, you will be entitled to fair and reasonable remuneration for such part of the Goods which you have delivered and/or the Services as you have completed or commenced and in respect of which you have not been paid, and for any costs or liabilities incurred to third parties as a result of any irrevocable commitment entered into in performance of the Contract, to the extent that you are able to provide evidence to our reasonable satisfaction to support any sums which you claim.
- 40.3 Upon receiving notice under Condition 40.1, you will forthwith cease delivering the Goods and/or performing the Services and will immediately take all reasonable steps to mitigate your costs and losses and withdraw from any commitments to third parties relating to performance of your obligations under the Contract.
- 40.4 We will not be liable upon termination under Condition 40.1 to pay any sum which, when added to the sums paid or due to you under the Contract, exceeds the total sum which would have been payable to you if the Contract had not been terminated prior to the expiry of the original Contract Period.

#### **41. EFFECT OF TERMINATION GENERALLY**

Termination under any provision of the Contract will not prejudice or affect any right of action or remedy which has accrued or will thereupon accrue to us and will not affect the continued operation of any obligation which is expressed to continue beyond termination or expiry of the Contract.

#### **42. DISRUPTION**

- 42.1 You will take reasonable care to ensure that in the execution of the Contract you do not disrupt our operations or the operations of our servants, agents, employees, or any other contractor employed by us.
- 42.2 You will immediately inform us of any actual or potential industrial action, whether such action be by your own Staff or your contractors, which is likely to affect your ability at any time to perform your obligations under the Contract.
- 42.3 In the event of industrial action by your Staff or your contractors, you will seek our approval to your proposals to perform your obligations under the Contract. If we consider your proposals to be insufficient or unacceptable, then we may terminate the Contract by notice in writing to you with immediate effect.
- 42.4 If you are temporarily unable to perform any of your obligations under the Contract owing to disruption of your normal business by our direction, an appropriate allowance by way of extension of time for performance of the obligation so affected will be approved by us.

#### **43. ASSIGNMENT AND SUB-CONTRACTING**

- 43.1 You will not assign, mortgage, charge or otherwise transfer any rights or obligations under the Contract without our prior written consent.
- 43.2 Unless we agree in writing, you will not sub-contract the Contract or any part of it.
- 43.3 If you sub-contract any work under the Contract, you will remain primarily responsible to us for all your obligations in the Contract. We can take action against you if any sub-contractor fails to perform the sub-contracted obligations.
- 43.4 If you enter into a sub-contract with a supplier or contractor for the purpose of delivering the Contract, you will ensure a term is included in the sub-contract that requires payment to be made of undisputed sums by you to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements. You will also require that any sub-contractor includes a like provision in any contract it enters into with a supplier or contractor.

#### 44. **FORCE MAJEURE**

- 44.1 For the purpose of this Condition 44, '**Force Majeure**' means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within your organisation or within any sub-contractor's organisation.
- 44.2 Neither Party will be liable to the other for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from an event of Force Majeure. Each Party will use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if such event prevents either Party from performing all of its obligations under the Contract for a period in excess of six (6) months, either Party may terminate the Contract by notice in writing with immediate effect.
- 44.3 Any failure or delay by you in performing your obligations under the Contract which results from any failure or delay by your agent, sub-contractor or contractor will be regarded as due to Force Majeure only if, and to the extent that, that your agent, sub-contractor or contractor is itself impeded by Force Majeure from complying with an obligation to you.
- 44.4 If either of the Parties will become aware of circumstances of Force Majeure which give rise to or are likely to give rise to any failure or delay on its part it will forthwith notify the other by the most expeditious method then available and will inform the other of the period over which it is estimated that such failure or delay will continue.
- 44.5 For the avoidance of doubt, it is hereby expressly declared that the only events which will afford relief from liability for failure or delay in performance of the Contract will be any event qualifying as Force Majeure.

## 45. SCOPE OF CONTRACT

- 45.1 At all times in connection with the Contract, you will be an independent contractor and nothing in the Contract creates a relationship of agency or partnership or a joint venture as between the Parties and accordingly you are not authorised to bind us.
- 45.2 You will not (and will procure that your Staff do not) say or do anything that might lead any other person to believe that you are acting as our agent.
- 45.3 Nothing in the Contract imposes any liability on us in respect of any liability incurred by you to any other person but this will not be taken to exclude or limit any liability of us to you that may arise by virtue of either a breach of the Contract or any negligence on our part , or the part of our employees, servants, agents or sub-contractors.

## 46. NOTICES

- 46.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other will have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 46.2 Any notice or other communication which is to be given by either Party to the other will be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail (confirmed by letter). Such letters will be addressed to the other Party at the address notified in the Contract or such other address as either Party may nominate to the other from time to time.
- 46.3 Provided the relevant communication is not returned as undelivered, the notice or communication will be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letter or electronic mail.

## 47. WARRANTIES

- 47.1 You warrant, represent and undertake to us that:
  - 47.1.1 you have full capacity and authority and all necessary consents to enter into and to perform the Contract, and that the Contract has been signed on your behalf by someone who is authorised to do so;
  - 47.1.2 you acknowledge we are entering into the Contract on the basis of information provided by you, whether contained in the Tender Documents or otherwise, and the information provided to us by you is true, accurate and complete in all material respects, and are not misleading;
  - 47.1.3 the Services (if any) will meet the Specification in all respects;

and

47.1.4 in addition to your specific obligations as set out in the Contract, you hold any licence, permit and/or certificate required by law for the performance of the Contract.

47.2 We warrant, represent and undertake to you that we have full capacity and authority and all necessary consents to enter into the Contract, and that the Contract has been signed on our behalf by someone who is authorised to do so.

47.3 You warrant that you are responsible for the accuracy of all drawings, documentation and information supplied to us by you or any of your sub-contractors or agents and will pay us any extra costs occasioned by any discrepancies, errors or omissions therein.

#### 48. **VARIATION**

Subject to Condition 19 (Change Control) no variation of the Contract will be valid unless confirmed in writing by authorised signatories of both Parties.

#### 49. **WAIVER**

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

#### 50. **SEVERABILITY**

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

#### 51. **THIRD PARTY RIGHTS**

51.1 A person who is not a party to the Contract will not have any rights to enforce its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

51.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

#### 52. **ENTIRE AGREEMENT**

52.1 The Contract constitutes the whole agreement between the Parties and supersedes and extinguishes all previous contracts, agreements,

promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter.

52.2 Each Party acknowledges that, in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) of any person (whether a party to the Contract or not) other than as expressly set out in the Contract or those documents. Nothing in this Condition 52 limits liability for fraudulent misrepresentation.

52.3 Each Party agrees that it will have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

### 53. **DISPUTE RESOLUTION**

53.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**'Dispute'**) then the Parties will comply with the following procedure:

53.1.1 either Party will give to the other written notice of the Dispute, setting out its nature and full particulars (**'Dispute Notice'**), together with relevant supporting documents. On service of the Dispute Notice, the respective authorised representatives (of appropriate seniority) will attempt in good faith and acting reasonably to resolve the Dispute;

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

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

53.2 The commencement of mediation will not prevent the Parties commencing or continuing proceedings in relation to the Dispute under Condition 55 (which applies at all times).

### 54. **REMEDIES AND DAMAGES**

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

54.2 Without prejudice to any other rights or remedies that you or we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of the terms of this Contract by you. Accordingly, we are entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract.

## 55. **LAW AND JURISDICTION**

The Contract will be deemed to be a contract made in Wales and is governed by and interpreted in accordance with the law of England and Wales, as it applies in Wales. All disputes arising under or in connection with it will (subject to Condition 53) be submitted in the first instance to the non-exclusive jurisdiction of the Courts of England and Wales sitting in Cardiff.