



**ESTYN'S STANDARD CONDITIONS FOR THE SUPPLY OF SERVICES**

**TABLE OF CONTENTS**

<b>Condition</b>	
1.	Definitions and Interpretation
2.	Preliminaries
3.	Commencement and Duration
4.	Scope
5.	The Services
6.	Rejection of Services
7.	Time of Delivery
8.	Programme of Work
9.	Key Performance Indicators
10.	Service Levels
11.	Progress Reports and Inspection
12.	Review Meetings and Management Information
13.	The Price and Payment
14.	Price Adjustment on Extension of the Contract Period
15.	Set-Off
16.	Warranties and Representations
17.	Policies
18.	Materials, Plan, Equipment etc.
19.	Intellectual Property
20.	Goods and Materials of the Client
21.	Access to Premises
22.	Health and Safety
23.	Designated Contract Managers
24.	Supplier's Personnel
25.	Environmental Requirements
26.	Community Benefits
27.	Welsh Language
28.	Discrimination and Equality
29.	Human Rights
30.	Protection of Personal Data
31.	Confidentiality

32.	Security of Confidential Information
33.	Freedom of Information
34.	Publicity
35.	Change Control
36.	Conflicts of Interest
37.	Corrupt Gifts, Payments of Commission and Prevention of Bribery
38.	Fraud
39.	Indemnity
40.	Limitation of Liability
41.	Insurance
42.	Force Majeure
43.	Industrial Action
44.	Termination
45.	Consequences of Termination and Expiry
46.	Break
47.	Dispute Resolution Process
48.	Sub-Contracting and Assignment
49.	Information and Assistance
50.	Offers of Employment
51.	Transfer of Undertakings (protection of Employment) Regulations 2006 ("TUPE")
52.	Estyn's Functions
53.	Notices
54.	Joint and Several Liability
55.	Severability
56.	Waiver
57.	Remedies Cumulative
58.	Amendments to this Contract
59.	Third Party Rights
60.	No Agency or Partnership
61.	Entire Agreement
62.	Costs
63.	Law and Jurisdiction

## 1. DEFINITIONS AND INTERPRETATION

1.1. For the purposes of these Conditions except where expressly stated to the contrary, the following words shall have the following meaning:

Acquired Staff	has the meaning given in Condition 51.1;
Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Award Letter	means the letter sent by the Client to the Supplier notifying it that its tender has been successful and the Supplier has been awarded this Contract for the provision of the Services;
Change Control Request	means a notice served on the Supplier by the Client which requests a variation to the Services;
Client	means Estyn, (the education and training inspectorate for Wales) whose principal office is Anchor Court, Keen Road, Cardiff, CF24 5JW;
Client Premises	means the Premises occupied or controlled by the Client;
Client Contract Manager	means a person appointed by the Client to act on its behalf for the purposes of this Contract;
Commencement Date	has the meaning given in Condition 3.1;
Conditions	means these standard conditions for the provision of services;
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 Personal Data and any 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;
Confidentiality Undertaking	means an undertaking not to use or disclose any Confidential Information received save as strictly required to fulfil the purposes of this Contract (including, without limitation, its re-tender);
Contract	means the contract comprised of the documents referred to in Condition 4;

Contract Period	means the period starting on the Commencement Date and ending on the date when this Contract expires or terminates (as the case may be);
Contracting Authority	means any contracting authority as defined in the PCR 2015;
Data Loss Event	means any event that results or may result in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract including any Personal Data Breach (as defined in the GDPR);
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
Data Protection Legislation	the GDPR, the DPA, the LED, and any applicable national implementing Legislation as amended from time to time, the DPA 2018 (subject to Royal Assent) to the extent that it relates to Processing of Personal Data and privacy and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
Data Subject Access Request	means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Default	means  (i) any breach of an obligation of either Party under this Contract; or  (ii) any default, act, omission, negligence or statement of either Party or its Personnel in connection with or in relation to the subject matter of this Contract in respect of which such Party is liable to the other;
DPA 2018	means the Data Protection Act 2018;
EIRs	means the Environmental Information Regulations 2004 including where applicable any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the EIRs;
Employment Liabilities	means all claims, demands, penalties, actions, proceedings, damages, compensation, protective awards, court or tribunal orders or awards, fines, costs, expenses, notice pay, pension liabilities and all other losses and liabilities (including legal and other professional expenses on an indemnity basis);
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time including where applicable any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to it;

Force Majeure Event	means an event occurring after the date of this Contract of war, armed conflict, acts of terrorism, riots, fire, flood, storm, earthquake, disaster or such other similar events which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Contract but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain or in the supply chain of any Sub-Contractor;
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
Good Industry Practice	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of services of a similar type to the Services to be provided under this Contract;
Guarantee	means a guarantee provided pursuant to Condition 2;
Guarantor	means any person who has provided a Guarantee pursuant to Condition 2;
Health and Safety Regime	means the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work etc Act 1974, the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Food Safety Act 1990 the Environment Act 1995, the Water Industry Act 1991, and the Water Resources Act 1991 (including in each case any associated regulations, guidance or approved codes of practice), and any similar or analogous health, safety or environmental Legislation which has as its aim the protection of persons or the environment or the prevention or reduction of risk of harm or injury to persons or the environment, or relating to the health and safety of those providing or using the Services or their provision, as is in force from time to time;
Implementation Date(s)	means the date or dates by or on which the Services or part thereof must be implemented as set out in the Specification unless otherwise agreed in writing;
Indemnified Loss	means all liabilities, fines, penalties, damages, demands, proceedings, claims, costs, expenses whatsoever and howsoever arising, incurred including without limitation all legal expenses (on an indemnity basis) and other professional fees (together with any VAT thereon);
Information	shall have the meaning given under section 84 of the FOIA and/or Regulation 2 of the EIRs;
Initial Service Transfer Date	means the date on which the Acquired Staff will transfer from the Previous Supplier to the Supplier;

Intellectual Property Rights	means copyright, rights related to or affording protection similar to copyright; rights in databases; patents and rights in inventions; semi-conductor topography rights; design rights; trademarks, service marks; rights in internet domain names and website addresses; trade names, business names, brand names; rights in get up; goodwill; know-how, trade secrets and rights in confidential information and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Invitation to Tender (ITT)	means the invitation to tender issued by the Client for the provision of the Services;
KPIs	means applicable key performance indicators referred to in Condition 9;
KPI Report	has the meaning given in Condition 9.4;
KPI Reporting Period	has the meaning given in Condition 9.4;
LED	means the Law Enforcement Directive (directive (EU) 2016/679);
Legislation	means: <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation or any delegated or subordinate legislation;</li> <li>(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(c) any applicable guidance, code of practice, direction or determination with which the Client and/or the Supplier is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Client; and</li> <li>(d) any applicable judgment or order of a relevant court of law which is a binding precedent in England and Wales,</li> </ul> in each case in force or applicable in both England and Wales, or in Wales only;
Necessary Consents	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the provision of the Services including without limitation those, if any, specified in the Specification.

Parent Company	shall have the meaning given to “parent undertaking” in section 1162 and Schedule 7 of the Companies Act 2006;
Parties	means the Client and the Supplier and “Party” shall mean either of them;
PCR 2015	means the Public Contracts Regulations 2015;
Personnel	means the officers, partners, employees, workers, agents, consultants and sub-contractors of whatever nature of a Party;
Premises	means buildings and land;
Previous Supplier	means any third party supplier who provides the Services prior to the Initial Service Transfer Date;
Price	has the meaning given in Condition 13.1;
Programme of Work	means any programme, timetable or key milestones which regulates or specifies the period or periods for the completion of the Services or any part thereof and referred to in Condition 8;
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <p>(a) directly or indirectly to offer, promise or give any person working for or engaged by the Client a financial or other advantage to:</p> <p style="padding-left: 40px;">(a) induce that person to perform improperly a relevant function or activity; or</p> <p style="padding-left: 40px;">(b) reward that person for improper performance of a relevant function or activity;</p> <p>(b) directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) committing any offence:</p> <p style="padding-left: 40px;">(i) under the Bribery Act 2010;</p> <p style="padding-left: 40px;">(ii) under legislation creating offences concerning fraudulent acts;</p> <p style="padding-left: 40px;">(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Client; or</p> <p style="padding-left: 40px;">(iv) defrauding, attempting to defraud or conspiring to defraud the Client;</p>

Protective Measures	means appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely matter after an incident and regularly assessing and evaluating the effectiveness of the measures adopted by it;
Relevant Transfer	means a service provision change to which TUPE applies;
Replacement Services	any services which are identical or substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the termination or expiry (or partial termination or expiry) of this Contract, whether those services are provided by the Client internally or by any Replacement Supplier;
Replacement Supplier	means the Client or any third party supplier of the Replacement Services appointed by the Client from time to time following termination or expiry of this Contract;
Request for Information	has the meaning set out in section 8 of the FOIA and/or Regulation 5 of the EIRs and includes any apparent request for such Information;
Service Levels	means the levels of service the Client requires provision of the Services to achieve pursuant to Condition 10;
Service Level Report	has the meaning set out in Condition 10.4;
Service Level Reporting Period	has the meaning set out in Condition 10.4;
Service Transfer	means the transfer of the provision of the Services in whole or part to the Client or a Replacement Supplier on the Termination Date;
Service Transfer Date	means the date of the transfer of the Transferring Employees to the Client or the Replacement Supplier under TUPE;
Services	means any and all of the services (or part thereof) provided or to be provided by the Supplier as set out in this Contract;
Specification	means the specification attached to the Invitation to Tender including any qualification or pre-qualification questionnaire and any clarification thereof;
Staff	means any and all individuals who are employed or engaged by the Supplier or any Sub-Contractor who at any time is concerned with all or any of the Services or any part thereof;
Staff Vetting Procedures	means the Client's procedures and policies for the vetting of Personnel for:



	<p>(a) suitability to provide the Services specified in the Specification;</p> <p>(b) eligibility to work in the UK;</p> <p>(c) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure;</p>
Sub-Contractor	means any third party with whom the Supplier enters into a sub-contract or a consortium agreement and/or the Supplier's employees or agents and any third party with whom that third party enters into a sub-contract and/or its employees or agents for the performance of any part of the Supplier's obligations under this Contract;
Sub-Processor	means any third party appointed to Process Personal Data on behalf of the Supplier in relation to this Contract;
Supplier	means the individual(s), organisation(s) or business(es) to which the Award Letter is addressed and any other individual(s), organisation(s) or business(es) which have executed the Award Letter;
Supplier Contract Manager	means a person appointed by the Supplier to act on its behalf for the purposes of this Contract in accordance with Condition 23;
Tender	means all documentation submitted by the Supplier in response to the Invitation to Tender (including without limitation the Supplier's response to any prequalification or qualification questionnaire or any clarification by the Supplier);
Tender Documents	means the Specification, the Tender, the ITT and the Award Letter;
Termination Date	means the date upon which this Contract terminates or expires and references to the Termination Date includes the partial termination or expiry of this Contract;
Transfer Date	means the date and time at which the Services (or any part thereof) transfer to the Client or a Replacement Supplier pursuant to the TUPE;
Transferring Employees	means those of the Supplier's Staff who are assigned to the relevant part of the Services (or services equivalent to the Services including without limitation Replacement Services) being transferred to the Client or the Replacement Supplier upon a Service Transfer and whose employment will therefore transfer to the Client or the Replacement Supplier pursuant to a Relevant Transfer;

TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;
TUPE Indemnities	means the indemnities set out in Conditions 51.2, 51.11, 51.14, 51.15.5 and 51.16;
VAT	means value added tax chargeable under the Value Added Tax Act 1994; and
Working Days	means Monday to Friday 9.00 a.m. to 5.00 p.m. excluding any statutory public holidays in Wales.

- 1.2. In this Contract the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 1.3. A reference to any statute, statutory instrument, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, statutory instrument, enactment, order, regulation or instrument as subsequently amended, replaced or re-enacted and as in force at the relevant time.
- 1.4. A reference to a Party shall include that Party's personal representatives and permitted assigns.
- 1.5. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6. A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.
- 1.7. A reference to any document shall be construed as a reference to the document as at the date of the Award Letter.
- 1.8. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.9. The schedules and appendices, if any, form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract shall include the schedules and appendices.

## 2. **PRELIMINARIES**

- 2.1. The Supplier shall, at the request of the Client, enter into a supplementary agreement determined by the Client to reflect the relevant requirements of any Invitation to Tender and (as appropriate) the offers or proposals set out in any Tender submitted by the Supplier in response to the Invitation to Tender. The Supplier shall provide evidence to the Client on request that such supplementary agreement has been entered into and is in force.
- 2.2. If required to do so by the Client, the Supplier shall provide the names and addresses of one or more substantial sureties who are satisfactory to the Client and who are prepared to guarantee the due performance of this Contract by the Supplier. The terms of any such guarantee must be to the satisfaction of the Client.

- 2.3. Where the Supplier is part of a consortium, the Supplier shall ensure that any and each member of the consortium is prepared to guarantee the due performance of this Contract if required to do so by the Client. The terms of any such guarantee must be to the satisfaction of the Client.

### **3. COMMENCEMENT AND DURATION**

- 3.1. This Contract shall take effect on the commencement date specified in the Award Letter (the "Commencement Date") and shall expire on:

3.1.1. the expiry date specified in the Specification; or

3.1.2. where no date is specified, on completion of the provision of the Services

unless this Contract is terminated in accordance with these Conditions or extended in accordance with Condition 3.2.

- 3.2. If provided for in the Specification the Client may extend the Contract Period for such further period as set out in the Specification. The Contract Period shall either be extended by notice served by the Client on the Supplier no less than twenty eight (28) days before the end of the Contract Period or with the written agreement of the Parties.

### **4. SCOPE**

- 4.1. This Contract shall comprise the documents listed in the Award Letter and shall have the order of precedence set out in the Award Letter. In the event that none are listed in the Award Letter, this Contract shall comprise the following documents in the following order of precedence:

4.1.1. the Award Letter;

4.1.2. these Conditions;

4.1.3. the Tender;

4.1.4. the Specification; and

4.1.5. the Invitation to Tender.

### **5. THE SERVICES**

- 5.1. Without prejudice to any higher standard required by this Contract, the Supplier shall ensure that all Services provided to the Client pursuant to this Contract shall:

5.1.1. be compliant with the Specification;

5.1.2. be compliant with any relevant or applicable Legislation including without limitation those relating to welfare, modern slavery, employment rights and relations and working rights, the Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989 and those relating to the payment of taxes and the prevention of the facilitation of evasion of taxes;

- 5.1.3. be compliant with any relevant British or European standard and, where applicable, the Supplier shall obtain and maintain accreditation with the relevant authority overseeing the relevant British or European standard;
  - 5.1.4. be compliant with any policies, rules, codes of practice, procedures and standards with which the Supplier is required to comply;
  - 5.1.5. be provided with reasonable care and skill and in accordance with Good Industry Practice; and
  - 5.1.6. be provided in accordance with the terms set out in this Contract.
- 5.2. Where Services include the provision of goods, materials or plant these shall be:
- 5.2.1. compliant with the Specification;
  - 5.2.2. compliant with any relevant Legislation;
  - 5.2.3. be compliant with any relevant British or European Standard and, where applicable, the Supplier shall obtain and maintain accreditation with the relevant authority overseeing the relevant British or European Standard;
  - 5.2.4. compliant with any policies, rules, codes of practice, procedures and standards with which such goods, materials or plant are required to comply;
  - 5.2.5. of satisfactory quality and fit for any purpose for which such goods, material or plant are commonly used or which is made known to the Supplier in writing by the Client; and
  - 5.2.6. provided in accordance with these Conditions.
- 5.3. The Supplier shall:
- 5.3.1. provide the Services promptly and in a professional and courteous manner so as to reflect and promote the image of the Client;
  - 5.3.2. not act in a manner which in the opinion of the Client brings the Client into disrepute;
  - 5.3.3. provide to the satisfaction of the Client such suitably qualified, adequately trained, capable and experienced Supplier's Personnel as shall be necessary for the proper execution of the Services and shall not remove or replace such persons without the prior written approval of the Client;
  - 5.3.4. ensure that all Supplier's Personnel involved in delivering the Services are sufficiently instructed with regard to the Services and on all relevant provisions of this Contract;
  - 5.3.5. ensure that only those Supplier's Personnel who are authorised by the Client (under the authorisation procedure (if any) agreed between the Parties) are involved in providing the Services;

- 5.3.6. provide all equipment, tools and vehicles and such other items required to provide the Services;
  - 5.3.7. co-operate with such Client's Personnel or third parties as the Client may reasonably require;
  - 5.3.8. satisfy itself that the information, including documentation, provided by the Client is adequate and will not prejudice the performance of any of the Supplier's obligations under this Contract and shall inform the Client immediately of any inadequacy of which it becomes aware, in which case the Parties shall discuss in good faith how to resolve the matter;
  - 5.3.9. ensure that all Necessary Consents are in place to provide the Services and the Client shall not incur any additional costs associated with obtaining, maintaining and complying with the same;
  - 5.3.10. work diligently to protect and promote the Client's interests; and
  - 5.3.11. take all reasonable care (and shall ensure that the Supplier's Personnel shall take all reasonable care) at all times to ensure that its execution of the Services does not disrupt the operations of the Client, its employees or any other contractor employed by the Client except as otherwise agreed with the Client.
- 5.4. The Supplier shall institute and maintain a properly documented system of quality control (which shall comply with any detailed requirements set out in the Specification) to ensure that the Services are provided in accordance with the provisions of this Contract.
- 5.5. In the event that through any breach of this Contract, any data transmitted or processed by the Supplier and its Personnel in connection with this Contract is disclosed, lost, destroyed or sufficiently altered or degraded to be unusable the Supplier shall notify the Client immediately and without prejudice to any other right or remedy shall:
- 5.5.1. be liable for the cost of reconstitution of that data; and
  - 5.5.2. provide a full credit in respect of any charge levied for its transmission.

## 6. REJECTION OF SERVICES

- 6.1. The Client shall have the power by notice to reject any Services (including any goods, materials or plant provided in connection with the Services) which it does not reasonably consider to have been provided in accordance with this Contract and the Supplier shall, without prejudice to the Client's other rights, promptly and at its own expense, re-perform provision of the Services or remedy the deficiency in the Services to the satisfaction of the Client.
- 6.2. If the Supplier fails to remedy the deficiency promptly in accordance with the Client's instructions, the Client may remedy or cause to be remedied by another supplier any deficiency, the costs of which will be payable by the Supplier.
- 6.3. Notwithstanding that the Services or any part of them have been the subject of any instruction, review, approval, acknowledgement or inspection by the Client, the Supplier shall not be relieved from any liability or obligation under this Contract.

- 6.4. Any additional costs (including costs of any audit) incurred by the Client as a result of the Supplier failing to carry out the Services in accordance with this Contract shall be reimbursed to the Client by the Supplier on demand.

## **7. TIME OF DELIVERY**

- 7.1. The Supplier shall provide the Services:

7.1.1. in accordance with the dates and times specified in the Tender Documents or if a Programme of Work is approved in writing by the Parties, in accordance with the dates and times agreed in the Programme of Work; and

7.1.2. by or on (as appropriate) the Implementation Date(s).

- 7.2. Time shall be of the essence with regard to the Supplier's obligations under this Contract and if the Supplier fails to provide the Services in accordance with the Programme of Work or by or on the Implementation Date(s), the Client may release itself from any obligation to accept and pay for the Services and/or may terminate this Contract by notice, in either case without prejudice to any other rights and remedies of the Client.

## **8. PROGRAMME OF WORK**

- 8.1. At the Client's request the Supplier shall submit a detailed programme of work to the Client Contract Manager for approval showing the number of days or weeks required for each separate stage of provision of the Services to ensure that the Implementation Date(s) is achieved.

- 8.2. On receipt of the detailed programme the Client Contract Manager shall in writing:

8.2.1. signify his/her approval in which event it shall form the Programme of Work; or

8.2.2. reject the programme stating his/her reasons for so doing and require that the programme be amended and resubmitted by the Supplier.

- 8.3. Approval, rejection and resubmission of the detailed programme (or amended programme) shall be effected without undue delay and the Supplier shall within a period of ten (10) Working Days from the date of such rejection resubmit a further amended programme to the Client Contract Manager for approval or rejection in accordance with the process set out in Condition 8.2 until the Programme of Work is approved in writing.

- 8.4. Failure or delay in agreeing the Programme of Work shall not relieve the Supplier of its obligation to provide the Services in a timely manner in accordance with the Implementation Dates and such other dates and times specified in the Tender Documents.

## **9. KEY PERFORMANCE INDICATORS**

- 9.1. If KPIs are specified in the Specification and/or the Tender, those KPIs will apply to the provision of the Services unless any additional or alternative KPIs are agreed in writing by the Parties.

- 9.2. Where KPIs are stated to apply (but are not specified) in the Specification, the Supplier and the Client shall meet within twenty five (25) Working Days (or such other period agreed by the

Parties) of the date of the Award Letter to agree in writing the applicable KPIs over the Contract Period.

- 9.3. The Supplier shall provide the Services in such a manner as will ensure that the KPIs achieved in respect of each part of the Services are equal to or higher than the specified KPIs.
- 9.4. The Supplier shall provide records setting out the applicable KPIs and its performance of the Services against the KPIs (a "KPI Report") at monthly intervals or such other interval stipulated by the Client from time to time (the "KPI Reporting Period").
- 9.5. Failure to achieve the KPIs shall entitle the Client to terminate this Contract in accordance with Condition 44.

## 10. **SERVICE LEVELS**

- 10.1. If Service Levels are specified in the Specification and/or the Tender, those Service Levels will apply to the provision of the Services unless any additional or alternative Service Levels are agreed in writing by the Parties.
- 10.2. Where Service Levels are stated to apply (but are not specified) in the Specification, the Supplier and the Client shall meet within twenty five (25) Working Days (or such other period agreed by the Parties) of the date of the Award Letter to agree in writing the applicable Service Levels over the Contract Period.
- 10.3. The Supplier shall provide the Services in such a manner as will ensure that the service levels achieved in respect of each part of the Services are equal to or higher than the applicable Service Levels.
- 10.4. The Supplier shall provide records setting out the applicable Service Levels and its performance of the Services against the Service Levels (a "Service Level Report") at monthly intervals or such other interval stipulated by the Client from time to time (the "Service Level Reporting Period").
- 10.5. Failure to achieve the Service Levels shall entitle the Client to terminate this Contract in accordance with Condition 44.

## 11. **PROGRESS REPORTS AND INSPECTION**

- 11.1. The Client shall be entitled on reasonable notice to request from the Supplier a progress report, other information relating to the provision of the Services, or a meeting to discuss progress or delivery of the Services. The Supplier shall comply with any such request within a reasonable time.
- 11.2. Where a progress report, or other information relating to the progress or the performance of either Party of its obligations under this Contract, is submitted the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Contract.
- 11.3. The Client may inspect and examine the work or Services being carried out on the Client Premises without notice at any time and to speak directly to the Supplier's Personnel.

11.4. Where any part of the work or Services is being carried out on Premises other than the Client Premises, five (5) Working Days' notice of an intention to inspect shall be given to the Supplier where possible.

11.5. The Supplier shall give all such assistance as the Client may reasonably require for such inspection and examination.

## **12. REVIEW MEETINGS AND MANAGEMENT INFORMATION**

12.1. The Supplier shall submit written management information reports to the Client on a monthly basis (unless otherwise specified in the Specification or agreed in writing), covering the period from the date of the previously submitted management information report.

12.2. The content of such reports shall be as set out in the Specification unless agreed otherwise between the Parties.

12.3. The Parties shall meet on a quarterly basis (unless otherwise specified in the Specification or agreed by the Parties in writing), to review and discuss any issues relating to the performance of this Contract.

12.4. A failure by the Supplier to provide the information required by this Condition 12 shall be a fundamental breach of this Contract for the purposes of Condition 44.

## **13. THE PRICE AND PAYMENT**

13.1. The sum payable by the Client for the Services shall be determined by reference to the costs, fees, rates or prices specified in the Tender Documents for the provision of the Services (the "Price") and shall be the full and exclusive remuneration of the Supplier for the Services.

13.2. The Price is exclusive of VAT. The Client shall pay VAT on the Price at the rate and in the manner prescribed by law, from time to time.

13.3. The Client may deduct from the sum payable to the Supplier for the Services any income tax, national insurance contributions and such other tax, fee or charge the Client determines it is required to deduct in accordance with Legislation. The Client shall provide the Supplier with the details of its determination within twenty (20) Working Days of receipt of a request from the Supplier.

13.4. The Price shall be paid in arrears at the intervals or in the instalments set out in the Tender Documents or as otherwise agreed by the Parties in writing.

13.5. All invoices submitted by the Supplier to the Client must be valid VAT invoices and must contain the information listed in Condition 13.8 unless otherwise agreed in writing. All invoices must be denominated in sterling.

13.6. Invoices must be submitted in the format and to the address specified by the Client with a copy sent to the Client Contract Manager together with supporting documentation unless the Client notifies the Supplier otherwise in writing.

13.7. The Price of the Services shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any invention or design for the purposes of performing this Contract.



- 13.8. The Supplier shall ensure that all invoices are accurate and clearly show the following information:
- 13.8.1. name and address of the Client as the addressee;
  - 13.8.2. name of the Client Contract Manager;
  - 13.8.3. the Client's contract number and purchase order number;
  - 13.8.4. date of the invoice;
  - 13.8.5. unique invoice number;
  - 13.8.6. name and address of the Supplier;
  - 13.8.7. name of the Supplier Contract Manager;
  - 13.8.8. Supplier's bank details;
  - 13.8.9. Supplier's VAT number (if applicable);
  - 13.8.10. the Supplier's reference;
  - 13.8.11. the period to which the payment relates;
  - 13.8.12. a description of the goods/works/ services to which the invoice relates which correlates with the items of goods/works/services set out in the relevant purchase order;
  - 13.8.13. a breakdown of the sum payable including where applicable the charging unit;
  - 13.8.14. the sum of VAT payable;
  - 13.8.15. total sum payable including VAT; and
  - 13.8.16. such other information as may be specified in the Specification
- 13.9. The Client shall, at the discretion of the Client, pay invoices via one of the payment methods set out in the Specification. Any fees associated with the Client's method of payment shall not be recoverable from the Client unless agreed otherwise in writing.
- 13.10. In the event of a submitted invoice being incorrect the invoice shall be returned to the Supplier as a query and/or the Client may raise any query or request for information relating to the invoice. The Supplier shall answer any such query or request within five (5) Working Days. The thirty (30) days payment timescale referred to in Condition 13.12 shall commence from the date of an accurate invoice or all of the information requested by the Client being received by the Client.
- 13.11. If the Client disputes any invoice or other statement of monies due, the Client shall promptly notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably

necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within thirty (30) days of the Client giving notice to the Supplier, the dispute shall be resolved in accordance with Condition 47. Where only part of an invoice is disputed, the undisputed amount shall be paid in accordance with the terms of this Contract. The Supplier's obligations to provide the Services shall not be affected by any payment dispute.

- 13.12. Payment shall be made within thirty (30) days of receipt by the Client (at its nominated address for invoices) of a valid and undisputed invoice from the Supplier.
- 13.13. The Supplier shall, and shall procure that its Sub-Contractors shall, at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.
- 13.14. The Supplier shall furnish the Client with the name, and if applicable, the VAT registration of any Sub-Contractor prior to the commencement of any work under this Contract by such Sub-Contractor. The Supplier shall not employ or will cease to employ any Sub-Contractor which the Client believes is not complying with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.
- 13.15. If the Client fails to pay any amount properly due and payable by it under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 5 per cent (5%) per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The Parties agree that this rate is a substantial remedy in accordance with section 9 of the Late Payments of Commercial Debts (Interest) Act 1998.

#### **14. PRICE ADJUSTMENT ON EXTENSION OF THE CONTRACT PERIOD**

- 14.1. The Price shall be firm for the initial Contract Period. In the event of an extension of the Contract Period in accordance with Condition 3 the Client and the Supplier may, if the Specification provides for the adjustment of the Price during any such period of extension, review the Price prior to expiry of the initial Contract Period.
- 14.2. Any claim for an increase or decrease in the Price during the extended Contract Period will be calculated in accordance with the Specification.

#### **15. SET OFF**

- 15.1. The Client may at any time set off any liability of the Client to the Supplier against any liability of the Supplier to the Client, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract.
- 15.2. Any exercise by the Client of its rights under this Condition 15 shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

#### **16. WARRANTIES AND REPRESENTATIONS**

- 16.1. The Supplier warrants and represents that:
  - 16.1.1. it has full capacity and authority to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier;

- 16.1.2. the Services shall be provided by appropriately experienced, qualified and trained Personnel in accordance with Good Industry Practice;
  - 16.1.3. as at the Commencement Date, all information contained in its Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to the date of the Award Letter;
  - 16.1.4. it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
  - 16.1.5. it is either the owner of the Intellectual Property Rights in any rights licensed or to be licensed to the Client in connection with this Contract or, to the extent that it is not the owner, it has the right to license such Intellectual Property Rights to the Client in accordance with Condition 19;
  - 16.1.6. as far as it is aware, any Intellectual Property Rights licensed or assigned to the Client will not infringe the Intellectual Property Rights of any third party;
  - 16.1.7. it shall not take any action nor shall it make any omission as a result of which the reputation of Estyn is placed in disrepute.
- 16.2. All representations and warranties set out in this Contract shall be deemed repeated on each day of the Contract Period with reference to the facts and circumstances then prevailing.

**17. POLICIES**

- 17.1. The Supplier shall, and shall procure that all the Supplier's Personnel, comply with all the Client's published policies and with any further rules, codes of practice, procedures and standards which the Client specifies in the Specification or notifies the Supplier from time to time. The Client shall throughout the Contract Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Supplier.

**18. MATERIALS, PLANT, EQUIPMENT ETC**

- 18.1. The Supplier shall make no delivery of nor commence any work or Services on Client Premises without obtaining the Client's prior written consent and shall comply with any conditions or directions to which the consent is subject.
- 18.2. All equipment, tools, plant or materials (the "Equipment") brought onto Client Premises shall be at the Supplier's own risk. The Supplier shall arrange the transport and removal of such Equipment at its own expense.
- 18.3. The Client shall have the power at any time during provision of the Services to require in writing:
- 18.3.1. the removal from Client Premises of any Equipment which in the opinion of the Client is either hazardous, noxious or not in accordance with this Contract; and/or
  - 18.3.2. the substitution of proper and suitable Equipment.

18.4. On completion of provision of the Services, at its own cost, the Supplier shall remove the Equipment and shall clear away from Client Premises all waste arising out of the Services and leave Client Premises in a neat and tidy condition.

## 19. **INTELLECTUAL PROPERTY**

19.1. It shall be a condition of this Contract that, except to the extent that the Services incorporate Intellectual Property Rights furnished by the Client, the Services will not infringe any Intellectual Property Rights of any third party.

19.2. All Intellectual Property Rights in all materials (in whatever format) including but not limited to documents, specifications, instructions, data, databases, plans, reports, drawings, inventions, patents, patterns, models, designs, programs or other material:

19.2.1. furnished to or made available to the Supplier by the Client shall remain the property of the Client;

19.2.2. prepared by or for the Supplier before the Commencement Date and used in relation to the provision of the Services shall remain the property of the Supplier but the Supplier shall, to the extent necessary to enable the Client to use any such materials, grant to the Client (or, in the case of Intellectual Property Rights belonging to third parties and used in relation to the provision of the Services, procure the grant of) a perpetual, irrevocable, royalty free, non-exclusive licence for the Client to copy, adapt, distribute, communicate and make available such materials (including without limitation the right for the Client to grant sub-licences in respect of the same) for all purposes reasonably contemplated by, connected with or ancillary to this Contract; and

19.2.3. prepared or collated by or for the Supplier after the Commencement Date for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Crown absolutely.

19.3. The Supplier shall promptly, at the Client's request, do all such further acts and execute all such other documents as the Client may require (i) to give effect to the licences granted in accordance with Condition 19.2.2; and (ii) for the purpose of securing for the Client all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Client under Condition 19.2.3.

19.4. The Supplier shall not have the right to use any documents, specifications, instructions, data, databases, plans, reports, drawings, inventions, patents, patterns, models, designs, programs or other material referred to in Condition 19.2.1 or 19.2.3 for its own commercial purposes except upon obtaining the prior written consent of, and subject to such terms and conditions as may be stipulated by, the Client.

19.5. At any time during the Contract Period the Supplier shall, on request, provide to the Client a copy of any materials referred to in Condition 19.2. On or after termination or expiry of this Contract the Supplier shall at the Client's option either destroy or deliver-up to the Client all materials referred to in Condition 19.2 held by it or any Supplier's Personnel in connection with this Contract, including any back up media (save that the Supplier may, with the Client's permission, be permitted to retain one copy of such materials for audit purposes only and subject to obligations of confidentiality).

- 19.6. The Supplier shall immediately notify the Client if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract. The Supplier shall at its own expense conduct any litigation arising from any such claim, demand or action and all associated negotiations provided always that the Supplier shall consult with 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.
- 19.7. The Client shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract and the Client shall be repaid all costs and expenses (including but not limited to legal cost and disbursements on a solicitor "own client" basis) incurred in doing so.
- 19.8. 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 Supplier in connection with the performance of this Contract.
- 19.9. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall at its own expense and subject to the approval of the Client (not to be unreasonably withheld or delayed) either:
- 19.9.1. modify any or all of the Services without reducing the quality or fitness for purpose of the same, or substitute alternative Services of equivalent quality and fitness for purpose, so as to avoid the infringement or alleged infringement, provided that this Contract shall apply *mutatis mutandis* to such modified Services or to the substituted Services; or
- 19.9.2. procure a licence to use the Intellectual Property Rights which are the subject of the infringement or alleged infringement, on terms which are acceptable to the Client.
- 19.10. The foregoing provisions of this Condition 19 shall not apply insofar as any such claim or demand or action is in respect of:
- 19.10.1. any use by or on behalf of the Client of any Services in combination with any item not provided or authorised by the Supplier (which shall act reasonably in giving such authorisation) where such use of the Services directly gives rise to the claim, demand or action; or
- 19.10.2. the use by the Client of the Services in a manner not reasonably inferred from the Specification; or
- 19.10.3. the Client's unreasonable refusal to accept modified or substitute Services pursuant to Condition 19.9.1 above.
- 19.11. If the Supplier has availed itself of the rights to modify or substitute the Services or to procure a licence and such exercise of the said rights has avoided any claim, demand or action for

infringement, then the Supplier shall have no further liability under this Condition 19 in respect of the said claim, demand or action.

- 19.12. If a modification or substitution in accordance with Condition 19.9.1 above is not possible so as to avoid the infringement and the Supplier has been unable to procure a licence in accordance with Condition 19.9.2, Condition 39.1.2 shall apply.
- 19.13. In the event that any claim or demand is made or action brought against the Client for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract Condition 39.1.2 shall apply and the Supplier shall at its own expense provide to the Client all such assistance as the Client may require in connection with such action.

## **20. GOODS AND MATERIALS OF THE CLIENT**

- 20.1. All goods and materials issued by the Client in connection with this Contract shall remain the property of the Client and shall be used for the performance of this Contract and for no other purpose whatsoever without the prior approval of the Client in writing. Such goods and materials shall be deemed to be in good condition when received by or on behalf of the Supplier unless it notifies the Client to the contrary within seven (7) Working Days or such other time as specified in the Specification.
- 20.2. The Supplier shall keep all such goods and materials used in the performance of the Services in good, clean and serviceable repair for the proper performance of the Services and the Client shall be under no liability in respect thereof.
- 20.3. The Supplier shall return such goods and materials on demand and shall be responsible for all loss of, or damage and the costs of repair to, or the replacement of them, however caused, prior to their re-delivery to the Client.
- 20.4. The Supplier shall, following completion of provision of the Services or in response to an earlier request by the Client, return the goods, materials, work or records held, including any back up media, in good condition, fair wear and tear excepted.

## **21. ACCESS TO PREMISES**

- 21.1. Unless otherwise agreed by the Parties the use of any Premises made available to the Supplier by the Client in connection with this Contract shall be made available to the Supplier free of charge (but without prejudice to the right of the Client to require reimbursement for any outgoings arising from that occupation or expenditure incurred, including in respect of any fuel or telecommunications charges attributable to the Supplier) and shall be used by the Supplier solely for the purpose of performing this Contract. The Supplier shall have the use of such Premises as licensee and shall vacate the same upon the termination or expiry of this Contract or at such earlier date as the Client may notify the Supplier. Access to such Premises shall not be exclusive to the Supplier unless agreed in writing by the Client.
- 21.2. The Parties agree that there is no intention on the part of the Client to create a tenancy of whatsoever nature in favour of the Supplier or the Supplier's Personnel and that no such tenancy has or shall come into being and the Client retains the right at any time to use any Client Premises.

- 21.3. The Supplier and Supplier's Personnel shall observe and comply with all rules and regulations in relation to the use of any Client Premises for the provision of the Services as determined by the Client, and pay for the cost of making good any damage caused by the Supplier or the Supplier's Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of such Client Premises or to plant, fixed equipment or fittings in the Client Premises. The Supplier shall notify the Client immediately on becoming aware of any damage caused to such Client Premises or to any plant, fixed equipment or fittings in the Client Premises.
- 21.4. The Supplier shall comply with all reasonable security requirements of the Client while on Client Premises and shall procure that all of the Supplier's Personnel shall comply with such requirements. Where relevant the Client shall provide the Supplier upon request with copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect the Client's physical security arrangements.
- 21.5. The Supplier shall at its own cost, provide its Personnel with a form of identification that is acceptable to the Client. The Supplier's Personnel shall display such identification together with such other form of identification (if any) provided by the Client on their clothing at all times when they are on Client Premises.
- 21.6. The Supplier shall ensure that all requests and instructions of the Client whilst on the Client Premises are adhered to.
- 21.7. The Supplier shall ensure that all its Personnel have been instructed about fire risks and that they are expressly forbidden to smoke while on any Client Premises.

## 22. **HEALTH AND SAFETY**

- 22.1. The Supplier and the Supplier's Personnel shall:
- 22.1.1. comply with all relevant parts of the Health and Safety Regime and with the Client's own policies and procedures notified to it;
  - 22.1.2. take all such steps as may be reasonably practicable to ensure the health and safety of all persons likely to be affected by provision of the Services;
  - 22.1.3. not treat, keep or dispose of any waste produced and/or carried by the Supplier in connection with the Services in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;
  - 22.1.4. notify the Client immediately of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise from provision of the Services;
  - 22.1.5. notify the Client immediately in the event of any incident occurring in providing the Services on the Client Premises where that incident causes any personal injury or damage to property that could give rise to personal injury;
  - 22.1.6. take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment;

22.1.7. ensure it adopts safe methods of work in order to protect the health and safety of:

- (i) the Supplier's Personnel;
- (ii) the employees of the Client;
- (iii) the employees of the Supplier's Personnel; and
- (iv) any other persons including but without limitation, members of the public.

22.1.8. produce to the Client if requested its detailed safe working system for providing the Services and its health and policy statement (as required by the Health and Safety at Work etc Act 1974).

22.2. The Client shall communicate to the Supplier any health and safety hazards which may exist or arise at any Client Premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of the Supplier's Personnel. The Supplier shall inform all persons engaged in the performance of this Contract at the Client Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

22.3. Nothing in this Condition 22 shall relieve the Supplier of its obligations to comply with its statutory duties.

## 23. **DESIGNATED CONTRACT MANAGERS**

23.1. The Client Contract Manager has the authority to act on behalf of the Client in connection with this Contract.

23.2. The Supplier shall nominate a supplier's representative (the "Supplier Contract Manager") at the commencement of this Contract who shall be empowered to act on behalf of the Supplier for all purposes connected with this Contract which will include but not be limited to:

23.2.1. managing the provision of the Services;

23.2.2. attending meetings with the Client Contract Manager to review the provision of the Services;

23.2.3. providing all information and documentation reasonably required by the Client in respect of the Services for the performance of its duties.

23.3. Subject to Condition 23.4, each Party may change the person appointed as its representative for the purposes of this Condition 23 at any time and shall inform any such change to the other Party in writing.

23.4. The Client reserves the right during the Contract Period to require the replacement of or reject the appointment of any person as the Supplier's Contract Manager who does not in the opinion of the Client have appropriate experience in the management of services similar to the Services or who is otherwise unsuitable for such appointment.

## 24. **SUPPLIER'S PERSONNEL**

24.1. The Client reserves the right under this Contract to refuse any Supplier's Personnel admission to any Client Premises if, in the opinion of the Client, such admission is undesirable or unnecessary.



- 24.2. If and when directed by the Client, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Contract to any Client Premises, specifying the capacities in which they are concerned with this Contract and such other particulars as the Client may reasonably require.
- 24.3. The Supplier and the Supplier's Personnel shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Personnel when, at or in the vicinity of any Client Premises.
- 24.4. The decision of the Client as to whether any person is to be refused admission to any Client Premises and as to whether the Supplier has failed to comply with Condition 24.3 shall be final and conclusive.
- 24.5. If the Supplier fails to comply with Condition 24.3 or fails to do so within a reasonable time of being given notice so to do, then the Client may terminate this Contract in accordance with Condition 44 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall afterwards accrue to the Client
- 24.6. The Supplier acknowledges that each member of the Supplier's Personnel engaged in the performance of the Services shall have full authority to act on behalf of the Supplier for all purposes in connection with this Contract provided always that if the Client shall at any time be dissatisfied for any reason with the behaviour or performance of any person engaged in carrying out the Services, the Supplier shall, if the Client so requires, provide a competent substitute to carry out the Services at no additional cost to the Client.
- 24.7. The Supplier shall replace any member of the Supplier's Personnel who the Client reasonably decides has failed to carry out their duties with reasonable care and skill following receipt of a notice from the Client. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services. The Client shall have no liability to the Supplier or the Supplier's Personnel for any losses of any nature whatsoever arising out of the operation of this Condition.
- 24.8. The Supplier shall maintain up to date personnel records in respect of the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Client in respect of the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records to the Client in compliance with the applicable Data Protection Legislation.
- 24.9. The Supplier shall provide such information as the Client may from time to time request in respect of any recruitment or employment agency used by the Supplier to engage Personnel for the performance of this Contract including (without limitation) information on the recruitment or employment practices and procedures used by such agencies.
- 24.10. The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of the Supplier's Personnel employed or engaged by it to provide the Services and that it shall not employ or engage any person in the provision of the Services who is barred from or whose previous conduct or records indicate that they would not be suitable for providing the Services.

**25. ENVIRONMENTAL REQUIREMENTS**

25.1. The Supplier shall:

25.1.1. have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier in connection with this Contract in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Legislation;

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

25.1.3. during the Contract Period, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.

**26. COMMUNITY BENEFITS**

26.1. The Supplier shall during the Contract Period deliver the community benefits set out in its Tender as required by Estyn acting reasonably.

**27. WELSH LANGUAGE**

27.1. The Client is required by the Welsh Language (Wales) Measure 2011 to comply with the standards of conduct in relation to the Welsh language notified to it by the Welsh Language Commissioner from time to time. The Supplier shall provide the Services in compliance with the Welsh language standards notified to the Client and applicable to the Services from time to time.

27.2. Without prejudice to Condition 27.1, the Supplier shall additionally comply with any other Welsh language requirements specified in the Specification.

**28. DISCRIMINATION AND EQUALITY**

28.1. The Supplier shall ensure that it complies with all relevant requirements of all current equalities Legislation, regulations and duties including but not limited to the Equality Act 2010 and all other similar Legislation ("Equality Legislation") in force from time to time together with any guidance or codes of practice issued by the Equality and Human Rights Commission and shall in addition discharge its obligations under this Contract and provide the Services in a manner consistent with the Client's equalities policies.

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

28.3. The Supplier shall provide any information reasonably requested by the Client in respect of such Equality Legislation in so far as it relates to the performance of this Contract.

28.4. The Supplier shall take all reasonable steps to secure the observance of this Condition 28 by all Supplier's Personnel in performance of this Contract.

28.5. The Supplier shall provide such information as the Client may from time to time request on the Supplier's supply chain for the goods and Services provided in connection with this Contract.

29. **HUMAN RIGHTS**

29.1. The Supplier shall not (and shall ensure that the Supplier's Personnel shall not) do or permit or allow anything to be done which may result in the Client acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

29.2. The Supplier shall (and shall use its reasonable endeavours to procure that its Personnel shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract.

29.3. The Supplier shall undertake, or refrain from undertaking, such acts as the Client requests so as to enable the Client to comply with its obligations under the Human Rights Act 1998.

30. **PROTECTION OF PERSONAL DATA**

30.1. In this Contract the following terms shall have the meaning given to them in the GDPR: Controller, Processor, Data Subject, Personal Data, Process, Personal Data Breach, Data Protection Officer.

30.2. Where the Specification states that provision of the Services will not require the Supplier to Process Personal Data on behalf of the Client:

30.2.1. in the event a change in the scope or nature of the Services requires the Supplier to Process Personal Data on behalf of the Client, the Supplier or the Client, as the case may be, shall notify the other Party immediately and the remainder of this Condition 30 shall apply. The Client shall instruct the Supplier of its instructions regarding the categories of Personal Data to be Processed and what Processing to be undertaken; and

30.2.2. to the extent that the Supplier needs to Process Personal Data (but not on behalf of the Client) in order to provide the Services it must do so in accordance with the Data Protection Legislation.

30.3. Where the Specification states that provision of the Services will require the Supplier to Process Personal Data on behalf of the Client the Parties acknowledge that for the purposes of the Data Protection Legislation the Client is the Controller and the Supplier is the Processor and the remainder of this Condition 30 shall apply.

30.4. The only Processing of Personal Data the Supplier is authorised to do is described in the Specification or is the subject of prior written approval by the Client and may not be determined by the Supplier.

30.5. The Supplier shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.

30.6. The Supplier shall provide all reasonable assistance to the Client in any on-going Data Protection Impact Assessment prior to and after commencing any Processing. Such assistance may, at the discretion of the Client, include:

- 30.6.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 30.6.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - 30.6.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 30.6.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 30.7. The Supplier shall in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 30.7.1. Process that Personal Data only in accordance with Condition 30.4, unless the Supplier is required to do otherwise by Legislation. If it is so required the Supplier shall promptly notify the Client before Processing the Personal Data unless prohibited by Legislation;
  - 30.7.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Client as appropriate, to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - 30.7.3. the Supplier shall, where it is required to notify to Data Subjects of the purpose and detail of the Processing to be undertaken, cooperate with the Client to agree an appropriate notice which complies with the Data Protection Legislation. The notice must have the Client's prior written approval.
  - 30.7.4. ensure that the Supplier Personnel do not Process Personal Data except in accordance with this Contract;
  - 30.7.5. ensure that it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Supplier's duties under this Conditions;
    - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - 30.7.6. not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
  - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Client with respect to the Processing of the Personal Data;
- 30.7.7. At the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination or expiry of the Contract unless the Supplier is required by Legislation to retain the Personal Data.
- 30.8. Subject to Condition 30.9, the Supplier shall notify the Client immediately if in connection with this Contract it:
- 30.8.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 30.8.2. receives a request to rectify, block processing or erase any Personal Data;
  - 30.8.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 30.8.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
  - 30.8.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation; or
  - 30.8.6. becomes aware of a Data Loss Event.
- 30.9. The Supplier's obligation to notify under Condition 30.8 shall include the provision of further information to the Client in phases, as details become available.
- 30.10. Taking into account the nature of the Processing, the Supplier shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 30.8 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:
- 30.10.1. the Client with full details and copies of the complaint, communication or request;
  - 30.10.2. such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 30.10.3. the Client, at its request, with any Personal Data it holds in relation to a Data Subject;

- 30.10.4. assistance as requested by the Client following any Data Loss Event;
- 30.10.5. assistance as requested by the Client with respect to any request from the Information Commissioner's Office or any consultation by the Client with the Information Commissioner's Office.
- 30.11. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Condition 30. This requirement does not apply where the Supplier employs fewer than 250 staff unless:
  - 30.11.1. the Client determines that the Processing is not occasional;
  - 30.11.2. the Client determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Articles 10 of the GDPR; and
  - 30.11.3. the Client determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 30.12. The Supplier shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 30.13. The Supplier shall designate a data protection officer if required by the Data Protection legislation.
- 30.14. Before allowing any Sub-Processor to Process any Personal Data related to this Contract the Supplier must:
  - 30.14.1. notify the Client in writing of the intended Sub-Processor and Processing;
  - 30.14.2. obtain the written consent of the Client;
  - 30.14.3. enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this Condition 30 such that they apply to the Sub-Processor; and
  - 30.14.4. provide the Client with such information regarding the Sub-Processor as the Client may reasonably require.
- 30.15. The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.
- 30.16. The Client may at any time on not less than 30 Working Days' notice revise this Condition by replacing it with any applicable controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 30.17. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issues by the Information Commissioner's Office.

- 30.18. For the avoidance of doubt, nothing in this Contract shall relieve the Supplier of its own direct responsibilities and liabilities under the Data Protection Legislation.
- 30.19. The provisions of this Condition 30 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

### 31. CONFIDENTIALITY

- 31.1. The Supplier acknowledges that any Confidential Information obtained from or relating to the Client or its Personnel is the property of the Client.
- 31.2. Except to the extent set out in this Condition 31 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 31.2.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 31.2.2. not disclose the other Party's Confidential Information to any other person without that Party's (or the owner's, if different,) prior written consent.
- 31.3. Condition 31.1 shall not apply to the extent that:
- 31.3.1. such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIRs pursuant to Condition 33 or for disclosure to a regulatory authority (including without limitation the Wales Audit Office);
  - 31.3.2. such information was in the possession of the Party making the disclosure without an obligation of confidentiality prior to its disclosure by the information owner;
  - 31.3.3. such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Contract; or
  - 31.3.4. it is independently developed without access to other Party's Confidential Information.
- 31.4. The Supplier may only disclose the Client's Confidential Information to the Supplier's Personnel who are directly involved in the provision of the Services and who need to know the Confidential Information, and shall ensure that such Supplier's Personnel are aware of and comply with these obligations as to confidentiality and are bound by obligations of confidentiality equivalent to those set out in this Condition 31
- 31.5. The Supplier shall not, and shall procure that the Supplier's Personnel do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Contract.
- 31.6. The Supplier undertakes (except as may be required by Legislation or in order to instruct professional advisers in connection with this Contract who shall be bound by obligations of confidentiality equivalent to those set out in this Condition 31) not to:
- 31.6.1. disclose or permit disclosure of any details of this Contract to the news media or any third party other than Supplier's Personnel;
  - 31.6.2. disclose that the Client is a client of the Supplier; or

- 31.6.3. use the Client's name and or brand in any promotion of marketing or announcement of orders, without the prior written consent of the Client.
- 31.7. At the written request of the Client, the Supplier shall procure that those members of the Supplier's Personnel identified in the Client's request sign a Confidentiality Undertaking prior to commencement of any work in accordance with this Contract.
- 31.8. In the event that the Supplier fails to comply with this Condition 31 the Client reserves the right to terminate this Contract by notice with immediate effect.

## 32. **SECURITY OF CONFIDENTIAL INFORMATION**

- 32.1. In order to ensure that no unauthorised person gains access to any Confidential Information obtained in the performance of this Contract, the Supplier:
  - 32.1.1. shall comply with the Client's security requirements set out in the Specification or as otherwise agreed in writing; and
  - 32.1.2. undertakes to maintain appropriate security systems, which may be subject to review and approval by the Client.
- 32.2. The Supplier will immediately notify the Client of any breach of security in relation to Confidential Information obtained or processed in the performance of this Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information however it may be recorded. This obligation is in addition to the Supplier's obligations under Conditions 30 and 31.
- 32.3. The Supplier shall at its own expense co-operate with the Client in any investigation that the Client considers necessary to undertake as a result of any breach of security in relation to Confidential Information.
- 32.4. The Client may (acting reasonably and proportionately) require the Supplier to alter or update any security systems at any time during the Contract Period.

## 33. **FREEDOM OF INFORMATION**

- 33.1. The Supplier acknowledges that the Client is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Client (at the Supplier's expense) to enable the Client to comply with these information disclosure requirements.
- 33.2. The Supplier shall and shall procure that the Supplier's Personnel shall:
  - 33.2.1. notify receipt of any Requests for Information in connection with this Contract to the Client as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information and comply with any instructions provided by the Client;
  - 33.2.2. provide the Client with a copy of all Information in its possession or power in the form that the Client requires in connection with a Request for Information within five (5) Working Days (or such other period as the Client may specify) of the Client requesting that Information; and



- 33.2.3. provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5(2) of the EIRs.
- 33.3. For the purposes of Condition 33.2, "reasonable assistance" shall include the redaction of documentation within five (5) Working Days of a request from the Client to do so.
- 33.4. The Client shall be responsible for determining in its absolute discretion whether the Confidential Information and/or any other Information:
  - 33.4.1. is exempt from disclosure under the FOIA or the EIRs; and
  - 33.4.2. is to be disclosed in response to a Request for information.
- 33.5. In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Client.
- 33.6. The Supplier shall ensure all information submitted in connection with the tendering process or in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Client to inspect such records as the Client may request from time to time.
- 33.7. The Supplier acknowledges that any lists or schedules provided by it as part of the tendering process identifying the Supplier's Confidential Information are of indicative value only and that the Client may nevertheless be obliged to disclose Confidential Information in accordance with this Condition 33.
- 34. **PUBLICITY**
- 34.1. Except with the written consent of the other Party, such consent not to be unreasonably withheld or delayed, neither Party shall make any press announcements or publicise this Contract or the Services (except as reasonably necessary to provide the Services) in any way.
- 34.2. Both Parties shall take all reasonable steps to ensure the observance of the provisions of Condition 34.1 by all their respective Personnel.
- 34.3. Neither Party shall use the business logos or publicise the logos of the other Party either in print or electronically without the express written consent of the other Party such consent shall not be unreasonably withheld or delayed.
- 34.4. Notwithstanding the provisions of Condition 34.1, the Client shall be entitled to publicise this Contract in accordance with any legal obligation upon the Client, including any examination of this Contract by the Wales Audit Office and the provisions of the FOIA or EIR.
- 34.5. The Parties acknowledge that the Wales Audit Office has the right to publish details of this Contract (including Confidential Information) in its relevant reports to the extent permitted and required by law.

## 35. CHANGE CONTROL

### General Change

- 35.1. The Client has the right to propose any variation(s) to the Services (including a request for the Supplier to cease any one or more or any part of the Services) in accordance with this Condition 35. If the Client wishes to propose a variation to the Services (a "Variation"), the Client shall serve a Change Control Request on the Supplier. No Variation shall be deemed to occur, and the Supplier shall not be entitled to any additional payment, unless the procedures in this Condition 35 are complied with.
- 35.2. The Supplier shall accommodate any Variation(s) required by the Client provided that it shall only be entitled to payment for any agreed additional costs it incurs as a result on the basis set out in this Condition 35.
- 35.3. The Change Control Request shall set out the Variation to the Services required by the Client in detail and request a cost estimate (the "Estimate") of the costs arising as a direct result of the Variation.
- 35.4. The Supplier shall provide the Client with the Estimate within ten (10) Working Days of the receipt of the Change Control Request or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of:
- 35.4.1. the impact of the proposed Variation on the provision of the Services;
  - 35.4.2. any amendment required to this Contract to accommodate the proposed Variation;
  - 35.4.3. the overall cost of, or savings from, implementing the proposed Variation. The cost of the Variation shall be determined (so far as possible) by reference to the rates and prices set out in the Tender Documents and in so far as it is impossible to do so then the Variation shall be determined on a fair and reasonable basis taking into account the rates, prices and practices in the industry to which the Services relate and the Supplier's general duty of cost efficiency under this Contract; and
  - 35.4.4. any other information reasonably requested by the Client or appearing to the Supplier to be relevant.
- 35.5. As soon as practicable after the Supplier provides the Client with the Estimate, the Client and the Supplier shall meet to discuss and agree any issues arising from the Change Control Request or the Estimate.
- 35.6. The Parties shall endeavour to agree the terms of the Estimate. In the event that the Parties cannot agree any part of the content of the Estimate within a reasonable time of the meeting under Condition 35.5 then the Change Control Request shall be withdrawn by the Client.
- 35.7. As soon as practicable after any part of the contents of the Estimate have been agreed in accordance with Condition 35.6 the Client shall:
- 35.7.1. confirm in writing that it wishes to proceed with the Change Control Request (or that part of it which has been agreed or determined as above); or

- 35.7.2. withdraw the Change Control Request (or the relevant part).
- 35.8. If the Client confirms that it wishes to proceed with the Change Control Request, the Services shall be deemed to have been varied accordingly. The additional cost of, or savings from, implementing the Variation (as agreed or determined) shall be added to or deducted from the Price.
- 35.9. If the Client has not confirmed or withdrawn the Change Control Request within twenty (20) Working Days of the date of agreement of any part of the Estimate in accordance with Condition 35.7 then the Change Control Request shall be deemed to be withdrawn by the Client.
- 35.10. The Client shall not be liable for any costs incurred by the Supplier in implementing the procedure set out in this Condition 35.

### **Legislative Change**

- 35.11. The Supplier shall bear the cost of complying with all Legislation and any amendments thereto relating to the provision of the Services. In the event that a change in Legislation necessitates a material change to the performance of this Contract by the Supplier and provided that such Legislative change:
- 35.11.1. relates directly to the performance of all or part of this Contract and does not necessitate a business or organisational wide change to the goods and services generally provided by the Supplier or to the procedures and processes used by the Supplier in the course of its business; and
- 35.11.2. could not have reasonably been foreseen by the Supplier on the Commencement Date,

the Parties shall enter into negotiations to make such adjustments to the Price as may be necessary to compensate the Supplier for any additional costs as are both reasonably and necessarily incurred by the Supplier in implementing such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Client may at its discretion terminate by notice this Contract in whole or in part.

### **36. CONFLICTS OF INTEREST**

- 36.1. The Supplier shall take appropriate steps to ensure that neither itself nor any Supplier's Personnel 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 such persons and the duties owed to the Client under the provisions of this Contract. The Supplier will disclose to the Client full particulars of any such conflict of interest which may arise.
- 36.2. Failure to disclose this information will be considered a material breach incapable of remedy and this Contract may be terminated in accordance with Condition 44.

### **37. CORRUPT GIFTS, PAYMENTS OF COMMISSION AND PREVENTION OF BRIBERY**

- 37.1. The Supplier shall not, and shall procure that any Supplier's Personnel shall not, in connection with this Contract commit a Prohibited Act.

- 37.2. The Supplier, warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Client, or that an agreement has been reached to that effect, in connection with the award of this Contract to the Supplier, excluding any arrangement of which full details have been disclosed in writing to the Client before the award of this Contract to the Supplier.
- 37.3. The Supplier shall:
- 37.3.1. if requested, provide the Client with any reasonable assistance to enable the Client to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
  - 37.3.2. within fourteen (14) Working Days of the date of the Award Letter, and annually thereafter, certify to the Client in writing (such certification to be signed by a senior officer of the Supplier) compliance with this Condition 37 by the Supplier and all persons associated with it or other persons who are supplying goods or providing services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Client may reasonably request.
- 37.4. The Supplier shall have an anti-bribery policy (which shall be disclosed to the Client) to prevent any Supplier's Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 37.5. If any breach of Condition 37.1 or 37.2 is suspected or known, the Supplier must notify the Client immediately.
- 37.6. If the Supplier notifies the Client that it suspects or knows that there may be a breach of Condition 37.1 or 37.2, the Supplier must respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to inspect audit books, records and any other relevant documentation.
- 37.7. The Client may terminate this Contract by notice with immediate effect if the Supplier or Supplier's Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Condition 37.1 or 37.2.
- 37.8. Any notice of termination under Condition 37.7 must specify:
- 37.8.1. the nature of the Prohibited Act;
  - 37.8.2. the identity of the party whom the Client believes has committed the Prohibited Act; and
  - 37.8.3. the date on which this Contract will terminate.
- 37.9. Despite Condition 47, any dispute relating to:
- 37.9.1. the interpretation of Condition 37; or
  - 37.9.2. the amount or value of any gift, consideration or commission,
- shall be determined by the Client and its decision shall be final and conclusive.

- 37.10. Any termination under Condition 37.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Client and the Parties agree that the Client may recover from the Supplier the amount or value of any gift, consideration or commission given in contravention of this Condition 37, together with all costs to the Client of terminating and entering into an alternative contract with another supplier including associated costs of any re-tendering or re-advertising.

## 38. **FRAUD**

- 38.1. The Supplier must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Client.
- 38.2. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Client the Supplier shall immediately inform the Client.

## 39. **INDEMNITY**

- 39.1. The Supplier shall indemnify and keep the Client indemnified in full against all direct costs, liabilities, fines, expenses, damages and losses (including but not limited to any legal and other professional fees and expenses awarded against or incurred or paid by the Client) as a result of or in connection with:
- 39.1.1. any claim made against the Client by a third party arising out of, or in connection with, the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier or the Supplier's Personnel;
  - 39.1.2. any claim made against the Client for or in connection with the actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Services;
  - 39.1.3. any failure to comply with Condition 30 (Protection of Personal Data);
  - 39.1.4. any failure to comply with any Legislation; and
  - 39.1.5. any damage caused to Client Premises or the Client's equipment arising out of an act or omission by the Supplier or the Supplier's Personnel.
- 39.2. If a payment due from the Supplier under this Condition 39 is subject to tax, (whether by way of direct assessment or withholding at its source), the Client shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Client in respect of the payment is the same as it would have been were the payment not subject to tax.

## 40. **LIMITATION OF LIABILITY**

- 40.1. Nothing in this Contract shall limit or exclude the liability of either Party for:
- 40.1.1. death of or personal injury to any individual resulting from negligence;
  - 40.1.2. fraud or fraudulent misrepresentation; or

- 40.1.3. any other act or omission, liability for which may not be limited under any applicable law.
- 40.2. Subject always to Condition 40.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (whether under contract, tort (including without limitation negligence) or statutory provision) arising out of or in connection with this Contract (excluding Conditions 39.1.1 to 39.1.4 (inclusive) and the TUPE Indemnities) shall not exceed the sum specified in the Specification in respect of any one incident or series of related incidents. In the event that the Specification does not specify a sum, the Supplier's total liability shall be unlimited.
- 40.3. Without prejudice to the Client's obligation to pay the Price as it falls due, the Client's liability under this Contract shall be limited to 100% of the total Price payable for the Services provided under this Contract unless stated otherwise in the Specification.
- 40.4. Subject always to Condition 40.2, in no event shall either Party be liable to the other for:
- 40.4.1. indirect or consequential loss or damage; and/or
  - 40.4.2. loss of profits; and/or
  - 40.4.3. loss of business; and/or
  - 40.4.4. loss of revenue; and/ or
  - 40.4.5. loss of goodwill,
- 40.5. The provisions of Condition 40.4 shall not be taken as limiting the right of the Client to claim from the Supplier for any:
- 40.5.1. additional operational and administrative costs and expenses; and/or
  - 40.5.2. any costs or expenses rendered worthless; and/or
  - 40.5.3. loss or damage resulting directly from the default of the Supplier.
- 40.6. The Parties expressly agree that should any limitation or provision contained in this Condition 40 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Condition 40.

#### 41. **INSURANCE**

- 41.1. The Supplier shall maintain and shall ensure that all Sub-Contractors involved in the provision of the Services shall maintain the following insurance cover with a reputable insurance company:
- 41.1.1. Professional Indemnity (if required); and
  - 41.1.2. Public Liability (including if applicable Products Liability);

in each case with the minimum level of indemnity set out in the Specification. If no level is specified in the Specification, then the Supplier shall hold and maintain such insurance cover with a reputable insurance company with a minimum level of indemnity set at one million pounds (£1,000,000) or such higher level as is consistent with (i) good industry practice in the relevant industry or business sector of services of a similar type to the Services to be provided under this Contract and (ii) any applicable Legislation unless otherwise agreed in writing by the Client.

- 41.2. Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Contract.
- 41.3. The Supplier shall from time to time and upon being given not less than two (2) Working Days notice when so required by the Client produce the relevant policy of insurance and receipts for premiums or other satisfactory evidence of insurance cover.
- 41.4. If the Supplier or any Sub-Contractor fails or is unable to maintain insurance in accordance with this Condition 41, or fails to provide evidence in accordance with Condition 41.4, the Client may (so far as it is able), purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.
- 41.5. The Supplier shall hold employer's liability insurance in respect of its Staff in accordance with any Legislation for the time being in force.
- 41.6. The Supplier's liabilities under this Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in this Condition 41.
- 41.7. If stated as required in the Specification the Supplier shall ensure that the Client's interest is noted on each insurance policy or that a generic interest condition has been included

## 42. **FORCE MAJEURE**

- 42.1. Subject to the remaining provisions of this Condition 42 either Party may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.
- 42.2. A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 42.3. An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under an agreement with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 42.4. The Affected Party shall immediately give the other Party notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 42.5. As soon as practicable after the Affected Party's notification, the Parties shall discuss in good faith and endeavour to agree a means of performing this Contract so far as reasonably possible for the duration of the Force Majeure Event. In the event that the Parties fail to agree a means

of performing this Contract within two (2) calendar months from the date of the Affected Party's notification (or such other period agreed by the Parties in writing), the Client may in its absolute discretion elect to terminate this Contract in whole or in part.

- 42.6. The Affected Party shall use all reasonable endeavours to continue to perform, or resume performance of this Contract for the duration of such Force Majeure Event and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 42.7. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 42.8. In the event that the Force Majeure Event continues for a period of two (2) calendar months (or such other period agreed by the Parties in writing) from the date of the Affected Party's notification, the Client may in its absolute discretion terminate this Contract in whole or in part by notice.

#### 43. **INDUSTRIAL ACTION**

- 43.1. The Supplier shall immediately inform the Client of any actual or potential industrial action by Staff, whether such action be by its own Personnel or others which affects or might affect its ability at any time to provide the Services in accordance with the requirements of this Contract. In the event of industrial action by such Staff the Supplier shall seek the Client's approval to any revised proposals to provide the Services.
- 43.2. If the Supplier's Proposals referred to in Condition 43.1 are considered insufficient or unacceptable by the Client then the Client may terminate this Contract in whole or in part.

#### 44. **TERMINATION**

- 44.1. The Client may at any time by notice terminate this Contract as from the date of deemed receipt of such notice (as provided in Condition 53.5) if:
  - 44.1.1. the Supplier fails to comply with Conditions 5.3.2 (The Services), 7.2 (Time of Delivery), Condition 24.5 (Supplier's Personnel), Condition 30 (Protection of Personal Data), Condition 31 (Confidentiality), 32 (Security of Confidential Information), 36 (Conflicts of Interest), 37 (Corrupt Gifts and Payments of Commission), 38 (Fraud) or 48 (Sub-Contracting and Assignment); or
  - 44.1.2. there is a change of control, ("control" shall be as defined by section 1124 of the Corporation Tax Act 2010), in the Supplier or its Parent Company provided that the Client shall only be permitted to exercise its rights pursuant to this Condition 44.1.2 for six (6) calendar months after each such change of control and shall not be permitted to exercise such rights where the Client has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
  - 44.1.3. the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a



bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or

- 44.1.4. the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, ("control" shall be as defined by section 1124 of the Corporation Tax Act 2010), shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 2016 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction; or
- 44.1.5. the Supplier commits a Default and the Default is irremediable; or
- 44.1.6. the Supplier commits a Default and the Default is a fundamental breach of this Contract; or
- 44.1.7. the Supplier commits a Default which is remediable but fails to remedy that Default to the satisfaction of the Client within twenty five (25) Working Days (or such other period as may be specified by the Client) after being notified in writing to do so; or
- 44.1.8. the Supplier commits a series of Defaults which when taken together amount to a fundamental breach of this Contract; or
- 44.1.9. the Supplier repeatedly commits a Default of any terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
- 44.1.10. the Supplier is the subject of a formal investigation for, or is the subject of prosecution for, any offence under the Modern Slavery Act 2015;
- 44.1.11. the Supplier is the subject of formal investigation , or the subject of a claim arising in connection with its statutory obligations relating to employment rights, employment relations, working rights or equality;
- 44.1.12. the Supplier is the subject of a claim for breach of the Human Rights Act 1998;
- 44.1.13. the Supplier commits a breach of the Official Secrets Acts 1911 to 1989 or Section 182 of the Finance Act 1989;

- 44.1.14. this Contract has been subject to substantial modification as to its scope and value such that a new procurement exercise would be required to be conducted in accordance with the provisions of Regulation 72(9) of PCR 2015; or
- 44.1.15. the Supplier, at the time that the Tender was awarded to the Supplier, had been or during the Contract Period is convicted of any one or more of the mandatory grounds for exclusion from participation in the Tender set out in Regulation 57 of PCR 2015; or
- 44.1.16. the Tender should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union (the TFEU) and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- 44.1.17. three (3) consecutive KPI Reports state that the Supplier has failed to achieve all the KPIs or in any five (5) or more consecutive KPI Reporting Periods (of whatever duration), at least half of the reports state that the Supplier has failed to achieve all the KPIs. This Condition is without prejudice to any other provisions in the Tender Documents relating to the failure to achieve the KPIs;
- 44.1.18. three (3) consecutive Service Level Reports state that the Supplier has failed to achieve all the Service Levels or in any five (5) or more consecutive Service Level Reporting Periods (of whatever duration), at least half of the reports state that the Supplier has failed to achieve all the Service Levels. This Condition is without prejudice to any other provisions in the Tender Documents relating to the failure to achieve the Service Levels; and
- 44.1.19. any of the events described in Conditions 44.1.2, 44.1.3, 44.1.4 occurs in respect of a Guarantor, the Guarantor is in breach of any term of a Guarantee or a Guarantee becomes invalid or unenforceable.
- 44.2. In deciding whether any Default is fundamental no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**45. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 45.1. Except as expressly provided otherwise this Condition 45 shall apply on the expiry or the termination (in full or in part) of this Contract howsoever terminated.
- 45.2. The termination or expiry of this Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 45.3. The Client shall be entitled without prejudice to the Client's other rights and remedies to obtain a refund of any payments made by the Client in respect of any Services which have not been performed or any goods provided by the Supplier by the date of termination or expiry.
- 45.4. In the event of the termination or expiry of this Contract by either Party, the provisions of this Condition 45 (Consequences of Termination) and Conditions 15 (Set-Off), 19 (Intellectual Property), 30 (Protection of Personal Data), 31 (Confidentiality), 32 (Security of Confidential Information), 33 (Freedom of Information), 34 (Publicity), 37 (Corrupt Gifts, Payments of Commission and Prevention of Bribery), 38 (Fraud), 39 (Indemnity), 40 (Limitation of Liability),

41 (Insurance), 47 (Dispute Resolution Process), 49 (Information and Assistance), 50 (Offers of Employment), 51 (Transfer of Undertakings (Protection of Employment) Regulations 2006), 53 (Notices), 56 (Waiver), and 63 (Law and Jurisdiction) shall survive the expiry or termination of this Contract.

- 45.5. Where, following a termination by the Client pursuant to Condition 44.1 the Client re-lets this Contract, or any part of it, to an alternative supplier, the Supplier shall make good to the Client all costs, losses damages and expenses it may incur or be liable to in consequence of such re-letting.
- 45.6. The Supplier acknowledges that prior to, on or after expiry or termination of this Contract the Client may either bring the provision of the Services in-house or invite persons which include the Supplier to tender for the right to provide some or all of the Services in future. Accordingly the Supplier agrees twelve (12) calendar months or such other period before expiry or termination of this Contract as may be specified in the Specification (or any part thereof) to provide such information, expertise, assistance and guidance to the Client and Replacement Supplier as would be reasonable and necessary to ensure and preserve the continuity of the Services including without limitation providing for the transfer of all knowledge required for the provision of Replacement Services (including without limitation records relating to the Services), training, training materials and a report on the Services. The Supplier shall on reasonable notice meet with the Client and, as required by the Client, the in-coming Supplier, before and for three (3) calendar months after termination or expiry of this Contract as would be reasonable to ensure and preserve the continuity of the Services.
- 45.7. On termination or expiry of this Contract the Supplier shall comply with its obligations under Conditions 18.4, 19.5 and 20.4.

46. **BREAK**

- 46.1. In addition to the Client's rights of termination under Condition 44 the Client may terminate this Contract by giving to the Supplier no less than one (1) calendar month's prior notice.
- 46.2. In the event of termination of this Contract pursuant to Condition 46.1 the Supplier shall:
- 46.2.1. 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 irrevocable commitments entered into in performance of this Contract to the extent that the Supplier is able to provide evidence to the reasonable satisfaction of the Client to support any sums which it claims;
- 46.2.2. upon receiving notice under Condition 46.1 continue to provide the Services until the date of termination unless requested otherwise by the Client 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 this Contract;
- 46.3. The Client shall not be liable upon termination under Condition 46.1 to pay any sum which when added to the sums paid or due to the Supplier under this Contract exceeds the total sum which would have been payable to the Supplier if this Contract had not be terminated prior to the expiry of the original Contract Period.

#### 47. **DISPUTE RESOLUTION PROCESS**

- 47.1. The Parties shall refer all matters in dispute arising out of or in connection with this Contract for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of fifteen (15) Working Days from the date notified in writing by one Party to the other in which details of the dispute are specified, and failing which, unless the Parties agree another period of time, any such dispute may be dealt with as set out in Condition 47.2.
- 47.2. If the dispute cannot be resolved by the Parties' representatives nominated under Condition 47.1, within fifteen (15) Working Days or such other period as shall have been agreed between the Parties then the dispute may be referred to mediation under the supervision of the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU ("CEDR"). Mediation shall commence by either Party serving on the other notice ("Mediation Notice") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to CEDR for the appointment of a mediator.
- 47.3. The mediation shall be conducted using a sole mediator in and substantially in accordance with CEDR's recommended agreement for the time being in use. The mediator must be a CEDR accredited mediator agreed between the Parties or, in default of agreement within ten (10) Working Days of the date of the Mediation Notice, appointed by CEDR at the request of the Party who served the Mediation Notice.
- 47.4. The Parties agree to co-operate fully and promptly and in good faith with CEDR and/or the mediator in the performance of their obligations under this Condition 47. Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the matters in dispute. All negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings.
- 47.5. If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representatives of each of the Parties, shall remain binding on the Parties.
- 47.6. Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.
- 47.7. If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the courts in accordance with Condition 63 below.
- 47.8. In the event that the process of mediation does not succeed in finding a resolution to the dispute within a period of two (2) calendar months of appointment of the mediator, or such other time as the Parties may agree, either Party may take such action as is available to it under this Contract or at law.
- 47.9. Nothing in this Contract shall be taken to prevent or constrain 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.
- 47.10. Each Party's respective obligations to be carried out under this Contract shall not cease or be delayed by the invocation of this dispute resolution procedure.

48. **SUB-CONTRACTING AND ASSIGNMENT**

- 48.1. This Contract is personal to the Supplier.
- 48.2. The Supplier shall not assign, novate, or otherwise dispose of this Contract or any part of it without the prior written consent of the Client acting in its absolute discretion.
- 48.3. The Supplier shall not sub-contract the performance of any of its obligations under this Contract nor change any Sub-Contractor without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed. The Supplier shall provide such information as the Client shall reasonably request in respect of any Sub-Contractor.
- 48.4. Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.
- 48.5. The Supplier shall provide the Client with a list of all Personnel engaged by his Sub-Contractors and any subsequent amendments to the list and shall ensure that all other requirements of Condition 24 are observed and complied with by any Sub-Contractor. The Client reserves the right to reject the appointment of or to request the removal of any of the Sub-Contractors' appointed Personnel to provide the Services.
- 48.6. In the event that the Supplier, in accordance with the terms of this Contract, enters into a sub-contract in connection with this Contract, the Supplier shall ensure that:
- 48.6.1. Sub-Contractors and any of its suppliers have accepted obligations equivalent to those set out in this Contract and that they comply with such obligations; and
- 48.6.2. a term is included in the sub-contract which requires the Supplier to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid and agreed invoice as defined by the terms of the sub-contract (as appropriate).
- 48.7. Subject to Condition 48.8, the Client shall be entitled to:
- 48.7.1. assign, novate or otherwise dispose of its rights and obligations under this Contract or any part of it to any Contracting Authority; or
- 48.7.2. novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Client.
- 48.8. This Contract is binding on the Client and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.
- 48.9. Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, affect the validity of this Contract. In such circumstances, this Contract shall be binding on any successor body to the Client.

**49. INFORMATION AND ASSISTANCE**

49.1. Throughout the Contract Period and for a period of ten (10) calendar years (or such other period specified in the Specification) after its expiry or termination, the Supplier shall:

49.1.1. maintain full and accurate records of this Contract including the goods and services provided under it, all expenditure reimbursed by the Client and all payments made by the Client; and shall on request afford the Client or the Client Contract Manager and the Client's external auditors (including without limitation the Wales Audit Office) such access to and copies of those records as may be required in connection with this Contract; and

49.1.2. give all reasonable assistance to the Client including attending all meetings required by the Client in order to answer questions pertaining to this Contract should the need arise.

**50. OFFERS OF EMPLOYMENT**

50.1. During the Contract Period and for a period of twelve (12) calendar months thereafter the Supplier shall not employ or offer employment to any of the Client's officers, employees or workers who have been associated with the Services without the Client's prior agreement in writing save that this Condition 50 shall not relate to a bona fide advertisement of employment with the Supplier.

**51. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")**

51.1. In the event that the Client and the Supplier believe that, pursuant to TUPE, the employment of those persons employed or engaged by the Client and/or the Previous Supplier and who on and/or immediately prior to the Initial Service Transfer Date are assigned to carrying out the Services for or on behalf of the Client (the "Acquired Staff") will transfer to the Supplier on the Initial Service Transfer Date. In those circumstances, the Supplier shall engage all of the Acquired Staff with effect from the Initial Services Transfer Date on the same terms and conditions (including as to previous periods of continuous employment) whether or not they are legally enforceable, as those on which they were previously employed immediately prior to the Initial Service Transfer Date and shall comply in all respects with the obligations imposed on a transferee by TUPE in respect of the Acquired Staff.

51.2. The Supplier shall indemnify the Client and the Previous Supplier in full for and against all losses in relation to or in connection with :

51.2.1. any failure by the Supplier to comply with its obligation pursuant to TUPE in respect of the Acquired Staff; and

51.2.2. anything done or omitted to be done by the Supplier in respect of any of the Acquired Staff whether before, on or after the Initial Service Transfer Date including by not limited to:

(i) Any action by any Acquired Staff in relation to the termination by the Supplier after the Initial Services Transfer Date of the employment;

- (ii) Any action by any Acquired Staff relating to the identity of the employer changing by virtue of TUPE and or this Contract;
  - (iii) any action by any Acquired Staff in relation to a change or proposed change to the terms of his or her employment or working conditions as a result of any act or omission of the Supplier whether such claims arise before on or after the Initial Service Transfer Date.
- 51.3. The Supplier agrees to satisfy all of its obligations up to the expiry or termination of this Contract (or any part thereof) with respect to all outgoing and accrued liabilities in respect of the Staff (including without limitation the Acquired Staff) involved in performing the Supplier's obligations under this Contract.
- 51.4. The Supplier undertakes (and will procure that any Sub-Contractor undertakes) to the Client and any Replacement Supplier that it shall have:
  - 51.4.1. paid and shall pay all sums, outgoing and accrued liabilities (whether arising under common law, statute, equity or otherwise) including all salaries, wages, holiday pay, bonus, commission, tax, expenses, National Insurance contributions, pension contributions and other remuneration, benefits, entitlements and outgoing regardless of when sums fall due to or in relation to the Staff on or before the expiry or termination of this Contract (or any part thereof); and
  - 51.4.2. complied with all of its obligations (including those arising pursuant to TUPE) due to or in connection with the Staff or any body representing them on or before the expiry or termination of this Contract (or any part thereof).
- 51.5. The Supplier acknowledges that the Client may wish to, prior to, on or after the expiry or termination of this Contract either bring the provision of the Services in-house or invite persons which include the Supplier to tender for the right to provide some or all of the Services in the future. Accordingly, the Supplier agrees that twelve (12) calendar months before the expiry or termination of this Contract (or any part thereof) or within ten (10) Working Days of being so requested by notice by the Client, it shall fully and accurately disclose to the Client such information (in excel format or such other format approved by the Client) as is reasonably requested by the Client of the Staff in anonymised format including but not necessarily restricted to the following:
  - 51.5.1. the total number of the Staff;
  - 51.5.2. each individual Staff member's job title, job description, general terms and conditions of employment or engagement, age, gender and date of commencement of employment or engagement or the date their period of continuous employment commenced and (if different) the date employment commenced with the Supplier or Sub-Contractor;
  - 51.5.3. details of whether a member of Staff is an employee, worker, self-employed, contractor or consultant, agency worker or otherwise;
  - 51.5.4. the identity of each individual Staff member's employer or relevant contracting party;
  - 51.5.5. the relevant notice period and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual or non-

contractual redundancy or termination payment schemes, enhancement rates and any other factors affecting the redundancy entitlement of each member of Staff;

- 51.5.6. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of the Staff;
- 51.5.7. the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to each individual Staff member;
- 51.5.8. details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Supplier car schemes applicable to each member of Staff;
- 51.5.9. any outstanding or potential contractual, statutory or other liabilities in respect of each member of Staff (including in respect of personal injury claims);
- 51.5.10. details of any member of Staff on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
- 51.5.11. a breakdown of each person's working time in the preceding twelve (12) calendar months by reference to:
  - (i) details of the work they perform;
  - (ii) the amount of time they spend carrying out the Services;
  - (iii) details of any other duties they carry out;
  - (iv) the locations of such work; and
  - (v) all other information required by regulation 11 (or otherwise) of TUPE.
- 51.5.12. the total terminal redundancy liability to the Staff;
- 51.5.13. in respect of each of the Staff, details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened;
- 51.5.14. details of all agreements or arrangements entered into in relation to the Staff or any trade union or organisation or body of employees including any employee representatives;
- 51.5.15. details of any offers of employment or engagement made by the Supplier or any Sub-Contractor which are still outstanding or which have been accepted but the employment or engagement has not yet commenced;
- 51.5.16. details of any court or tribunal case, claim or action brought by any of the Staff against the Supplier or any Sub-Contractor within the previous two years and details of any court or tribunal cases that the Supplier or any Sub-Contractor has reasonable grounds to believe that Staff may bring against the Supplier or Sub-Contractor, arising out of the Staff's employment with the Supplier or Sub-Contractor;
- 51.5.17. details of all dismissals or terminations or notice of terminations of anyone employed or engaged in connection with the provision of the Services in the previous twelve (12) calendar months;



- 51.5.18. any other information required under Regulation 11 of the TUPE or other information concerning the Staff which may be reasonably required by the Client.
- 51.6. If so requested in accordance with Condition 51.5, at intervals to be stipulated by the Client and immediately prior to the expiry or termination of this Contract the Supplier shall deliver to the Client a complete update of all such information which shall be disclosable pursuant to Condition 51.5. If the Supplier becomes aware that any of the information it has provided pursuant to Condition 51.5 has become untrue, inaccurate or misleading, it shall notify the Client immediately and provide the Client with up to date information as soon as is reasonably practicable.
- 51.7. At the time of providing any information disclosed pursuant to Conditions 51.5 or 51.6 the Supplier shall be deemed to warrant the completeness and accuracy of all such information:
- 51.8. In the event that the Supplier enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on the Supplier by the Client pursuant to Conditions 51.3 to 51.7 and shall procure that the Sub-Contractor complies with those obligations.
- 51.9. The Client may use the information it receives from the Supplier pursuant to Conditions 51.5 and 51.6 for the purposes of the TUPE or any retendering process including but not limited to providing such information to prospective tenderers.
- 51.10. If any obligation under this Condition 51 would cause the Supplier to breach any legal obligation (including any obligation under the Data Protection Legislation) or do any unlawful act, the Supplier shall do such things as are reasonably practicable to comply with its obligations under this Condition 51 without breaching any legal obligation or doing any unlawful act, including, if relevant, providing information in an anonymised form.
- 51.11. The Supplier shall indemnify and keep indemnified the Client and its or their employees, servants, agents or Sub-Contractors including any Replacement Supplier fully and to hold them harmless at all times from and against all actions, suits, proceedings, claims, expenses, awards, damages, demands, costs (including but not limited to legal costs) and any other liabilities of whatever nature (including for the avoidance of doubt where arising from a redundancy) relating to or arising from:
- 51.11.1. any act or omission by the Supplier or any Sub-Contractor (including for the avoidance of doubt, termination of employment and/or any acts of discrimination by third parties for which the Supplier or any Sub-Contractor would be vicariously liable and/or the variation of terms and conditions of employment) occurring on or before the Service Transfer Date in respect of the Staff;
- 51.11.2. any act, fault or omission of the Supplier or any Sub-Contractor in relation to the provision of information under Condition 51.5 or 51.7 and any reliance on or use of such inaccurate or incomplete information or the failure of the Supplier to impose and enforce employee liability information obligations in relation to its Sub-Contractors under Condition 51.8;
- 51.11.3. any act or omission of the Supplier or any Sub-Contractor in relation to any of the Personnel who will not transfer in accordance with the TUPE upon the expiry or termination of this Contract whether before, on or after the Transfer Date;

- 51.11.4. any failure on the part of the Supplier or any Sub-Contractor to comply with its obligations under the TUPE;
  - 51.11.5. any claim arising by virtue of the TUPE applying on the expiry or termination of this Contract.
- 51.12. The Supplier undertakes to the Client that, during the twelve (12) calendar months prior to the expiry of this Contract (or, where this Contract has been terminated more than twelve (12) calendar months prior to expiry of this Contract, during the period between receipt of a notice terminating this Contract and the date of termination), the Supplier (and the Sub-Contractor) shall not without the prior consent of the Client (such consent not to be unreasonably withheld or delayed):
- 51.12.1. amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and pension) of any Staff (other than where such amendment or variation has previously been agreed between the Supplier and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
  - 51.12.2. terminate or give notice to terminate or induce (directly or indirectly) or attempt to induce to terminate the employment or engagement of any member of Staff (other than in circumstances in which the termination is for reasons of misconduct or serious poor performance);
  - 51.12.3. transfer away, remove, reduce or vary (including materially increasing the proportion of working time spent on the Services (or the relevant part) by the Staff) the involvement of any member of Staff from or in the provision of the Services (other than where such variation: (i) was planned as part of the member of Staff's career development; (ii) takes place in the normal course of business; (iii) at the request of the individual and (iv) will not have any adverse impact on the delivery of Services by the Supplier, PROVIDED THAT any such transfer, removal, reduction or variation is not in anyway related to the transfer of the Services);
  - 51.12.4. recruit, engage, employ or offer to recruit, employ or engage or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period (except to fill a vacancy);
  - 51.12.5. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any Staff.
- 51.13. At least twenty eight (28) days prior to the Service Transfer Date the Supplier must provide to the Client and/or (at the Client's request) any Replacement Supplier a final list of all Transferring Employees (Final List) which shall contain any updated Employee Termination Information in relation to each Transferring Employee and shall be complete, accurate and up to date. The Supplier must immediately notify the Client of:
- 51.13.1. any changes to the Final List prior to the Service Transfer Date;
  - 51.13.2. any Transferring Employee who has objected to a transfer pursuant to regulation 4(7) TUPE; and

- 51.13.3. any Transferring Employee who has given or been given notice of termination of his employment.
- 51.14. The Supplier shall indemnify in full and keep indemnified the Client and/or any Replacement Supplier against any Indemnified Loss which arises from any deficiency or inaccuracy in the Final List provided under Condition 51.13.
- 51.15. In the event of there being any employee, worker or any other party engaged in or in connection with the provision of the Services prior to the Termination Date (save for any employee who is a Transferring Employee and who was listed on the Final List) whose employment or claims arising out of their employment or its termination transfers to the Client or any Replacement Supplier on the Termination Date or who successfully claims that their employment or such claims so transfer:
- 51.15.1. the Client or the Replacement Supplier shall, within twenty eight (28) Working Days of becoming aware of that fact, give notice to the Supplier;
- 51.15.2. the Supplier may offer employment to such person within twenty eight (28) Working Days of the notification by the Client or the Replacement Supplier;
- 51.15.3. if such offer of employment is accepted, the Client or the Replacement Supplier shall immediately release the person from his/her employment or alleged employment;
- 51.15.4. if after the twenty eight (28) Working Day period in Condition 51.15.2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Client or the Replacement Supplier may (but shall not be obliged) within fifty six (56) Working Days give notice to terminate the employment of such person; and
- 51.15.5. subject to the Client and/or the Replacement Supplier acting in the way set out in Conditions 51.15.1 to 51.15.4 (inclusive) above, the Supplier shall indemnify the Client and/or the Replacement Supplier against:
- (i) all Employment Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Client or the Replacement Supplier; and
  - (ii) any and all employment costs associated with the employment of such person by the Client or the Replacement Supplier up to the date of termination of such person's employment or the date on which they commence employment with the Supplier under Condition 51.15.3.
- 51.16. The indemnity in Condition 51.15.5 includes the employment costs (including but not limited to remuneration, employer's national insurance costs, pension costs and overheads) (for a maximum period of six (6) calendar months from the Service Transfer Date) of the Client or the Replacement Supplier continuing to employ the person who transferred (or is alleged to have transferred) to the Client or the Replacement Supplier as appropriate, where the Client or the Replacement Supplier decide not to terminate the employment of such person pursuant to Condition 51.15.4.

- 51.17. The Client and the Supplier (and the Sub-Contractor) shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer pursuant to the TUPE will be fulfilled.
- 51.18. The Client and the Supplier agree that this Contracts (Rights of Third Parties) Act 1999 shall apply to this Condition 51 to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Client to the Supplier in its own right pursuant to section 1(1) of this Contracts (Rights of Third Parties) Act 1999.
- 51.19. Notwithstanding Condition 48.18 it is expressly agreed that the Client and the Supplier may by agreement rescind or vary this Condition 51 without the consent of any other person who has the right to enforce the terms of this Condition 51 notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

## 52. **ESTYN'S FUNCTIONS**

- 52.1. The Parties acknowledge that Estyn has a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. The Parties agree that nothing contained or implied in, or arising under or in connection with, this Contract shall in any way prejudice, fetter or affect the functions of Estyn or any of them nor oblige Estyn or any of them to exercise or refrain from exercising any of its functions in any particular way.

## 53. **NOTICES**

- 53.1. Except as expressly provided otherwise in this Contract, no communication from one Party to the other shall have any validity under this Contract unless made in writing.
- 53.2. The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Condition 53.1.
- 53.3. Any notice given to a Party under or in connection with this Contract must be in writing and must be:
- 53.3.1. delivered by hand or pre-paid first class post or other next Working Day delivery service; or
  - 53.3.2. sent by email and confirmed by first class post or other next Working Day delivery service
- 53.4. Unless otherwise agreed in writing between the Parties, for the purposes of Condition 53.3 the addresses and email addresses for the Parties shall:
- 53.4.1. for the Client be the address set out in the Award Letter and the email address of the Client Contract Manager.
  - 53.4.2. for the Supplier be the address set out in the Tender and the email address of the Supplier Contract Manager.
- 53.5. Any notice shall be deemed to have been received:

- 53.5.1. if delivered by hand, on signature of a delivery receipt at the proper address;
  - 53.5.2. if sent by pre-paid first class post or other next Working Day delivery service, at 9.00am on the second Working Day after posting;
  - 53.5.3. if sent by email, shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next Working Day, provided that no error report is generated and confirmation by first class post or other next Working Day delivery service is sent the same day.
- 53.6. The Parties agree that this Condition 53 does not apply to the service of any proceedings or other documents in any legal action.

**54. JOINT AND SEVERAL LIABILITY**

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

**55. SEVERABILITY**

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

**56. WAIVER**

- 56.1. The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise any right or remedy to which it is entitled under this Contract or by law, shall not constitute a waiver of that or any other right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 56.2. Waiver of any Default shall not constitute a waiver of any subsequent Default.
- 56.3. No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Condition 53.

**57. REMEDIES CUMULATIVE**

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

**58. AMENDMENTS TO THIS CONTRACT**

- 58.1. This Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Client and a duly authorised representative of the Supplier.

**59. THIRD PARTY RIGHTS**

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

**60. NO AGENCY OR PARTNERSHIP**

- 60.1. The Supplier is not and shall not in any circumstances hold itself out as being the servant or agent of the Client. The Supplier shall not hold itself out as being authorised to enter into any contract on behalf of the Client or in any way bind the Client to the performance, variation, release or discharge of any obligation to a third party. The Supplier's Personnel shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of the Client.
- 60.2. Nothing in this Contract shall be construed as constituting a partnership between the Parties.

**61. ENTIRE AGREEMENT**

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

**62. COSTS**

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

**63. LAW AND JURISDICTION**

- 63.1. This Contract is a contract made in Wales and shall be governed and construed in accordance with the laws of England and Wales, as it applies in Wales. Subject to Condition 47 the Parties

irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales sitting in the locality of the Client.