

CONDITIONS OF CONTRACT FOR GOODS

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

1. DEFINITIONS

1.1 In these Conditions the words and phrases below shall have the following meaning:

‘the Client’ means Estyn or any designated representative of it;

‘Commencement Date’ means (without prejudice to any applicable Standstill Period) the date specified in the Tender Documents or (if no specific date is given):

(a) the date upon which award of this Contract was notified to the Contractor, where there is no applicable Standstill Period; or

(b) where a Standstill Period applies, the first business day after the expiry of the applicable Standstill Period.

‘Condition’ means a condition within this Contract;

‘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 the Client and the Contractor consisting of the Tender Documents, these Conditions and any other documents (or parts thereof) specified in the Tender Documents;

‘Contract Period’ means the period of duration of the Contract in accordance with Condition 2;

‘Contract Price’ means the monies payable by the Client to the Contractor for the provisions of the Goods and/or Services as set out in the Contract;

‘the Contractor’ means the person, firm or company to whom the Contract is issued;

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

‘Goods’ means any such goods as are to be supplied to the Client by the Contractor (or by any of the Contractor's sub-contractors) pursuant to or in connection with this 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;

‘Order’ means the order placed by the Client with the Contractor or, in the case of the Goods to be provided by a third party, the Order placed by the Client with that third party;

‘Party’ means the Client or the Contractor, together the “Parties”;

‘Premises’ means the location where the Goods are to be delivered and/or Services are to be performed, as specified in the Tender Documents;

‘Services’ means the services to be provided as specified in the Specification and shall where the context so admits, include any materials, articles and Goods to be supplied thereunder;

‘Specification’ means the specification for the Services the Client requires the Contractor to perform as set out in the Tender Documents;

‘Standstill Period’ means (to the extent applicable to the award of this Contract):

(a) the period specified in the Tender Documents which is to be allowed between notification of the Client’s decision to award the Contract to the Contractor, and the Contract being entered into between the Parties; or

(b) if no such period is specified in the Tender Documents, the minimum mandatory period which must be allowed between notification of the Client’s decision to award the Contract to the Contractor and the Contract being entered into between the Parties, of at least ten (10) calendar days (or such other period as may be imposed from time to time by any legal or administrative requirement applicable to the Client);

‘Staff’ means all persons employed by the Contractor to perform the Contract and/or the Services together with the Contractor’s servants, agents and sub-contractors used in the performance of the Contracts and/or Services;

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

‘Tender Documents’ means the documents as contained in Schedule 1.

1.2 In these Conditions a reference to any statute, enactment, order, regulation or other similar instrument (“legislation”) shall, 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 shall include the plural and vice versa, and references to any person shall include 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 shall include the masculine, the feminine and the neuter.

- 1.4 The use of headings and bold type in this Contract are for convenience only and shall not affect the interpretation of any provision of this Contract.
- 1.5 Unless the context otherwise requires, a reference to any document shall be construed as a reference to the document as at the date of execution of this Contract.
- 1.6 References to Conditions and Schedules are, unless otherwise provided, references to conditions of and schedules to this Contract.
- 1.7 In the event of any conflict or inconsistency between any provision of the Conditions and any provision of the Schedules, the Conditions shall prevail.
- 1.8 Any reference to “approval” by the Client shall mean approval in writing.

2. **DURATION**

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date specified in the Tender Documents, unless it is otherwise terminated in accordance with these Conditions, or otherwise lawfully terminated, or extended in accordance with Condition 2.2 below.
- 2.2 If provided for in the Tender Documents, subject to satisfactory performance by the Contractor during the Contract Period, the Client may extend the Contract for such further period as set out in the Tender Documents. The Client shall give notice to the Contractor if it wishes 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. **INSPECTION OF PREMISES AND NATURE OF THE GOODS/SERVICES**

- 3.1 The Contractor is deemed to have inspected the 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 satisfied himself in relation to all matters connected with the Goods, Services and Premises. Any cost incurred by the Client due to failure of the Contractor to inspect the Premises or understand the nature and extent of the

Goods and/or Services in accordance with this Condition 3 shall be borne by the Contractor.

3.2 The Client shall, at the request of the Contractor, grant such access as may be reasonable for this purpose.

3.3 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

4. **THE GOODS**

4.1 The Goods shall be to the reasonable satisfaction of the Client and shall conform in all respects with any particulars specified in this Contract and with any variations thereto.

4.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.

4.3 The Goods shall be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Client and the Client relies on the skill and judgement of the Contractor in the supply of the Goods and the execution of the Contract.

4.4 This Contract incorporates the rules relating to sale by sample.

4.5 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 of the sample.

5. **APPOINTMENT**

5.1 The Client appoints the Contractor to provide the Services:

5.1.1 promptly and in a professional and courteous manner so as to reflect and promote the image of the Client;

- 5.1.2 strictly in accordance with the Tender Documents and all the provisions of the Contract;
- 5.1.3 in accordance with all applicable UK and European laws and regulations, codes of practice and good industry practice;
- 5.1.4 in accordance with the policies (including any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Client as amended from time to time.
- 5.1.5 The Contractor accepts the terms of the appointment as provided in Condition 5.1.

6. PERFORMANCE OF THE SERVICES

- 6.1 The Contractor shall provide at its own expense all Staff, equipment, tools, appliances, materials or items for the provision of the Services.
- 6.2 If the Tender Documents provide for performance of the Services in stages, the Contractor undertakes to perform the Services in strict compliance with the timetable for stages as provided in the Tender Documents.
- 6.3 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Contractor to provide the Services using the degree of skill, care and diligence reasonably to be expected of a contractor carrying on the trade business or profession of the Contractor and who is experienced in providing services of similar value, nature, scope and complexity to the Services.
- 6.4 The Contractor will ensure that all its 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.
- 6.5 The Contractor shall institute and maintain a properly documented system of quality control (which shall 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.

- 6.6 In addition to any other rights of the Client under the Contract, the Client shall be entitled to inspect and examine the provision of Services being carried out at the Premises without notice at any time. The Contractor shall provide to the Client all such facilities as the Client may require for such inspection and examination.
- 6.7 If any part of the Service is found to be defective or different in any way from the Tender Documents, or not in compliance with the provisions of the Contract, the Contractor shall at its own expense re-perform the Services in question (without additional remuneration) within such time as the Client may reasonably specify failing which the Client shall be entitled to procure performance of the defective Services from a third party or to execute the tasks in question itself.
- 6.8 If the cost to the Client of executing or procuring such Services exceeds the amount that would have been payable to the Contractor for such Services, the excess shall be paid by the Contractor to the Client on demand in addition to any other sums which may be payable by the Contractor to the Client.

7. STATUTORY OBLIGATIONS

- 7.1 In performing the Contract, the Contractor shall 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, race relations and sexual discrimination. The Contractor shall take all reasonable steps to ensure the observance of these provisions by all Staff of the Contractor employed or engaged in the execution of the Contract. The Contractor shall indemnify the Client and the Crown against all actions, claims, losses, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of any statutory obligation.

8. TIME OF PERFORMANCE

- 8.1 The Contractor shall begin performing the Services on the date stated in the Specification and shall 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. The Client may by written notice require the Contractor to execute the Services in such order as the Client may decide. In the absence of such notice, the Contractor shall submit detailed programmes of work and progress reports as the Client may from time to time require.

- 8.2 If performance of the Contract by the Contractor is delayed by reason of any act or Default on the part of the Client, or by any other cause that the Contractor could not have reasonably foreseen or prevented and for which it was not responsible, the Contractor shall be entitled to a reasonable extension of time for completion of such part of the Services or delivery of the Goods so affected.

9. DELIVERY

- 9.1 The Goods shall be delivered to the place or places named in the Tender Documents. Any access to Premises and any labour and equipment that may be provided by the Client in connection with delivery shall be provided without acceptance by the Client of any liability whatsoever and the Contractor shall indemnify the Client, the Crown, and its or their employees, servants, agents or sub-contractors in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Client the Crown, and its or their 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 of the Contractor or its Staff.
- 9.2 Where any access is necessary to Premises which are owned, or managed or controlled, by the Client, the Contractor and its Staff shall at all times comply with the reasonable requirements of the Client's Head of Security.
- 9.3 The Services must be effected within a maximum of seven (7) working days after receiving instructions from the Client. The Client may require that some Services be effected more urgently.

- 9.4 Where the Tender Documents require the delivery of the Goods via the Royal Mail or a carrier approved by the Client, the Client requires written proof that each consignment of Goods has been delivered to or picked up by the Royal Mail or a carrier approved by the Client, to the agreed time schedule. This must be supplied to the Client within seven (7) days of completion of each distribution.
- 9.5 All items for delivery must be held at the Contractor's warehouse or as specified in the Tender Documents.
- 9.6 The Contractor may occasionally be required to pick-up and deliver items to the Client free of additional charge.

10. ON RECEIPT OF DELIVERY

- 10.1 The Contractor will inspect all Goods relating to the Contract to confirm that the quantity conforms with the Order. Failure to do so will give the Client the right to terminate the Contract.
- 10.2 Any defect in number which is apparent on inspection of the Goods supplied shall be communicated to the Client's authorised representative in writing prior to the fulfilment of any further obligation of the Contractor under the Contract.
- 10.3 The Contractor hereby agrees to indemnify the Client against any loss suffered as a result of the Contractor's failure to detect any defect in the quantity of the Goods delivered.

11. PROPERTY AND RISK IN GOODS

- 11.1 Risk in the Goods shall without prejudice to any of the rights or remedies of the Client (including the Client's rights and remedies under Condition 37 (Alternative Contractor)) pass to the Client at the time of delivery. The Goods shall become the property of the Client at the time of delivery.

12. INSPECTION, REJECTION AND GUARANTEE OF GOODS

- 12.1 The Contractor shall permit the Client or its authorised representatives to make any inspections or tests the Client may reasonably require and the Contractor shall 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 shall constitute a waiver by the Client of any rights or remedies in respect of the Goods.

12.2 The Client may by written notice to the Contractor reject any of the Goods which fail to meet the requirements specified in this Contract. Such notice shall be given within a reasonable time after delivery to the Client of the Goods concerned. If the Client shall reject any of the Goods pursuant to this Condition 12 the Client shall be entitled (without prejudice to its other rights and remedies) either:

12.2.1 to have the Goods concerned as quickly as possible either repaired by the Contractor or (as the Client shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified in the Order; or

12.2.2 to obtain a refund from the Contractor in respect of the Goods concerned.

12.3 Any Goods rejected or returned by the Client as described in this Condition 12 shall be returned to the Contractor at the Contractor's risk and expense.

12.4 The guarantee period applicable to the Goods shall be twelve (12) months from putting into service or eighteen (18) months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Client and the Contractor). If the Client shall within such guarantee period or within thirty (30) days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Contractor shall (without prejudice to any other rights and remedies which the Client may have) as quickly as possible remedy such defects (whether by repair or replacement as the Client shall elect) without cost to the Client.

13. **DAMAGE IN TRANSIT**

13.1 On dispatch of any consignment of Goods in any Order the Contractor shall send to the Client an advice note specifying the means of transport, the place and date of dispatch, the number of packages and

their weight and volume. The Contractor shall free of charge and as quickly as possible either repair or replace (as the Client shall elect) such Goods as may either be damaged in transit.

- 13.2 In the case of damage to such Goods in transit the Client shall within thirty (30) days of delivery give notice to the Contractor that the Goods have been damaged.
- 13.3 In the case of non-delivery the Client shall (provided that the Client has been advised of the dispatch of the Goods) within ten (10) days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.
- 13.4 The Contractor shall take out and maintain with an insurer of repute carrying on business in the European Union full goods in transit insurance of up to £20,000.00 per vehicle and must provide to the Client upon 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 shall be packed and marked in a proper manner and in accordance with the Client's instructions and any statutory requirements and any requirements of the carriers. Parcels will be packed in a convenient size, no larger than 24.0 cms high and shall be suitably protected. In particular the Goods shall be marked with the Order number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Contractor shall indemnify the Client, the Crown, and its or their employees, servants, agents or sub-contractors against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client, the Crown and its or their 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 the Contractor's advice note states that such materials will be charged for unless returned. The Client accepts no liability in respect of the non-

arrival at the Contractor's premises of empty packages returned by the Client unless the Contractor shall within ten (10) days of receiving notice from the Client that the packages have been despatched notify the Client of such non-arrival.

- 14.3 Maximum use must 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 must 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**

- 15.1 The Contractor shall comply with such monitoring arrangements as may be set out in the Tender Documents and in any event shall provide such data and information relating to performance of the Services as the Client may reasonably require.

16. **AUDIT**

- 16.1 The Contractor shall keep and maintain until two (2) years after the Contract has been completed or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods and/or Services provided under it, all expenditure reimbursed by the Client, all payment made by the Client, and (where any Staff are paid for on a time-charge basis) of the hours worked and costs incurred in connection with the Contract. The Contractor shall on request afford the Client or its representatives such access to those records as may be required by the Client in connection with the Contract. The provisions of this Condition 16 shall apply during the continuance of this Contract and shall survive its expiry or termination.

17. **SUSTAINABILITY**

- 17.1 The Contractor shall, when working on the Client's Premises, perform the Contract in accordance with the Client's environmental policies as notified to the Contractor from time to time and in any event will use all reasonable endeavours to –

- 17.1.1 conserve energy, water, wood, paper and other resources;

- 17.1.2 reduce waste;
- 17.1.3 phase out the use of ozone depleting substances; and
- 17.1.4 minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health or the environment.

18. **NO SMOKING**

- 18.1 The Client has a no smoking policy in all its Premises. The Contractor shall ensure that its Staff observe the no smoking policy whilst carrying out any Services at the Client's Premises. Any failure by the Contractor's Staff to comply with the Client's no smoking policy will result in the Contractor's Staff being asked to leave the Premises and any loss resulting from this action shall be borne by the Contractor.

19. **VARIATION OF THE GOODS OR SERVICES**

- 19.1 The Client reserves the right by written notice to the Contractor to vary the quality or quantity of the Goods and/or Services. Any variation, and any alteration to the Contract Price or the time for performance of any obligation under the Contract which arises by reason of such variation, shall be of no effect unless agreed in writing between the Parties.
- 19.2 The Contractor shall within seven (7) days of receipt of a notice of variation pursuant to Condition 19.1 above advise the Client in writing of any amendment to the Contract Price and/or the time for performance of any obligation under the Contract which the Contractor believes is necessary in consequence of the proposed variation. Any such amendment shall be determined (so far as possible) by reference to the rates and prices set out in the Tender Documents. In so far as it is impossible to so determine such amendment, then the amendment is to be determined on a fair and reasonable basis, taking into account the rates, prices and practices in the industry to which the Goods and/or Services relate.
- 19.3 If the Parties fail to agree on amendments requested by the Contractor under Condition 19.2 above, then the Client may either –

- 19.3.1 withdraw the notice of variation, in which case the Contractor shall be under no obligation to implement the proposed variation and the Contract will continue in full force and without any amendment; or
- 19.3.2 give notice to the Contractor to proceed to implement the variation without agreement, in which case the Contractor will proceed forthwith to implement the variation, and shall be entitled to be paid a fair and reasonable sum and be entitled to such additional time as may be reasonable to be determined in accordance with the principles set out in Condition 19.2. If the Parties fail to agree on any outstanding issues as to the Contract Price and time for performance arising from the variation within seven (7) days of the Client having given notice under this Condition 19.3.2, either Party may refer the outstanding issue or issues as a dispute for determination in accordance with Condition 52 (Dispute Resolution).

19.4 The variation shall take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.

19.5 Each record of variation shall be dated and sequentially numbered.

19.6 Save as provided for in any such record of variation the Contract shall continue in full force and effect.

20. **CONFLICTS OF INTEREST**

20.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any member of its Staff is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or its Staff and the duties owed to the Client under the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise as soon as possible after becoming aware of it. The provisions of this Condition 20 shall apply during the continuance of the Contract and indefinitely after expiry or termination.

21. **CONTRACT PRICE**

- 21.1 In consideration of the performance of the Contractor's obligations under the Contract by the Contractor, the Client shall pay the Contract Price.
- 21.2 In the event that the cost to the Contractor of performing its 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 the Contractor's costs will be deemed to have been included in the Contract Price.

22. **PAYMENT AND TAX**

- 22.1 The Client shall pay the Contractor, 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 work completed to the satisfaction of the Client.
- 22.3 Each invoice shall contain all appropriate references and a detailed breakdown of the Goods and/or Services and shall be supported by any other documentation required by the Client to substantiate the invoice.
- 22.4 Where the Contractor enters into a sub-contract with a contractor for the purpose of performing the Contract, it shall cause a term to be included in such sub-contract which requires payment to be made by the Contractor 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, shall be shown separately on all invoices as a strictly net extra charge.
- 22.6 The Client may reduce payment in respect of any Goods and/or Services which the Contractor has either failed to provide or has

provided inadequately, without prejudice to any other rights and remedies of the Client.

23. RECOVERY OF SUMS DUE

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

24. PRICE ADJUSTMENT ON EXTENSION OF THE CONTRACT PERIOD

- 24.1 The Contract Price shall 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 Client and the Contractor shall 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 Client and the Contractor, 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 the Client, the Contractor may increase or decrease the Contract Price to be charged for the Extended Contract Period.

25. **CONTRACTOR'S STAFF**

25.1 The Client reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on, any Premises occupied by or on behalf of the Client or the Crown:

25.1.1 any member of the Contractor's Staff;

25.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor,

whose admission or continued presence would be, in the opinion of the Client, undesirable.

25.2 The Contractor and its Staff must when present at any Premises occupied by or on behalf of the Client or the Crown, 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 the Contractor and the Contractor's Staff.

25.3 If the Contractor or its Staff fail to comply with Condition 25.2 above, the Client (whose decision shall be final and conclusive) may decide that such failure is prejudicial to the interests of the State and if the Contractor does not comply with the provisions of Condition 25.2 within a reasonable time of written notice from the Client to do so then the Client may terminate the Contract provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

25.4 The Contractor should take all reasonable steps to ensure that in the performance of the Contract none of the following enters the Premises:

25.4.1 Any person (not being a national of a member state of the European Union) who is an alien, or a naturalised person within the meaning of the British Nationality Act 1981, unless the prior permission in writing of the Client has been obtained.

25.5 If and when instructed by the Client, the Contractor shall give to the Client 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 the Client or the Crown, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require.

- 25.6 If and when directed by the Client, the Contractor shall secure that any of its Staff who is specified in the direction given by the Client, or is one of a class of persons who may be so specified, shall sign a statement that such person understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of this Contract and after its expiry or termination.
- 25.7 The Contractor shall take the steps reasonably required by the Client to prevent unauthorised persons being admitted to the Premises. If the Client gives the Contractor 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, the Contractor shall take all reasonable steps to comply with such notice and if required by the Client the Contractor shall 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.
- 25.8 The decision of the Client 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 the Contractor has furnished the information or taken the steps required of him by this Condition 25 shall be final and conclusive.
- 25.9 The Client shall 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 employee of the Contractor in respect of his or her service with the Contractor and arising from the operation of the Client's security measures.
- 25.10 The Contractor agrees to notify the Client of any impending disputes with its employees which could affect the operation of the Services.

26. **HEALTH AND SAFETY**

- 26.1 The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of the Contract.
- 26.2 The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Client's Premises and which may affect the Contractor in the performance of the Contract.
- 26.3 While on the Client's Premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working on those Premises.
- 26.4 The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of the Contract on the Client's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 26.5 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 ("the 1974 Act") and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Contract.
- 26.6 The Contractor shall ensure that its health and safety policy statement (as required by the 1974 Act) is made available to the Client on request.

27. **CORRUPT GIFTS OR PAYMENTS**

- 27.1 The Contractor shall not offer or give, or agree to give to any employee, servant, agent or representative of the Client any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Client or the Crown or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

- 27.2 The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee, servant, agent or representative of the Client by the Contractor or on the Contractor's behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Client.
- 27.3 Where the Contractor or any of its Staff or anyone acting on the Contractor's behalf, breach the provisions of Conditions 27.1 and 27.2 in relation to this or any other contract with the Client or the Crown, the Client has the right to:
- 27.3.1 terminate the Contract with immediate effect and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination;
 - 27.3.2 recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - 27.3.3 recover in full from the Contractor any other loss suffered by the Client in consequence of any breach of this Condition 27, whether or not the Contract has been terminated.
- 27.4 In exercising its rights or remedies under this Condition 27, the Client shall:
- 27.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
 - 27.4.2 give all due consideration, where appropriate, to action other than termination of the Contract.

28. **FRAUD**

- 28.1 The Contractor shall safeguard the Client's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Contractor's directors and contractors. The Contractor shall notify the Client immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

29. **OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**

29.1 The Contractor undertakes to abide by, and to ensure that its Staff abide by, the provisions of:

29.1.1 the Official Secrets Acts 1911 to 1989; and

29.1.2 Section 182 of the Finance Act 1989 (disclosure of information relating to tax and other matters).

29.2 In the event that the Contractor and/or its Staff fail to comply with this Condition 29, the Client reserves the right to terminate the Contract by giving notice in writing to the Contractor.

29.3 The provisions of Condition 29.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

30. **CONFIDENTIALITY**

30.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Contractor acknowledges that any Confidential Information obtained from or relating to the Client, the Crown, and its or their employees, servants, agents or sub-contractors, is the property of the Client or the Crown as the case may be.

30.2 Each Party shall:

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 this 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 this 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 shall disclose any Confidential Information to any other person whatsoever without the prior written consent of the Party supplying it.
- 30.4 The Contractor shall provide all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (without the Client's prior approval in writing) or used other than for the purpose of this Contract by the Contractor's Staff.
- 30.5 Without prejudice to the generality of the foregoing neither the Contractor nor any of its Staff shall use the Confidential Information for the solicitation of business from the Client its employees, servants, agent or sub-contractors or the Crown.
- 30.6 Where it is considered necessary in the opinion of the Client, the Contractor shall ensure that the Staff or any other person engaged by it in connection with the Contract shall sign a confidentiality undertaking in a form specified by the Client before commencing work in connection with the Contract.
- 30.7 The provisions of this Condition 30 shall not apply to any information which:
 - 30.7.1 is or becomes public knowledge (otherwise than by breach of this Contract); or
 - 30.7.2 which 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 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 30.7.4 which is independently developed without access to the Confidential Information; or
 - 30.7.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the

disclosure including any requirements on the Client for disclosure under the Code of Practice on Public Access to Information published by the Client, the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and pursuant to Condition 33 (Freedom of Information).

- 30.8 Nothing in this Condition 30 shall prevent the Contractor 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 the Contractor's accounts to its 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 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 30.10 In the event that the Contractor fails to comply with this Condition 30, the Client reserves the right to terminate the Contract by notice in writing with immediate effect.
- 30.11 The provisions of this Condition 30 shall apply during the continuance of the Contract and indefinitely after its termination howsoever arising.

31. **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 31.1 Except with the written consent of the Client, the Contractor shall not make any press announcements or publicise the Contract or any part thereof in any way.

- 31.2 The Contractor shall take all reasonable steps to ensure the observance of Condition 31.1 by its Staff.
- 31.3 The provisions of this Condition 31 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

32. **DATA PROTECTION**

- 32.1 In this Condition 32 the term Personal Data has the same meaning given in the Data Protection Act 1998 ("the 1998 Act") and "processed" and "process" shall be construed in accordance with the 1998 Act.
- 32.2 The Contractor shall comply with the 1998 Act and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Client by the seventh data protection principle ("the Seventh Principle") set out in the 1998 Act, namely:
- 32.2.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Client by the Seventh Principle;
 - 32.2.2 only to process Personal Data for and on behalf of the Client, in accordance with the instructions of the Client and for the purpose of performing its obligations under the Contract and to ensure compliance with the 1998 Act;
 - 32.2.3 to allow the Client to audit the Contractor's compliance with the requirements of this Condition 32 on reasonable notice and/or to provide the Client with evidence of its compliance with the obligations set out in this Condition 32.
- 32.3 The Contractor agrees to indemnify and keep indemnified the Client against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Client as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Contractor, its employees or agents in the Contractor's performance of the Contract or as otherwise agreed between the Parties.

32.4 Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Contractor providing the Client with reasonable assistance in complying with subject access requests served on the Client under Section 7 of the 1998 Act and the Contractor consulting with the Client prior to the disclosure by the Contractor of any Personal Data in relation to such requests.

33. **FREEDOM OF INFORMATION**

33.1 The Contractor acknowledges that the Client is subject to the requirements of the Code of Practice on Public Access to Information published by the National Assembly for Wales (“the NAW Code”), the Freedom of Information Act (“the FOIA”) and the Environmental Information Regulations 2004 (“EIR”).

33.2 The Contractor acknowledges that the Client shall be responsible for determining in its absolute discretion whether:

33.2.1 to disclose any information which it has obtained under or in connection with the Contract to the extent that the Client is required to disclose such information to a person making a disclosure request under the FOIA or the EIR (“an RFI”);

33.2.2 any information is exempt from disclosure under the NAW Code, the FOIA or the EIR.

33.3 The Contractor acknowledges that the Client may, acting in accordance with the Department of Constitutional Affairs Code of Practice on the Discharge of Functions of Public Authorities issued under Section 45 of the FOIA (“the DCA Code”), be obliged under the NAW Code, the FOIA or the EIR to disclose information subject to an RFI:

33.3.1 following consultation with the Contractor carried out in accordance with the DCA Code;

33.3.2 without consulting with the Contractor where this is not required by the NAW Code or the DCA Code.

- 33.4 Where the Contractor is consulted in accordance with Condition 33.3.1 then the Contractor shall respond with any views within five (5) working days.
- 33.5 In no event shall the Contractor respond directly to an RFI unless expressly authorised in writing to do so by the Client.
- 33.6 The Contractor shall promptly provide all necessary assistance as reasonably required by the Client to respond to an RFI by providing such information and access to documents and records as the Client reasonably requires in order to answer a disclosure request within the time for compliance set out in Section 10 of the FOIA.
- 33.7 The provisions of this Condition 33 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

34. THE HUMAN RIGHTS ACT 1998

- 34.1 The Contractor shall, and shall use reasonable endeavours to ensure that its Staff shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998. The Contractor agrees to indemnify and keep indemnified the Client against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this Condition 34.

35. INTELLECTUAL PROPERTY RIGHTS

- 35.1 It shall be a condition of this Contract that, except to the extent that the Goods are made up in accordance with designs furnished by the Client, none of the Goods and/or Services will infringe any Intellectual Property Rights of any third party and the Contractor shall fully indemnify the Client and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Condition 35.
- 35.2 The Contractor shall obtain the Client's 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 the Client, the Contractor shall procure that the

owner of the rights grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence to use, reproduce, modify, adapt and enhance the material subject to such rights. Such licence shall be perpetual and irrevocable and shall be granted at no cost to the Client.

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 the Contractor by the Client pursuant to this Contract shall remain the property of the Client;

35.3.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract are hereby assigned to and vest in the Crown absolutely, and without prejudice to Condition 30 (Confidentiality) the Contractor shall not and shall procure that his Staff shall not (except to the extent necessary for the implementation of this Contract) without prior approval of the Client use or disclose any such Intellectual Property Rights or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to this 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) the Contractor shall not refer to the Client or the Contract in any advertisement without the Client's prior approval.

35.4 The Contractor shall forthwith notify the Client if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith provided always that the Contractor shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations and shall, in such conduct, take due and proper account of the interests of the Client.

- 35.5 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and shall 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 The Client shall 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 the Client or the Contractor 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 the reasonable opinion of the Contractor is likely to be made, the Contractor shall at its own expense and subject to the approval of the Client (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 this Contract shall 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 the Client.
- 35.8 The foregoing provisions of this Condition 35 shall 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 the Client of Goods and/or Services in combination with any item not supplied or authorised by the Contractor (which shall act 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 the Client of the Goods and/or Services in a manner not reasonably inferred from the Specification; or
- 35.8.3 the Client's unreasonable refusal to accept modified or substitute Goods and/or Services pursuant to Condition 35.7.1 above.
- 35.9 If the Contractor has availed itself of the rights to modify or substitute the Goods and/or Services or to procure a licence and such exercise of the said rights has avoided any claim, demand or action for infringement, then the Contractor shall 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 above is not possible so as to avoid the infringement and the Contractor has been unable to procure a licence in accordance with Condition 35.7.2, Condition 35.1 shall apply.
- 35.11 The foregoing states the entire liability of the Contractor 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 the Contractor shall immediately return to the Client all materials, work or records held, including any back up media.
- 35.13 The provisions of this Condition 35 shall apply during the continuance of this Contract and indefinitely after its termination or expiry howsoever arising.

36. **INDEMNITY AND INSURANCE**

- 36.1 The Contractor shall **indemnify** and keep indemnified the Client, the Crown and its or their 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 the Contractor's 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 the Contractor and Staff.

- 36.2 The Contractor shall further **indemnify** and keep indemnified the Client, the Crown, and its or their employees, servants, agents or sub-contractors against any expenditure relating to the repair of the Premises or replacement of equipment arising as a result of negligence or Default on the part of the Contractor or its Staff.
- 36.3 The indemnity in Condition 36.1 shall 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 the Contractor or loss or damage to property owned by persons not employed by the Contractor to the extent that such death or injury or loss or damage to property was caused by the wilful act or omission of the Client, the Crown or any of its or their employees, servants, agents or sub-contractors. For the purpose of this Condition 36.3 a person shall be considered as employed by the Contractor if they were so employed at the date or dates they suffered death or injury or loss or damage to their property.
- 36.4 The Contractor shall (to the extent that such policies of insurance are generally available) effect and maintain with an insurer of repute carrying on business in the European Union a policy or policies of insurance providing the level of cover specified in the Tender Documents or if none, an adequate level of cover in respect of all risks which may be incurred by the Contractor arising out of the Contractor's performance of the Contract, including (without limitation) death or personal injury or loss of or damage to property. Such policies shall include (but shall 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 the Contractor; 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 the Client under the Contract including cover for loss or damage to the Client's Premises or any of the Client's property from time to time in the custody or control of the Contractor,
- in the sum of not less than £500,000 for any one event or series of connected events arising from the same incident and unlimited in total,

unless otherwise agreed by the Client in writing. Such insurance is to be taken out by the Contractor in the joint names of the Contractor and the Client notwithstanding that the Contractor shall be solely responsible for the payment of the insurance premium including related taxes and any brokerage charges.

- 36.5 For the avoidance of doubt, if insurance is refused or only offered subject to onerous or unusual conditions due to the Contractor's claims record or any other reason particular to the Contractor, this shall not be taken to mean that insurance of that type is not generally available.
- 36.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.
- 36.7 The Contractor shall produce to the Client 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.
- 36.8 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to under Conditions 36.1 and 36.2.
- 36.9 Where relevant to this Condition 36 the Contractor shall notify the Client immediately on becoming aware of any fact or matter which could render the Client liable to prosecution.

37. ALTERNATIVE CONTRACTOR

- 37.1 The Client reserves the right without incurring liability to the Contractor to use an alternative contractor at any time during the currency of this Contract due to the Contractor's inability to provide any of the Goods and/ or Services to the Client's satisfaction for any reason outside the control of the Client.
- 37.2 In accordance with Condition 6.8 in the event that the Client incurs charges over and above the Contract Price as a result of using an

alternative contractor the Client may at its discretion elect that those charges are met by the Contractor.

38. **TERMINATION**

38.1 The Client may terminate the Contract by notice in writing with immediate effect where:

38.1.1 the Contractor undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

38.1.2 where the Contractor is an individual or a firm and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or any partner of the firm, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or the firm's affairs; or

38.1.3 the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

38.1.4 where the Contractor is 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 where the Contractor is unable to pay its 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 the Contractor is subject.
- 38.2 In respect of termination for a change in control, the Client may only exercise its right under Condition 38.1 within six (6) months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs.
- 38.3 The Contractor shall notify the Client in writing immediately upon the occurrence of any of the events described in Condition 38.1 above.
- 38.4 The Client may terminate the Contract, or terminate the provision of any part of the Contract, by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:
- 38.4.1 the Contractor has not remedied the Default to the satisfaction of the Client within thirty (30) days, or such other period as may be specified by the Client, 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 fundamental breach of the Contract.
- 38.5 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

39. EFFECT OF TERMINATION FOR DEFAULT

- 39.1 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 its rights, the Client may itself 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 the Contractor) all

materials, plant and equipment on the Premises belonging to the Contractor, and the Client shall not be liable to make any further payment to the Contractor until the Goods have been delivered and/or the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor any extra costs in respect thereof incurred by the Client (including the Client's own costs). If the total of such extra costs to the Client exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by the Client from the Contractor.

40. **BREAK**

- 40.1 In addition to the Client's rights of termination under Condition 38, the Client shall be entitled to terminate this Contract by giving to the Contractor not less than thirty (30) days' notice to that effect.
- 40.2 Upon receiving notice under Condition 40.1, the Contractor shall be entitled to fair and reasonable remuneration for such part of the Goods which it has delivered and/or the Services as it has completed or commenced and in respect of which it has 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 the Contractor is able to provide evidence to the reasonable satisfaction of the Client to support any sums which it claims.
- 40.3 Upon receiving notice under Condition 40.1, the Contractor shall forthwith cease delivering the Goods and/or performing the Services and shall immediately take all reasonable steps to mitigate its costs and losses and withdraw from any commitments to third parties relating to performance of its obligations under the Contract.
- 40.4 The Client shall not be liable upon termination under Condition 40.1 to pay any sum which, when added to the sums paid or due to the Contractor under the Contract, exceeds the total sum which would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the original Contract Period.

41. **EFFECT OF TERMINATION GENERALLY**

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

42. **DISRUPTION**

42.1 The Contractor shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of the Client, its servants, agents, employees, or any other contractor employed by the Client.

42.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by its own Staff or the Contractor's Contractors, which is likely to affect the Contractor's ability at any time to perform its obligations under the Contract.

42.3 In the event of industrial action by the Staff or the Contractor's contractors, the Contractor shall seek the Client's approval to its proposals to perform its obligations under the Contract. If the Contractor's proposals are considered insufficient or unacceptable by the Client, then the Contract may be terminated by the Client by notice in writing with immediate effect.

42.4 If the Contractor is temporarily unable to perform any of its obligations under the Contract owing to disruption of its normal business by direction of the Client, an appropriate allowance by way of extension of time for performance of the obligation so affected will be approved by the Client.

43. **ASSIGNMENT AND SUB-CONTRACTING**

43.1 The Contractor shall not assign, mortgage, charge or otherwise transfer any rights or obligations under this Contract without the prior written consent of the Client.

43.2 The Contractor shall not sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract.

- 43.3 The Contractor shall provide the Client with a list of all personnel engaged by its sub-contractors and any subsequent amendments thereto and shall ensure that all other requirements of Condition 25 (Contractor's Staff) are observed and complied with by any sub-contractor.
- 43.4 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Client immediately it is issued.
- 43.5 The Client may upon giving notice to the Contractor assign, novate or otherwise dispose of its rights obligations and liabilities under this Contract or any part thereof to any UK contracting authority as defined in Article 1 of Directive 2004/18/EC, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract.

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 the Contractor's organisation or within any sub-contractor's organisation.
- 44.2 Neither Party shall 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 shall 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 the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Contractor shall be regarded as due to Force Majeure only

if, and to the extent that, that agent, sub-contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

44.4 If either of the Parties shall 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 shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period over which it is estimated that such failure or delay shall continue.

44.5 For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay in performance of the Contract shall be any event qualifying as Force Majeure.

45. **SCOPE OF CONTRACT**

45.1 At all times in connection with the Contract, the Contractor shall be an independent contractor and nothing in the Contract shall create a relationship of agency or partnership or a joint venture as between the Contractor and the Client and accordingly the Contractor shall not be authorised to bind the Client.

45.2 The Contractor shall not (and shall procure that its Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Client.

45.3 Nothing in this Contract shall impose any liability on the Client in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Client to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Client, its 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 shall 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 shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party at the address notified in the Tender Documents 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 shall be deemed to have been given two (2) working days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letter, facsimile transmission or electronic mail.

47. **WARRANTY**

- 47.1 The Contractor warrants to the Client that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of the Contract.
- 47.2 The Contractor warrants to the Client that it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract.

48. **AMENDMENT**

- 48.1 This Contract may only be amended in writing signed by the duly authorised representatives of the Parties.

49. **WAIVER**

- 49.1 No failure or delay on the part of either Party to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

50. **SEVERABILITY**

50.1 If any provision or part of this Contract is held to be invalid, amendments to this Contract may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Contract to the maximum extent permissible under the applicable law.

51. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 (“the 1999 Act”)

51.1 No person who is not a Party to this Contract (including without limitation any employee, officer, agent, shareholder, representative or sub-contractor of either the Client or the Contractor) shall have any right to enforce any term of the Contract which expressly or by implication confers a benefit on such person, without the prior agreement in writing of both Parties, which agreement should specifically refer to this Condition 51. This Condition 51 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the 1999 Act and does not apply to the Crown.

52. DISPUTE RESOLUTION

52.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Parties shall continue their respective performance of the Contract (unless the Client requests in writing that the Contractor does not do so).

52.2 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them (other than a matter in respect of which the Client’s opinion is expressed to be final) arising out of or in connection with the Contract within thirty (30) days of either Party notifying the other of the dispute. Such efforts shall include the escalation of the dispute to the Head of Procurement of the Client and the Contractor’s Finance Director or equivalent.

52.3 Nothing in this Contract shall prevent either Party from seeking from any court of competent jurisdiction an interim order or injunction restraining the other Party from doing any act or compelling the other Party to do any act.

52.4 If the dispute cannot be resolved by negotiation, the dispute shall be referred to mediation pursuant to the procedure set out below unless either:

52.4.1 the Client considers that the dispute is not suitable for mediation; or

52.4.2 the Contractor does not agree to mediation.

For the avoidance of doubt, nothing in this Contract shall be taken to exclude or limit the rights of any Party to make such applications (including but not limited to applications as to costs) as it sees fit in any proceedings, relating to the conduct of the other Party and in particular any decision made under Condition 52.4.1 or 52.4.2 above.

52.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

52.5.1 a neutral mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within fourteen (14) days after a request from one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party may apply to the ADR Group, Grove House, Grove Road, Redland, Bristol BS6 6UN to appoint a Mediator and the mediation shall be conducted in accordance with the rules and procedures of the ADR Group. If the ADR Group is unable or unwilling to nominate a Mediator then either Party may (subject to obtaining the consent of the other) approach an alternative reputable mediation body.

52.5.2 The Parties shall within fourteen (14) days of the Mediator's appointment meet with him in order to discuss and agree a programme for the exchange of all relevant information and the procedure to be adopted for the mediation. Either Party may ask the Mediator to give guidance on a suitable programme for information exchange and/or mediation procedure.

52.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be in

confidence and without prejudice to the rights of the Parties in any future proceedings.

- 52.5.4 If the Parties reach agreement on the resolution of the dispute or any part of it, their agreement shall be reduced to writing and shall be binding on the Parties once it is signed by each of them or their duly authorised representatives.
- 52.5.5 If the mediation fails to achieve a resolution of the dispute or any part of it, either Party may ask the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 52.5.6 If the Parties fail to reach a resolution of the dispute or any part of it within sixty (60) days of the Mediator being appointed, or within such longer period as the Parties may agree, then any outstanding dispute or difference between them may be referred to the Courts.
- 52.5.7 Subject to Conditions 52.3 and 52.4, neither Party may commence any action in the Courts until the mediation procedure set out in this Condition 52.5 has been completed.

53. **LAW AND JURISDICTION**

- 53.1 This Contract shall be deemed to be a contract made in Wales and shall be 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 shall (subject to Condition 52 above) be submitted in the first instance to the non-exclusive jurisdiction of the Courts in Cardiff.