

CONDITIONS OF CONTRACT FOR SERVICES

These Conditions of Contract for Services (the “Conditions”) may only be varied with the written agreement of the Client. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

1. DEFINITIONS

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

‘Acceptance Date’ means the date on which written notice of the Client’s acceptance of each Phase of development of the System is given to the Contractor following successful Acceptance Tests;

‘Acceptance Tests’ means the tests carried out by the Client to ensure that the System (and each Phase thereof) conforms to the Specification;

‘Client’ means The Welsh Ministers or any designated representative of them;

‘Client Data’ means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Client; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; (including but not limited to any notices, business details or other data held by the Client in relation to the Client’s current national procurement websites) and/or (b) any personal data for which the Client is the data controller (as those terms are defined in the Data Protection Act 1998).

‘Client Property’ means any property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract;

‘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;

‘Content’ means the content provided to the Contractor by the Client from time to time for incorporation in the System (including but not limited to any Client Data);

‘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;

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

‘Contractor Software’ means collectively the Licensed Software, the Third Party Software, any Modified Software and the Specially Written Software;

‘Contract Price’ means the monies payable by the Client to the Contractor for the provision of the Services as set out in the Contract;

‘Contract Generated Intellectual Property Rights’ means any Intellectual Property Rights created by the Contractor as a result of the performance by the Contractor of its obligations under the Contract; including but not limited to any such rights in and to the System, any Modified Software and any Specially Written Software;

‘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;

‘Documentation’ means operating manuals, user instructions, technical literature and any other materials relating to the design, configuration and operation of the System as updated by the Contractor from time to time during the term of the Contract; together with any training materials relating to the operation of the System;

‘Exit and Transfer Arrangements’ means the arrangements agreed by the Parties which shall apply in the event of the expiry or termination (howsoever arising) of the Contract;

‘Final Acceptance Date’ means the date on which written notice of the Client’s acceptance of the System is given to the Contractor following successful Acceptance Tests;

‘Good Industry Practice’ means that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant business or industry sector;

‘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 names, 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.

‘Licensed Software’ means the commercial off the shelf software forming the basis of the System and all subsequent amendments and updates to, or new versions of, such software as may be provided under the Contract;

‘Modified Software’ means the software programs proprietary to the Contractor and/or third parties modified or to be modified by the Contractor under the Contract to form part of the System;

‘New Release’ means a new release of all or any part of the Contractor Software (including the Licensed Software) suitable for use by the Client in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added;

‘New Version’ means any new version of the Contractor Software (including the Licensed Software) after the Acceptance Date and/or Final Acceptance Date which provides additional and/or improved functionality and/or performance.

‘Order’ means the order placed by the Client with the Contractor;

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

‘Phase’ means each phase of development of the System including but not limited to Phase 1 and Phase 2 (as described in the Tender Documents) and such other phases of development as may be agreed by the Parties);

‘Pre-Existing Intellectual Property Rights’ means any Intellectual Property Rights vested in or licensed to:

a) the Contractor prior to or independently of the performance by the Contractor of its obligations under the Contract; and

b) the Client prior to or independently of the performance by the Client of its obligations under the Contract.

‘Premises’ means the location where the services are to be performed, as specified in the Tender Document;

‘Services’ means the services to be provided as detailed in the Specification (including but not limited to the implementation of the System, the provision of

the Support Services and the migration of any current Client Data and/or Content onto the System) and shall, where the context so admits, include any materials, articles and Goods to be supplied thereunder;

‘Service Credits’ means the service credits agreed by the Parties which shall be payable to the Client by the Contractor in the event that the Service Levels are not met in respect of the supply of the Services.

‘Service Levels’ means the levels of service agreed by the Parties which shall be adhered to by the Contractor in supplying the Services.

‘Specially Written Software’ means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract;

‘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 Contract and/or the Services;

‘Support Services’ means the services provided by the Contractor to the Client in relation to the delivery of the System including the installation of the

Contractor Software, the provision of any training for Client personnel and the production of the Documentation as detailed in the Specification and in accordance with any tender proposal submitted by the Contractor.

‘System’ means the system and software solutions (including but not limited to the Licensed Software and the Contractor Software) and the Documentation, together with the Services (including but not limited to the Support Services and any related hosting and maintenance services) supplied by the Contractor to the Client pursuant to the Contract as more particularly described in the Specification and in accordance with any tender proposal submitted by the Contractor.

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

‘Tender Documents’ means the documents as referred to in the Schedule;

‘Term’ means the period during which the Contract is in full force and effect, commencing on the Commencement Date and, subject to the provisions of Clause 36, continuing in force for the period set out in the Tender Documents, unless terminated earlier in accordance with these Conditions;

‘Third Party Software’ means software which is proprietary to any third party (other than an affiliate of the Contractor) which is or will be used by the Contractor for the purpose of providing the System;

‘Working Day’ means any day other than a Saturday, Sunday or public holiday in England or Wales.

- 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 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 Services to be carried out and satisfied himself in relation to all matters connected with the 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 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. APPOINTMENT

4.1. The Client appoints the Contractor to provide the Services:

- 4.1.1. promptly and in a professional and courteous manner so as to reflect and promote the image of the Client;
- 4.1.2. strictly in accordance with the Tender Documents and all the provisions of the Contract;
- 4.1.3. in accordance with all applicable UK and European laws and regulations, codes of practice and good industry practice;
- 4.1.4. 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.

4.2. The Contractor accepts the terms of the appointment as provided in Condition 4.1.

5. PERFORMANCE OF THE SERVICES

5.1. The Contractor shall provide at its own expense all Staff, equipment, tools, appliances, materials or items for the provision of the Services.

5.2. 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.

5.3. The Contractor shall perform the Services in accordance with:

5.3.1 any agreed timetable; and

5.3.2 any applicable Service Levels at all times throughout the Term.

- 5.4. Any failure to meet Service Levels shall entitle the Client to claim Service Credits from the Contractor.
- 5.5. 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.
- 5.6. 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.
- 5.7. 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.
- 5.8. 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.
- 5.9. 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.
- 5.10. 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.

5.11. 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.

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

5.13. 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.

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

5.15. The bulk of the Goods will correspond with the sample in quality.

5.16. The Goods will be free from any defect making their quality unsatisfactory, whether apparent or not on reasonable examination of the sample.

6. STATUTORY OBLIGATIONS

6.1. 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.

7. TIME OF PERFORMANCE

7.1. 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.

- 7.2. 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.

8. MANNER OF CARRYING OUT THE SERVICES

- 8.1. The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Client's prior written consent.

- 8.2. Access to the Premises shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Client may reasonably require.

- 8.3. The Contractor shall ensure that the facilities are used with due regard to conservation and exercise energy management control in the course of providing the Services.

- 8.4. The Client shall have the power at any time during the progress of the Services to order in writing:

8.4.1. the removal from the Premises of any materials which in the opinion of the Client are either hazardous, noxious or not in accordance with the Contract, and/or

8.4.2. the substitution of proper and suitable materials, and/or

8.4.3. the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship, is not in the opinion of the Client in accordance with the Contract.

8.5. On completion of the Services the Contractor shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

9. MONITORING OF CONTRACT PERFORMANCE

9.1. 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.

10. AUDIT

10.1. 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 payments 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 10 shall apply during the continuance of this Contract and shall survive its expiry or termination.

11. CLIENT PROPERTY

11.1. Where the Client for the purpose of the Contract issues Client Property free of charge to the Contractor, such property shall be and remain the property of the Client. The Contractor shall not in any circumstances have a lien on the Client Property and the Contractor shall take all reasonable steps to ensure that the title of the Client to such property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Contract.

11.2. Any Client Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or

on behalf of the Contractor, unless the Contractor notifies the Client otherwise within seven (7) days of receipt.

- 11.3. The Contractor shall maintain all Client Property in good order and condition and shall use such property solely in connection with the Contract and for no other purpose without prior approval in writing.
- 11.4. The Contractor shall notify the Client of any surplus Client Property remaining after completion of the Contract and shall dispose of it as the Client may direct.
- 11.5. Waste of Client Property arising from bad workmanship or negligence of the Contractor or any of the Contractor's Staff or suppliers shall be made good at the Contractor's expense. Without prejudice to any other right or remedy of the Client, the Contractor shall deliver up Client Property on demand to the Client (whether processed or not).
- 11.6. The Contractor shall ensure the security of all Client Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Contract, in accordance with the Client's reasonable security requirements from time to time.
- 11.7. The Contractor shall be liable for any and all loss of or damage to any Client Property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or Default of the Client. The Contractor shall forthwith inform the Client of any defects appearing in or losses or damage occurring to Client Property made available for the purposes of the Contract.

12. SUSTAINABILITY

- 12.1. 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 –

12.1.1. conserve energy, water, wood, paper and other resources;

12.1.2. reduce waste;

12.1.3. phase out the use of ozone depleting substances; and

12.1.4. minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health or the environment.

13. NO SMOKING

13.1. 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.

14. VARIATION OF THE SERVICES

14.1. The Client reserves the right by written notice to the Contractor to vary the quality or quantity of the 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.

14.2. The Contractor shall within seven (7) days of receipt of a notice of variation pursuant to Condition 14.1 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 Services relate.

14.3. If the Parties fail to agree on amendments requested by the Contractor under Condition 14.2 above, then the Client may either –

14.3.1. 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

14.3.2. 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 14.2. 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 14.3.2, either Party may refer the outstanding issue or issues as a dispute for determination in accordance with Condition 47 (Dispute Resolution).

14.4. 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.

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

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

15. CONFLICTS OF INTEREST

15.1. 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 15 shall apply during the continuance of the Contract during the Term and indefinitely after expiry or termination of the Contract.

16. CONTRACT PRICE

- 16.1. In consideration of the performance of the Contractor's obligations under the Contract by the Contractor, the Client shall pay the Contract Price.
- 16.2. 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.

17. PAYMENT AND TAX

- 17.1. The Client shall pay the Contractor, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Contract.
- 17.2. 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.
- 17.3. Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation required by the Client to substantiate the invoice.
- 17.4. Where the Contractor enters into a sub-contract with a supplier or 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.
- 17.5. Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

- 17.6. The Client may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights and remedies of the Client.

18. RECOVERY OF SUMS DUE

- 18.1. 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.
- 18.2. 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.
- 18.3. 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.

19. PRICE ADJUSTMENT ON EXTENSION OF THE CONTRACT PERIOD

- 19.1. 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.
- 19.2. 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.

- 19.3. Following agreement in writing with the Client, the Contractor may increase or decrease the Contract Price to be charged for the Extended Contract Period.

20. CONTRACTOR'S STAFF

- 20.1. 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:

20.1.1. any member of the Contractor's Staff;

20.1.2. 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.

- 20.2. 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.

- 20.3. If the Contractor or its Staff fail to comply with Condition 20.2 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 20.2 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.

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

20.4.1. 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.

- 20.5. 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.
- 20.6. 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 and after the expiry or termination of the Contract.
- 20.7. 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 20 with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 20.8. 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 20 shall be final and conclusive.
- 20.9. 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.

- 20.10. The Contractor agrees to notify the Client of any impending disputes with its employees which could affect the operation of the Services.

21. HEALTH AND SAFETY

- 21.1. The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of the Contract.
- 21.2. 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.
- 21.3. 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.
- 21.4. 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.
- 21.5. 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.
- 21.6. 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.

22. CORRUPT GIFTS OR PAYMENTS

- 22.1. 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 Act 1889 to 1916.

22.2. 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.

22.3. Where the Contractor or any of its Staff or anyone acting on the Contractor's behalf, breach the provisions of Conditions 22.1 and 22.2 in relation to this or any other contract with the Client or the Crown, the Client has the right to:

22.3.1. terminate the Contract with immediate effect and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination;

22.3.2. recover from the Contractor the amount or value of any such gift, consideration or commission; and

22.3.3. recover in full from the Contractor any other loss suffered by the Client in consequence of any breach of this Condition 22, whether or not the Contract has been terminated.

22.4. In exercising its rights or remedies under this Condition 22, the Client shall:

22.4.1. 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;

22.4.2. give all due consideration, where appropriate, to action other than termination of the Contract.

23. FRAUD

- 23.1 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 suppliers. 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.

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

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

24.1.1. the Official Secrets Acts 1911 to 1989; and

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

- 24.2. In the event that the Contractor and/or its Staff fail to comply with this Condition 24, the Client reserves the right to terminate the Contract by giving notice in writing to the Contractor.

- 24.3. The provisions of Condition 24.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

25. CONFIDENTIALITY

- 25.1. 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.

- 25.2. Each Party shall:

25.2.1. 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;

- 25.2.2. treat all Confidential Information obtained as secret and confidential and safeguard it accordingly, and only use it for the purpose of this Contract;
- 25.2.3. not disclose any Confidential Information to any other person other than to its Staff who have accepted obligations of confidentiality equivalent to this Condition 25 and who need to have access to such information or materials in connection with the performance of the Contract.
- 25.3. Without prejudice to Condition 25.2.3 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.
- 25.4. 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.
- 25.5. 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.
- 25.6. 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.
- 25.7. The provisions of this Condition 25 shall not apply to any information which:
 - 25.7.1. is or becomes public knowledge (otherwise than by breach of this Contract); or
 - 25.7.2. which is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; or

- 25.7.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 25.7.4. which is independently developed without access to the Confidential Information; or
 - 25.7.5. 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 28 (Freedom of Information).
- 25.8. Nothing in this Condition 25 shall prevent the Contractor from:
- 25.8.1. 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
 - 25.8.2. 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.
- 25.9. Nothing in this Condition 25 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.
- 25.10. In the event that the Contractor fails to comply with this Condition 25, the Client reserves the right to terminate the Contract by notice in writing with immediate effect.
- 25.11. The provisions of this Condition 25 shall apply during the continuance of the Contract and indefinitely after its termination howsoever arising.

26. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 26.1. 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.
- 26.2. The Contractor shall take all reasonable steps to ensure the observance of Condition 26.1 by its Staff.
- 26.3. The provisions of this Condition 26 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

27. DATA PROTECTION

- 27.1. In this Condition 27 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.
- 27.2. 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:
 - 27.2.1. to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Client by the Seventh Principle;
 - 27.2.2. 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;
 - 27.2.3. to allow the Client to audit the Contractor’s compliance with the requirements of this Condition 27 on reasonable notice and/or to provide the Client with evidence of its compliance with the obligations set out in this Condition 27.
- 27.3. 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.

- 27.4. 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.

28. FREEDOM OF INFORMATION

- 28.1. The Contractor acknowledges that the Client is subject to the requirements of the Code of Practice on Public Access to Information published by the Welsh Ministers (“the NAW Code”), the Freedom of Information Act (“the FOIA”) and the Environmental Information Regulations 2004 (“EIR”).
- 28.2. The Contractor acknowledges that the Client shall be responsible for determining in its absolute discretion whether:
- 28.2.1. 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”);
- 28.2.2. any information is exempt from disclosure under the NAW Code, the FOIA or the EIR.
- 28.3. 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:

- 28.3.1. following consultation with the Contractor carried out in accordance with the DCA Code;
- 28.3.2. without consulting with the Contractor where this is not required by the NAW Code or the DCA Code.
- 28.4. Where the Contractor is consulted in accordance with clause 28.3.1 then the Contractor shall respond with any views within five (5) working days.
- 28.5. In no event shall the Contractor respond directly to an RFI unless expressly authorised to do so by the Client.
- 28.6. The Contractor shall 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.
- 28.7. The provisions of this Condition 28 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

29. THE HUMAN RIGHTS ACT 1998

- 29.1. 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 29.

30. INTELLECTUAL PROPERTY RIGHTS

- 30.1 Subject to the provisions of Condition 30.2, the Contractor hereby agrees that any and/or all Contract Generated Intellectual Property Rights shall be proprietary to and owned by the Contractor, with appropriate royalty-free licences granted to the Client to enable continuing use by the Client.

30.2 For the avoidance of doubt, any and all Intellectual Property Rights in and to the Content and any Client Data shall, as between the Client and the Contractor, remain the property of the Client.

30.3 The Contractor shall:

30.3.1 grant, and hereby grants, to the Client a royalty-free, irrevocable, non-exclusive perpetual licence to use such of the Contractor's Contract Generated Intellectual Property Rights and Contractor Software for such term as the Client shall require for the purposes of the Contract and such other purposes as it shall reasonably require that relate to the use and provision of the System, together with the ability to sub-licence the same;

30.3.2 grant, and hereby grants, to the Client a royalty-free, irrevocable, non-exclusive perpetual licence to use such of the New Releases, New Versions and/or any other updates to the Contractor Software and/or System created by the Contractor as part of, or applicable to, the Contract for such term as the Client shall require for the purposes of the Contract and such other purposes as it shall reasonably require that relate to the use and provision of the System, together with the ability to sub-licence the same;

30.3.3 procure the grant to the Client of licences to use the Third Party Software and updates thereto on the Third Party Software owner's standard licence terms (and where relevant in accordance with the Specification and these Conditions);

30.3.4 grant, and hereby grants, to the Client a royalty-free, irrevocable, non-exclusive licence for such term as the Client shall require to use the Documentation and any and all Intellectual Property Rights therein (together with the ability to sub-licence the same) for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the Client under this Clause 30; and the Contractor shall promptly provide copies of any and all Documentation to the Client following production and in any event immediately upon request by the Client in such format as the Client may request;

30.4 Save as granted under this Contract, neither the Client nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Contractor acknowledges that the Client Data is the property of the Client and the Client hereby reserves (as between the Client and the Contractor) any and all Intellectual Property Rights which may subsist in the Client Data.

30.6 The Contractor shall ensure and procure that the availability, provision and use of the System (including but not limited to any Modified Software and Specially Written Software) and the performance of the Contractor's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party and the Contractor shall at all times, during and after the Term, fully **indemnify** (and keep indemnified) the Client and the Crown against all actions, suits, claims, demands, losses, damages, charges, costs and expenses (including legal costs and disbursements on a solicitor and client basis) arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:

30.6.1 availability, provision or use of the System and/or the Contractor Software (or any part thereof); and/or

30.6.2 performance of the Services and of the Contractor's responsibilities and obligations under the Contract.

30.7 To the extent that the System comprises any material which is or may be subject to any third party Intellectual Property Rights (including but not limited to in relation to any Third Party Software), 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 additional cost to the Client.

30.8 Any and all Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models designs or other material furnished to or made available to the Contractor by the Client (including any Client Data and/or Content) shall remain the property of

the Client and (without prejudice to Condition 25 (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 the 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 or by reason of the Contract, except information which is in the public domain otherwise than by reason of a 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.

30.9 The Contractor shall promptly 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 that may affect the availability, provision or use of the System (or any part thereof) and/or the performance of the Contractor's responsibilities and obligations under the Contract.

30.10 The Client shall promptly notify the Contractor if any claim or demand is made or action brought against the Client to which Condition 30.6 may apply. 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.

30.11 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 and/or in connection with the performance of the Contract. The Contractor shall reimburse the Client for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.

30.12 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.

30.13 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 within a reasonable time and subject to the approval of the Client (not to be unreasonably withheld or delayed) either:

30.13.1 modify any or all of the System and/or the Services without reducing the quality or fitness for purpose of the same, or substitute alternative goods and/or Services of equivalent performance and functionality, so as to avoid the infringement or alleged infringement, provided that:

30.8.1.1 the terms of the Contract shall apply *mutatis mutandis* to such modified goods and/or to the substituted Services; and

30.8.1.2 such substitution shall not increase the burden on the Client; and

30.8.1.3 such modified or substituted goods and/or services items shall be acceptable to the Client, such acceptance not to be unreasonably withheld; or

30.13.2 the Contractor shall 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; and

30.13.3 in relation to the performance of the Contractor's responsibilities and obligations under the Contract, the Contractor shall promptly re-perform those responsibilities and obligations.

30.14 The foregoing provisions of this Condition 30 shall not apply insofar as any such claim or demand or action is in respect of:

30.14.1 any use by or on behalf of the Client of the System 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 System directly gives rise to the claim, demand or action; or

30.14.2 any modification carried out by or on behalf of the Client to the System provided under the Contract if such modification is not authorised by the Contractor; or

30.14.3 the use by the Client of the System in a manner not reasonably inferred from the Specification; or

30.14.4 the Client's unreasonable refusal to accept modified or substitute Services pursuant to Condition 30.13.1 above.

30.15 If the Contractor has availed itself of the rights to modify or substitute the System and/or any 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 30 in respect of the said claim, demand or action.

30.16 In the event that a modification or substitution in accordance with Clause 30.13.1 above is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Clause 30.13.2:

30.16.1 the Client shall be entitled to treat such Default as a fundamental breach of the Contract under Condition 33.4.3 and terminate this Contract pursuant to Clause 33; and

30.16.2 the Contractor shall be liable for the value of the additional costs incurred in implementing and maintaining replacement services.

30.17 Clauses 30.6 and 30.13 set out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right by the availability, provision or use of the System (or any part

thereof) and/or the performance of the Contractor's responsibilities and obligations hereunder. This shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise hereunder.

30.18 The provisions of this Condition 30 shall apply during the Term and indefinitely after the termination or expiry of the Contract howsoever arising.

30A SOFTWARE

30A.1 The Contractor shall:

30A.1.1 supply the System in accordance with the terms of the Specification, the Tender Documents and these Conditions and any agreed timescales;

30A.1.2 carry out, in conjunction with the Client and in accordance with the Specification and the Tender Documents, the Acceptance Tests and the Final Acceptance Tests.

30A.2 Subject to Condition 30A.3, in consideration for the Client's agreement to the Contractor retaining ownership in any Contract Generated Intellectual Property Rights (and thereby having the right to commercially exploit the same), the Contractor hereby agrees:

30A.2.1 to use its best endeavours where practicable to incorporate any Specially Written Software and/or Modified Software into the Licensed Software (including as part of any New Releases and/or New Versions); and

30A.2.2 to regularly incorporate any enhancements to the Licensed Software developed in conjunction with or on behalf of other users of the Licensed Software into the Licensed Software and to regularly supply the same to the Client without additional charge during the Term (including as part of any New Releases and/or New Versions); and

30A.2.3 to provide any New Releases to the Client without additional charge during the Term; and

30A.2.3 to provide any New Versions to the Client without additional charge during the Term; and

30A.2.4 to provide any new Documentation relating to such New Releases, New Versions and any other updates without additional charge during the Term; and

30A.2.5 to provide any additional Services (including but not limited to, training) reasonably required by the Client in relation to any New Releases, New Versions or other updates supplied by the Contractor and the Contractor acknowledges and agrees that the Contract Price shall be inclusive of all anticipated costs which may arise in relation to the provision of such New Releases, New Versions or other updates to the Contractor Software and/or the System.

30A.3 For the avoidance of doubt, where the Client asks the Contractor to produce any bespoke software (in addition to the Specially Written Software provided for in the Contract Price) the Contractor shall notify the Client of the proposed charge for delivery and installation of such bespoke software prior to production and the Client shall confirm its agreement to pay such costs prior to commencement of work by the Contractor.

30A.4 The Contractor shall promptly notify the Client of the issue of any New Release and/or New Version.

30A.5 The Contractor shall ensure that no unlicensed software is interfaced with or embedded within any software which is developed by or on behalf of the Contractor under the Contract.

30A.6 The Contractor shall ensure that, where any software which is developed by or on behalf of the Contractor under the Contract incorporates any open source software, the Contractor shall take all steps necessary to comply with the licensing terms applicable to that open source software including making available source code where required by the applicable open source licensing terms.

30A.7 Where any open source software or Third Party Software is used by the Contractor, the Contractor shall ensure that such software is subject to and adheres to the same security standards as any other software proprietary to, or developed by, the Contractor.

30B **ACCEPTANCE TESTS**

30B.1 Following the date of signature of the Contract, the Client and the Contractor shall agree the user acceptance criteria and test data for the Acceptance Tests for the Contractor Software and the System. The criteria and data shall be such as are reasonably required to show that the Contractor Software and/or the System complies with the Specification. The Contractor shall provide the Client with reasonable assistance to prepare such user acceptance criteria and test data where so required by the Client.

30B.2 The Acceptance Tests shall take place in accordance with any timetable agreed by the Parties.

30B.3 If any part of the Contractor Software (or Phase of the System) fails to pass the Acceptance Tests or any part of those tests, the Contractor shall remedy the defects and deficiencies and the relevant tests shall be repeated within a reasonable time.

30B.4 If any part of the Contractor Software fails in some material respect to pass the Acceptance Tests, the Client may, by written notice to the Contractor, choose at its sole discretion:

- (a) to fix (without prejudice to the Client's other rights or remedies) a new date for carrying out further tests. If the Contractor Software or the System fails such further tests then the Client may request a repeat test under this Condition 30B.4 or choose to proceed as set out below;
- (b) to accept that part of the Contractor Software subject to such change of acceptance criteria, amendment to the Specification and/or reduction in the Contract Price as, taking into account all the relevant circumstances, is reasonable; or
- (c) if the Contractor is unable to correct such material defect within an agreed period of time following commencement of the relevant Acceptance Tests, to reject the Contractor Software as not being in conformity with the Contract, in which event the Client may terminate the Contract.

30B.5 On completion of all the Acceptance Tests on the individual modules of the Contractor Software as provided above, the Contractor shall carry out the agreed Acceptance Tests for the System as a whole to ensure that it meets the Specification. The relevant provisions of Conditions 30B.2, 30B.3 and 30.B4 above shall apply these Acceptance Tests in the same way as they apply to the Acceptance Tests for the individual modules of the Contractor Software.

30C. ESCROW

30C.1 Immediately following each Acceptance Date the Contractor shall, at the Client's request:

- (a) lodge the source code for the relevant Contractor Software and supporting Documentation; and
- (b) ensure that the owners of any Third Party Software lodge the source code for that Third Party Software

with NCC Escrow International Limited (or such other escrow agent as the Client may reasonably request). The Contractor shall supply future updated versions of the source code (including for the avoidance of doubt, in respect of the Phase 2 development of the System) for the Contractor Software and supporting Documentation to NCC Escrow International Limited on a regular basis and in any event following reasonable request by the Client. Any and all costs associated with the setting up and maintenance of such escrow arrangement shall be borne by the Contractor.

30C.2 For the avoidance of doubt, in addition to the usual escrow trigger events (as outlined in the NCC standard escrow licence, the Parties agree that such escrow arrangements may be triggered by the Contractor's material or persistent breach of the Contract in relation to the implementation of the System and/or provision of the Services.

31 INDEMNITY AND INSURANCE

31.1 The Contractor shall **indemnify** and keep indemnified the Client, the Crown, and its or their employees, servants, agents or sub-contracts against all actions, 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..

- 31.2 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.
- 31.3 The indemnity in Condition 31.1 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 31.3 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.
- 31.4 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):
- 31.4.1 cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor; and
- 31.4.2 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.

- 31.5 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.
- 31.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.
- 31.7 The Contractor shall produce to the Client upon request evidence that all insurance policies referred to in this Condition 31 are being maintained in the form of a broker's letter or similar, including, where requested, details of the nature and amount of cover, name and address of insurer, annual premiums (including evidence of premiums paid), receipts, renewal date and any outstanding claims.
- 31.8 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 31.1 and 31.2.
- 31.9 Where relevant to this Condition 31 the Contractor shall notify the Client immediately on becoming aware of any fact or matter which could render the Client liable to prosecution.

32 ALTERNATIVE CONTRACTOR

- 32.1 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 Services to the Client's satisfaction for any reason outside the control of the Client or the Contractor is in breach of any provision of this Contract.
- 32.2 In accordance with Condition 5.8 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.

33 TERMINATION

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

33.1.1. 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

33.1.2 the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm 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 firm's affairs; or

33.1.3 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;

33.1.4 the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise 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

33.1.5 where the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

33.1.6 any similar event occurs under the law of any other jurisdiction to which the Contractor is subject.

33.2 In respect of termination for a change in control, the Client may only exercise its right under Condition 33.1 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.

33.3 The Contractor shall notify the Client in writing immediately upon the occurrence of any of the events described in Condition 33.1 above.

33.4 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:

33.4.1 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

33.4.2 the Default is not capable of remedy; or

33.4.3 the Default is a fundamental breach of the Contract.

For the avoidance of doubt, the Client may treat a breach of any of the warranties set out in Condition 42.1 as a fundamental breach of the Contract.

33.5 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract (including any Client Data and/or Content) 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.

33.6 The Client may terminate the Contract in accordance with the provisions of Condition 30B.

34 EFFECT OF EXPIRY OR TERMINATION

- 34.1 Where the Contract is terminated in accordance with Condition 33, 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 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 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 in accordance with Clause 34.5.
- 34.2 Upon termination or expiry of the Contract (and in accordance with the terms of the Specification, the Contract and/or any Exit and Service Transfer Arrangements) the Contractor shall:
- 34.2.1 provide all such assistance as is reasonably requested by the Client in transferring the System (and where applicable, any rights therein), any Client Data and/or Content and (if relevant) any ongoing Services to the Client (and/or to another service provider) including but not limited to granting or procuring the grant of any licences required for the continued use of the Contractor Software and in any Contract Generated Intellectual Property Rights; and
- 34.2.2 provide to the Client or a replacement services provider copies of all documentation (including but not limited to the Documentation) used in the provision of the System and/or the Services and necessarily required for the continued use thereof.
- 34.3 Notwithstanding the service of a notice to terminate this Contract or any part thereof, the Contractor shall continue to support and provide the System and the Services until the date of expiry or termination

(howsoever arising) of the Contract (or any part thereof) or such other date as required under this Clause 34.

34.4 Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of the Contract, the Contractor shall return to the Client (or at the Client's instruction transfer to a third party) any data (including Client Data and/or Content) and Client Confidential Information in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Client (in which event the Client will reimburse the Contractor's pre-agreed and reasonable data conversion expenses), together with any other information and all copies thereof owned by the Client, save that it may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Clause 34, or such period as is necessary for such compliance.

34.5 Within ten (10) Working Days of the date of expiry or termination (howsoever arising) of the Contract, the Contractor shall return to the Client any sums prepaid in respect of the System (or any part of it) and/or the Services not provided by the date of expiry or termination (howsoever arising).

34.6 The Client and the Contractor shall comply with the Exit and Service Transfer Arrangements; and in particular with any such arrangements relating to the migration of Client Data and Content.

35 **BREAK**

35.1 In addition to the Client's rights of termination under Condition 33, the Client shall be entitled to terminate this Contract by giving to the Contractor not less than thirty (30) days' notice to that effect.

35.2 Upon receiving notice under Condition 35.1, the Contractor shall be entitled to fair and reasonable remuneration for such part of 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.

35.3 Upon receiving notice under Condition 35.1, the Contractor shall forthwith cease 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.

35.4 The Client shall not be liable upon termination under Condition 35.1 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.

36 **EFFECT OF TERMINATION GENERALLY**

36.1 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.

36.2 For the avoidance of doubt, the following clauses shall survive the expiry or termination of the Contract howsoever arising: 1,6, 10, 11, 15, 17.6, 18, 22.3, 25, 26, 27, 28, 29, 30, 30C, 31, 32.2, 34, 35.4, 38, 40, 41, 42, 45, 46, 47, 48, 49 and this Condition 36 together with such other Conditions which by implication need to survive the expiry of the Term shall so survive.

37 **DISRUPTION**

37.1 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.

37.2 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 suppliers, which is likely to affect the Contractor's ability at any time to perform its obligations under the Contract.

37.3 In the event of industrial action by the Staff or the Contractor's suppliers, 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.

37.4 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.

38 ASSIGNMENT AND SUB-CONTRACTING

38.1 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.

38.2 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 him under the Contract.

38.3 The Contractor shall provide the Client with a list of all personnel engaged by his sub-contractors and any subsequent amendments thereto and shall ensure that all other requirements of Condition 20 (Contractor's Staff) are observed and complied with by any sub-contractor.

38.4 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.

38.5 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.

39 FORCE MAJEURE

39.1 For the purpose of this Condition 39, "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.

39.2 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.

39.3 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 supplier shall be regarded as due to Force Majeure only if, and to the extent that, that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

39.4 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.

39.5 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.

40. SCOPE OF CONTRACT

40.1 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.

40.2 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.

40.3 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.

41. NOTICES

41.1 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.

41.2 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.

41.3 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.

42. WARRANTIES AND REPRESENTATIONS

42.1 The Contractor warrants and represents that:

- 42.1.1 it has all necessary corporate standing and authorisation (including, where its procedures so require, the consent of its parent company) to enter into and be bound by the terms of the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 42.1.2 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;
- 42.1.3 the Contract shall be performed in compliance with any and all applicable laws (including but not limited to primary and secondary legislation and any associated codes of practice or guidance) in force for the time being and as amended from time to time;
- 42.1.4 it shall perform its obligations under the Contract and provide the Services in a timely manner and using appropriately experienced, qualified and trained Staff who shall have appropriate training in respect of the functions and operations of the System and its application and use by the Client;
- 42.1.5 it shall discharge its obligations under the Contract in accordance with Good Industry Practice and in accordance with its own established internal procedures;
- 42.1.6 for the term of the Contract, all Staff involved in the provision of the Services (whether at the Premises or otherwise) will comply fully with any rules, regulations and requirements (including without limitation those relating to security and health and safety arrangements) as may be in force from time to time;
- 42.1.7 it owns, has obtained or shall obtain and will continue to hold valid licences for all Intellectual Property Rights that are necessary for the performance of the Contract and the use of the System by the Client (including all rights in any Third Party

Software);

42.1.8 the System and/or the provision of the Services shall not infringe the Intellectual Property Rights or other rights of any person;

42.1.9 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any malicious software) into the System, data, software or any other systems) owned by or under the control of, or used by, the Client;

42.1.10 it shall take all measures to avoid any and all data loss and data corruption during the supply of the System in accordance with Good Industry Practice;

42.1.11 in performing the Services the Contractor shall comply with the Client's reasonable instructions to ensure minimal disruption to the Client's business;

42.1.12 it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the System;

42.1.13 the System (or any part thereof) is and will at all times during the Term (or where relevant, with effect from the relevant Acceptance Date and/or Final Acceptance Date) be:

- (a) of satisfactory quality;
- (b) in conformance with the relevant specifications and documentation set out in the Contract; including but not limited to the Specification;
- (c) free from material programming errors and material defects in design, manufacture or materials throughout any applicable warranty period; and

42.1.14 where any goods used in the provision of the System (including but not limited to hardware and software) are supplied to the Client by the Contractor by way of sale and

purchase they shall be supplied with full title guarantee.

42.1.15 The Contractor acknowledges that any breach of the warranties in Condition 42.1 shall be remedied as a matter of urgency at no cost to the Client. Failure to remedy (if capable of remedy) such to comply with Condition 42.1 within five (5) Working Days of notification by the Client shall constitute a breach of this Contract entitling the Client to terminate in accordance with Condition 33.4.

42.2 Each of the warranties set out in Condition 42.1 shall be construed as a separate warranty and shall not be limited by reference to, or inference from, the terms of any other warranty.

43 AMENDMENT

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

44 WAIVER

44.1 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.

45 SEVERABILITY

45.1 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.

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

46.1 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 46. This Condition 46 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.

47 DISPUTE RESOLUTION

47.1 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).

47.2 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.

47.3 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.

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

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

47.4.2 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 47.4.1 or 47.4.2 above.

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

47.5.1 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.

47.5.2 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.

47.5.3 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.

47.5.4 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.

47.5.5 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.

47.5.6 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.

47.5.7 Subject to Conditions 47.3 and 47.4, neither Party may commence any action in the Courts until the mediation procedure set out in this Condition 47.5 has been completed.

48 LAW AND JURISDICTION

48.1 The 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 47 above) be submitted in the first instance to the exclusive jurisdiction of the Courts in Cardiff.

Schedule

[The tender documents for contract number C180/2011/12 comprise the following:

Final document file list			
	Brief description	Current File name	Type
ITT	ITT specification	FS2W ITT spec v10	Word 2003
Annexes			
1a	System Requirements Specification	S2W SRS v1.0.doc	Word 2003
1b	Access Control Matrix	S2W SRS Annex 1b - Access Control Matrix.xls	Excel 2003
1c	LowValFormFields	S2W SRS Annex 1c - LowValFormFields.xls	Excel 2003
2	SQuID Functional Requirements	SQuID FuncReqs v1.pdf	PDF
3	Conditions of Contract for Services	Conditions of Contract for Services (vA7075334).doc	Word 2003
4	ITT Scoring Methodology	ITT Scoring Table ME Updated.doc	Word 2003
Templates			
	Short answer objective questionnaire	Questionnaire 1.xls	Excel 2003
	Open comment subjective questionnaire	Questionnaire 2.doc	Word 2003
	Price Schedule for implementation, operational and role rates	Price Schedule Template.doc	Word 2003
	Invitation to the Product Validation demonstration	Product Validation Invitation.doc	Word 2003
	Invitation to the project brief	INVITATION_TO_PROJECT_BRIEFa.doc	Word 2003

This document	Final document file list.xls	Excel 2003
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together with such other documentation as the Client may issue to the Contractor as part of the tender process for the above contract.