

**MID AND WEST WALES FIRE AND RESCUE AUTHORITY
GENERAL TERMS AND CONDITIONS FOR
THE PURCHASE OF SERVICES**

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MID AND WEST WALES FIRE AND RESCUE AUTHORITY
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1 GENERAL

1.1 In these general conditions

- (i) “Authority” means Mid and West Wales Fire Authority.
- (ii) “Contractor” means the person who by the Contract undertakes to supply the Service to the Authority. Where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or the partners.
- (iii) “The Contract” means the Contract concluded between the Authority and the Contractor, consisting of these clauses and any attached Appendices or Schedules, and including all specifications and other documents which are incorporated or referred to herein and in the index of the Tender or Contract document. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing.

1.2 The Authority shall only be bound by an order placed by the Authority on the Authority’s official Purchase Order form duly authorised by a member of the Authority and subject to these terms and conditions. Any terms and conditions of the Contractor are expressly excluded from this order and any Service supplied to the Authority shall be deemed to have been supplied in accordance with and subject to these terms and conditions.

1.3 No variation, cancellation or waiver of these conditions shall be valid unless made in writing and signed by an authorised member of the Authority.

2 SUPPLIER PERFORMANCE

2.1 The Contractor shall perform the Services with all reasonable skill, care and diligence in accordance with all relevant legislative and statutory requirements.

2.2 The Contractor shall properly manage and monitor performance of the Services and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

3 GOODS SUPPLIED DURING PROVISION OF SERVICE

3.1 Except in so far as may otherwise be indicated by such descriptions, specifications, patterns or Contractor’s samples, any Goods supplied shall be strictly in compliance with the latest relevant International, European or British Statutory Requirements (governing sale and/or delivery) and Standards, where such exist.

- 3.2 All Goods which customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by a Government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels or other devices intact.
- 3.3 All Goods shall be securely packed in trade packages of a type normally used by the Contractor for commercial deliveries of the same or similar Goods either in retail or in bulk quantities within the United Kingdom.
- 3.4 The Authority shall not be responsible for having received any goods, articles, materials or services unless an Official Order and a Delivery Note be produced by the Contractor(s) signed on behalf of the Authority by their duly Authorised Manager.
- 3.5 The Authority disclaims all responsibility for the security of any goods delivered and left on its premises by the Contractor(s) if they should fail to obtain a receipt for their acceptance from a person authorised to receive them. Under no circumstances shall goods be left at any premises unattended unless written or electronic agreement has been provided in advance.
- 3.6 In delivering goods and/or services and at all times when on Authority premises or premises of which any part is used by the Authority in connection with this Contract the Contractor(s) shall take all reasonable care to avoid injury to persons thereon and damage to the property of the Authority or property wherein the Authority has any interest and shall indemnify the Authority against all claims, demands expenses, proceedings, actions, damages and costs occasioned by or arising out of any breach of this Condition.
- 3.7 The property and risk in the Goods shall pass to the Authority when the goods have been delivered to the Authority and unloaded.

4 STAFF

- 4.1 The Contractor must employ sufficient staff to ensure that the Services are provided at all times and in all respects to the Service Specification. The Contractor must ensure that a sufficient reserve of staff is available to provide the Services to the Service Specification during holidays or absences.
- 4.2 All Contractors' staff shall report to the Authority's authorised manager on arrival and departure from the premises. Visits to the location of the equipment are not permitted without the consent of the Authority's authorised manager.
- 4.3 The Contractor shall cause as little interference as possible with other activities on the premises. Any interference caused will be agreed with the Contract Manager in advance.

- 4.4 The Contractor shall instruct its staff about fire risks and require them not to smoke on the Authority's premises except where it is expressly permitted to do so.
- 4.5 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposals to change Key Personnel.
- 4.6 The Contractor must employ for the purposes of the Contract only such persons as are careful, skilled and experienced in the duties required of them, and must ensure that every person is properly and sufficiently trained and instructed and carries out the Services with regard to
- (a) the task that person has to perform;
 - (b) all relevant provisions to the Contract;
 - (c) all relevant rules, policies, procedures and standards of the Authority;
 - (d) fire risks and fire precautions;
 - (e) the need for those working on behalf of the Authority to observe the highest standard of hygiene, courtesy and consideration;
 - (f) the requirements of the Health and Safety at Work etc. Act 1974 and all other relevant legislation and codes of practice.
 - (g) all contractors must observe and follow the Health & Safety guidance provided in the Authority's Contractor and Visitor leaflet (copy enclosed).
- 4.7 The Contractor must provide its staff with a form of identity acceptable to the Authority, sign the visitor's book and ensure that they display that identity on their clothing at all times when they are on the Authority's premises.
- 4.8 The Contractor must remove any of its staff from the Authority's premises if on grounds of efficiency or public interest the Authority requests it to do so.

5 CONTRACT

- 5.1 During the period for which any Contract is accepted the Contractor(s) shall supply and deliver to the Authority and the Authority shall accept such goods, services, articles or materials of the description and at the prices mentioned in the tender annexed hereto in such quantities and at such prices as may be ordered by the Authority.
- 5.2 In the event that a different organisation is required to take over the Services at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer, under arrangements to be notified to him by the Authority. The transfer shall be arranged between the Authority and the Contractor so as to reduce to a minimum any interruption in the Authority.

6 DEFAULT BY CONTRACTOR

- 6.1 Without prejudice to any other right or remedy if the Contractor does not carry out the Services in accordance with the Service Specification or at the time specified in the Contract the Authority may:
- (a) require the Contractor to remedy the default within such time as the Authority may specify by providing again (as the case may be) without further charge to the Authority those Services or such part of the Services to the Specification;
 - (b) without terminating the whole of the Contract terminate the Contract in respect of the Services only and thereafter provide or procure the provision of such part of the Services itself;
 - (c) itself provide or procure the provision of the Services until the Authority shall be satisfied that the Contractor is again able to carry out the Services in accordance with these Conditions;
 - (d) terminate the contract in accordance with clause 3;
 - (e) deduct from any amount then due or to become due to the Contractor such amount as is reasonable having regard to the value of the Services which have not been properly performed;
 - (f) if the cost to the Authority of executing or procuring such Services or part of them exceeds the amount which would have been payable to the Contractor for executing or procuring such Services, the excess shall be paid by the Contractor to the Authority in addition to any other sums payable by the Contractor to the Authority in respect of the breach of the Contract.

7 SERVICES

- 7.1 The Contractor shall provide the Services during the Term in accordance with the Authority's requirements as set out in the Specification and the terms of the Contract. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority give reasonable notice to the Contractor, at any other premises where any part of the Service is being performed.
- 7.2 If the Authority informs the Contractor that the Authority considers that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Services, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

8 MANNER OF CARRYING OUT THE SERVICES

- 8.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

- 8.2 The Contractor shall make no delivery of Equipment nor commence any work on the Authority's premises without obtaining the Authority's prior approval.
- 8.3 All Equipment brought onto the Authority's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Contractor.
- 8.4 The Contractor shall maintain all items of Equipment within the Authority's Premises in a safe, serviceable and clean condition.
- 8.5 All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.
- 8.6 The Authority shall have the power at any time during the performance of the Services to order in writing that the Contractor:
- (a) remove from the Authority's Premises any Equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
 - (b) if the Authority has ordered the Contractor to remove any item of Equipment in accordance with clause 8.6(a) above, to replace such item with a substitute item of Equipment.
- 8.7 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the Services in order to leave the Authority's premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Authority's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.
- 8.8 Access to the Authority's premises shall not be exclusive to the Contractor, but shall be limited to such Staff and the Contractor's suppliers as are necessary to perform the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require.

9 STANDARD OF WORK

- 9.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards Authorisation body.

To the extent the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to execution, and shall execute the Contract with reasonable care and skills and in accordance with good industry practice.

- 9.2 The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

10 INSPECTION OF PREMISES

- 10.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract.
- 10.2 The Authority shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 10.1.

11 LICENCE TO OCCUPY THE AUTHORITY'S PREMISES

- 11.1 Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 11.2 The Contractor shall not use the Authority's premises for any purpose or activity other than the provision of Services.
- 11.3 Should the Contractor require modifications to the Authority's premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 11.4 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 11.5 The Parties agree that there is no intervention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted

pursuant to the Contract, the Authority retains the right at any time to use in any manner the Authority sees fit any premises owned or occupied by it.

12 AUTHORITY PROPERTY

- 12.1 Where the Authority for the purpose of the Contract issues Authority Property free of charge to the Contractor such property shall be and remain the property of the Authority. The Contractor shall not in any circumstances have a lien on the Authority's property and the Contractor shall take all reasonable steps to ensure that the title of the Authority to such Authority property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Contract.
- 12.2 Any Authority property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- 12.3 The Contractor shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Contract and for no other purpose without prior approval.
- 12.4 The Contractor shall notify the Contract Manager of any surplus Authority Property remaining after the expiry, termination and/or partial termination (as appropriate) the Contract and shall dispose of it as the Authority may direct. Waste of such Authority Property arising from bad workmanship or negligence of the Contractor or any of its employees, servants, agents, suppliers or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights of the Authority, the Contractor shall deliver up Authority Property, whether processed or not, to the Authority on demand.
- 12.5 The Contractor shall ensure the security of all Authority Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Contract, in accordance with the Authority's reasonable security requirements as required from time to time.
- 12.6 The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority. The Contractor's liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Authority. The Contractor shall inform the Contract Manager within 2 Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Authority Property made available for the purposes of the Contract.

13 SUB-CONTRACTING FOR THE DELIVERY OF THE SERVICES

- 13.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

14 OFFERS OF EMPLOYMENT

- 14.1 For the duration of the Contract and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the procurement and/or the contract management of the Services without the Authority's prior Approval.

15 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 15.1 Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contract, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of Part 27-31 of the Contract.
- 15.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, or the Contractor's performance of its obligations under the Contract has failed to meet the requirement set out in the Specifications Schedule, then the Authority may, without prejudice to its rights under Part 27-31 of the Contract, do any of the following:
- (a) make such a deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately:
 - (b) without terminating the Contract, itself provide or procure the provision of part of the Service until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services in accordance with the Contract:

- (c) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
 - (d) terminate, in accordance with Part 27-31, the whole of the Contract.
- 15.3 The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services.
- 15.4 The Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.
- 15.5 In the event that:
 - (a) the Contractor fails to comply with clause B15.4 above and the failure is materially adverse to the commercial interests of the Authority or prevent the Authority from discharging a statutory duty; or
 - (b) the Contractor persistently fails to comply with clause B15.4 above, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 15.6 The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

16 PROFESSIONAL INDEMNITY

- 16.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause 16.1, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the performance of Services has a limit of indemnity as agreed in the Contract for any occurrences out of each and every event. Such insurance shall be maintained for a minimum of 6 years following the expiration or earlier termination of the Contract.

17 MISTAKES IN INFORMATION

- 17.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Service, and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

18 PRICE AND PAYMENT

- 18.1 The Service will be supplied at prices notified to and agreed by the Authority.
- 18.2 The Contract Price shall be “net”, that is, after deduction of all agreed discounts and vat.
- 18.3 Payment for the Service shall be made within thirty days from the date of receipt by the Authority of a correctly submitted invoice from the Contractor. The invoice must quote the Purchase Order number relating to the supply of Services. Where possible, the invoice should be in A4 format. The submission of invoices via e-mail is acceptable. The Authority will also accept the electronic submission of “invoice data” where the format has been agreed and deemed as suitable in advance. The Authority shall be entitled to set off against the invoice price any sum owing by the Contractor to the Authority in respect of any legal liability whether in contract or in tort.
- 18.4 Payment for the Service by the Authority shall not be deemed to waive any rights which the Authority might have against the Contractor to reject the Service or to claim damages in respect of the Service

19 CANCELLATION

- 19.1 The Authority reserves the right (without prejudice to any other rights which the Authority might have and without incurring any liability to the Contractor for breach of contract) at any time to cancel an order or any part of any order;
- (a) if the Contractor goes into liquidation either compulsory or voluntarily (save for the purposes of reconstruction or amalgamation) or shall become bankrupt or if a receiver or administrative receiver is appointed in respect of the whole or any part of its assets or if the Contractor makes an assignment for the benefit of or composition of its creditors generally or threatens to do any of these things or any judgement is made against it or any similar occurrence affects the Contractor; or
 - (b) if the Contractor shall refuse the Authority the right to inspect any Service or quality assurance system or access to the Contractor’s premises;

- (c) if the Contractor fails to execute the work or deliver the Service or materials or execute or deliver any portion thereof or carry out the services within the time specified in the order, the Authority, without prejudice to any other remedy available for breach of contract, shall be free to determine the contract either wholly, or in part or to the extent of such default and to provide for the execution of the work by other means or to purchase other Service or materials or to make other provisions for the supply of the services as the case may be to make good such defect or in the event of the order being wholly determined the unexecuted services, or materials remaining to be delivered or the provision of the additional services required under the order. The amount by which the cost of providing for the execution of the work by other means or purchasing materials or providing substitute services exceeds the amount which would have been payable to the Contractor had he/she executed the order or a portion thereof within the same time or times specified therein shall be payable by the Contractor.

19.2 The Authority shall cancel this order and recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor or any person on his/her behalf shall have offered or given or agreed to give any person any gift or consideration of any thing as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or the execution of the order or any favour or disfavour to any person in relation to the order or any other order with the Authority or if like acts shall have been done by any person employed by him/her or acting on his/her behalf (with or without the knowledge of the Contractor) or if in relation to any order with the Contractor the Contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Act 1889 to 1916 or shall give any fee or reward the receipt of which is an offence under Sections 117(2) and (3) of the Local Government Act 1972 or any amendment or reactment thereof.

20 REJECTION

20.1 The Authority reserves the right (without prejudice to any other rights which the Authority may have and without incurring any liability to the Contractor for breach of contract) at any time to reject any Service if the Contractor:

- (a) tenders late delivery of the Services
- (b) tenders delivery of Services which are defective; or
- (c) attempts to render a different performance of the Contract from that specified in the order placed by the Authority.

21 INDEMNITY

- 20.1 The Contractor shall indemnify the Authority from and against any injury loss, damage or liability whether criminal or civil suffered and legal fees and costs incurred by the Services resulting directly or indirectly from:
- (a) a breach of these terms and conditions by the Contractor;
 - (b) any breach of any contractual obligation whether express or implied by common law, statute, custom or otherwise by the Contractor;
 - (c) any breach of duty in tort by the Contractor; and
 - (d) any act, neglect or default of the Contractor, its servants or agents or sub-contractors and breaches resulting in any claim by third parties in respect of any matter including without limitation any infringements of any copyright and claims under the Consumer Protection Act 1987.

22 NON-ASSIGNMENT

- 22.1 The Contractor shall not without prior written consent of the Authority assign or sub-contract or transfer the order or any part of it to any other person, firm or company.

23 WAIVER

- 23.1 The failure of either party to seek redress for breaches or to insist on strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy to which it is entitled under the Contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under the Contract.
- 23.2 No waiver of any provisions of the Contract shall be effective unless it is agreed by both parties in writing.
- 23.3 No waiver of any default shall constitute a waiver of any subsequent default.

24 FRAUD

- 24.1 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

25 FORCE MAJEURE

- 25.1 The Authority reserves the right to cancel any order or part order or to vary any order at any time if the Authority's business is in the Authority's opinion affected adversely as a result of its inability to secure labour, materials or supplies or as a result of any Act of God, war, strike, lock-out or other labour disputes or flood, drought, legislation or other cause beyond the Authority's control.

26 TRADING ADDRESS AND NOTICES

- 26.1 Unless otherwise requested by the Authority, the Contractor shall direct all Correspondence and Service to the Authority's Headquarters at Carmarthen.

27 CONFIDENTIALITY

- 27.1 The Contractor and its staff must not disclose to any person other than a person authorised by the Authority any information acquired by them in connection with the Contract.
- 27.2 Without prejudice to the generality of Condition 27.1, the Contractor and its staff must not disclose to any person other than a person authorised by the Authority any information acquired by them in connection with the provision of the Services which concerns the Authority, its staff or procedures, or the medical condition of any employee.
- 27.3 In these Conditions, "Commercially Sensitive Information" means all matters relating to the Contract together with all information designated as such by either party in writing and all other information which relates to the proceedings, business, affairs, products, trade secrets, developments, know-how, personnel, customers and suppliers of either party and information which may reasonably be regarded as the confidential information of the disclosing party.
- 27.4 Subject to Clause 27.5 and 27.6 below, each Party shall keep confidential all Commercially Sensitive Information disclosed to it. Each Party shall procure that its employees shall not make any disclosure to any person of any Commercially Sensitive Information.
- 27.5 The Contractor acknowledges the commitment of the Authority to open government and public access to information. Accordingly, the Parties agree that:
- (a) the provisions of this Clause 27 are subject to the respective obligations and commitments of the Authority under the Freedom of Information Act 2000 (for the purposes of this clause the FOIA) (as may be amended from time to time);

- (b) subject to Clause 27.5(c) the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
- (c) where the Authority is managing a request as referred to in Clause 27.5(b) then it will consult with the Contractor in relation to any request for disclosure of recorded information to which this Clause applies and in accordance with the guidance referred to in the Code of Practice on the Discharge of Public Authorities` Obligations issued under section 45 of the FOIA. The Contractor shall co-operate with the Authority making the request and respond within 7 Working Days to any request by it for assistance in determining how to respond to a request for disclosure; and
- (d) the Parties shall each nominate a representative for considering and agreeing matters relating to this Clause 27.5(c).

27.6 Clause 27.3 shall not apply to:

- (a) any disclosure of information to each of the Parties' professional advisors;
- (b) any disclosure of information which is required to ensure the Authority's compliance with the FOIA as set out in Clause 27.5 above;
- (c) any disclosure of information that is reasonably required by, or to, persons engaged in the performance of its obligations under the Contract including the Contractors and subcontractors provided that such subcontractors have entered into undertakings as to confidentiality and as to compliance with the FOIA substantially in the form of this Clause;
- (d) any information which the disclosing party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 27;
- (e) any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory Authority having the force of law;
- (f) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and which is not subject to an obligation of confidentiality;

- (g) any provision of information to the Contractor's bankers or their professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (h) when appropriate, any registration or recording of the consents and property registration required;
- (i) Subject to Clause 27.4 any disclosure by the Authority of any document related to the Contract to which it is a party and which the Contractor (acting reasonably) has agreed in writing with the Party making the request contains no Commercially Sensitive Information; and
- (j) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- (k) any disclosure of information which is or was lawfully received by the receiving party from a third party and which is or was not the subject of any obligations of confidentiality; or
- (l) any information shown to the reasonable satisfaction of the other party to have been independently developed or created by the receiving party or its agents or sub-contractors without access to the Commercially Sensitive Information supplied.

27.7 Where disclosure is permitted under Clause 27.6.(b), 27.6.(c), 27.6.(e), 27.6.(g) the disclosing party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in these Conditions.

27.8 The provisions and obligations set out in this Clause 27 shall survive and remain in force upon and following the termination of the Contract.

27.9 Where the Contractor, in carrying out its obligations under the Contract, is provided with Commercially Sensitive Information from or by a third party, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the

Contractor has sought the prior written consent of that third party, and has obtained the prior written consent of the Authority.

- 27.10 In entering into the Contract to provide Services for parties which are all defined as public bodies under the FOIA, the Contractor notes and acknowledges the Freedom of Information Act 2000 and both the respective Codes of Practice on the Discharge of Public Authorities` Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively). The Contractor will act in accordance with these provisions to the extent they apply to the Contract and will provide all reasonable assistance to the SERVICES to facilitate its compliance therewith.
- 27.11 The Parties acknowledge that the Wales Audit Office has the right to publish details of the Contract in its reports.

28. DATA PROTECTION

- 28.1 The Contractor must protect personal data in accordance with the provisions and principles of the Data Protection Act 1998 and must ensure the reliability of its staff that have access to the data.
- 28.2 The Contractor must indemnify the Authority against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person by the disclosure of any personal data by the Contractor, its staff or agents.
- 28.3 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

29 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 29.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- (a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;
 - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to the Authority,

and the Contractor`s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

- 29.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Contract, which is or may be subject to any third Party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third Party providing services to the Authority, and shall be granted at no cost to the Authority.
- 29.3 It is a condition of the Contract that the materials supplied or licensed by the Contractor will not infringe any Intellectual Property Rights of any third Party and the Contractor shall during and after the Initial Term on written demand indemnify and shall keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim refers to:
- (a) designs furnished by the Authority;
 - (b) the use of data supplied by the Authority, which is not required to be verified by the Contractor under any provision of the Contract.
- 29.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 29.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Right in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Authority; and
 - (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 29.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and shall be repaid all costs and expenses

(including, but not limited to, legal costs and disbursements) incurred in doing so.

29.7 The Authority 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 Authority or the Contractor in connection with the performance of the Contract.

29.8 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms, which are acceptable to the Authority.

29.9 At the termination of the Contract the Contractor shall immediately return to the Authority all materials, work or records held, including any back-up media.

29.10 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

30 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

30.1 Without prejudice to the Authority's obligations under the Freedom of Information Act, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party. The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination

31 AUDIT AND THE WALES AUDIT OFFICE

31.1 The Contractor shall keep and maintain until twelve years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Contract.

32 HEALTH & SAFETY

- 32.1 The Contractor represents and warrants to the Authority that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the goods/service to ensure that the goods/service are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Authority adequate information about the use for which the goods/service have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods/service will be safe and without risk to health. The Contractor shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this condition.
- 32.2 The Contractor warrants that the Contract will be undertaken by appropriately qualified and trained persons with due care and diligence and to such high standards as it is reasonable for the Authority to expect in all circumstances.
- 32.3 The Contractor shall ensure that its safety policy has been drawn to the attention of all its members of staff, and that all of its management and supervisory staff have a detailed knowledge of this policy and that they will observe the policy and require the Contractor's staff to comply fully with its provisions. The Contractor shall also ensure that its staff complies with the Authority's Health & Safety policy (a copy of which is provided) and other relevant policies and procedures at all times, whilst on the Authority's premises.
- 32.3 Where COSHH Regulations or other safety legislation is applicable to the Goods/Service supplied, the Contractor must ensure that the appropriate safety data sheets are made available to the Authority.

33 EQUAL OPPORTUNITIES

- 33.1 The Contractor shall comply with the Authority's statutory obligations under all applicable legislation and, accordingly, will not discriminate directly or indirectly against any person because of his or her sex, marital status, race, colour, nationality ethnic or national origin, disability, Religion or Belief, Age or spent offences in decisions to recruit, train, promote, discipline or dismiss employees.
- 33.2 The Contractor shall observe as far as is practicable the Codes of Practice of the Equal Opportunities Commission and the Commission for Racial Equality, the Code of Good Practice on the Employment of Disabled People and the Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability.
- 33.4 In the event of any finding of unlawful discrimination being made against the Contractor, during the Contract Period by any court or industrial tribunal, or of an adverse finding in any formal investigation by the Equal Opportunities Commission or the Commission for Racial Equality over the same period, the

Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of such unlawful discriminations.

- (a) The Contractor shall, upon request, provide the Authority with details of any steps taken under the above condition.

33.4 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's compliance with the above conditions including, if requested, examples of any instructions, recruitment advertisements or other literature and details of monitoring applicants and employees.

34 TRAINING

34.1 The Contractor shall provide education and training for the Authority's personnel as set out in the specification.

As a minimum, the combination of training provided hereunder and the Documentation and Materials provided in accordance with Clause 34.2 below shall be sufficient to allow proper use, operation, maintenance and management of the System and Deliverables by appropriately qualified personnel who receive such training and who have access to such Documentation and Materials. For the avoidance of doubt, "appropriately qualified" shall mean a generally accepted level of ability, education and experience required for such tasks as agreed by the Contractor and the Authority in advance or, where applicable, to agreed National Standards, and shall not refer to any particular personnel of the Authority. Where applicable, "appropriately qualified" personnel will attain a formal Certificate of Competence.

34.2 The Contractor shall supply Documentation and Materials to the Authority as specified in the specification. As a minimum, the combination of Documentation and Materials provided hereunder and the training provided in accordance with Clause 34.1 above shall be sufficient.

35 INDUCEMENTS

35.1 The Contractor shall not offer to the Authority or its representatives as a variation of the Conditions of the Contract or as a Contract collateral to it any advantage other than a cash discount against the Contract Price.

35.2 The Authority shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if:

- (a) the Contractor shall have offered, or given, or agreed to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other Contract with the Authority; or

- (b) the acts referred to in 35.2(a) above shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); or in relation to any Contract with the Authority, the Contractor or person employed by it or acting on its behalf shall:
- (c) have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
- (d) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

35.3 Any clause limiting the Contractor's liability does not apply to this clause.

36 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

36.1 No person who is not a Party to the Contract (including without limitation any employee, manager, agent, representative, or sub-contractor of either the Authority or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause 36.1. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

37 MONITORING OF PERFORMANCE

37.1 The Contractor shall comply with the monitoring arrangements set out in the Specification or other relevant documentation including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

37.2 Unless specifically identified in contract documentation monitoring meetings will be held every six months initially.

38 SEVERABILITY

38.1 If any provision of the Contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of its other provisions.

39 TRANSFER, SUB-CONTRACTING AND CHANGE OF CONTROL

39.1 The Contractor(s) shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever, any portion of his contract without the written permission of the Authority. Sub-letting of any part(s) of the work except to the extent permitted in writing by the Chief Manager concerned, shall be prohibited.

39.2 The Contractor shall exercise due care and propriety when dealing with third parties in connection with the Contract and ensure that no commitments are

entered into (unless expressly required under the Contract), without the Authority's prior written consent.

- 39.3 The Contractor shall ensure that any sub-contractor complies with the terms and conditions of the Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under the Contract.
- 39.4 The Contractor shall forthwith inform the Authority in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Contractor (being a company as defined in the Companies Act 1985) shall inform the Authority of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Authority for information arising from this Condition.

40 POSSIBLE EXTENSION OF TERMS

- 40.1 Subject to satisfactory performance by the Contractor during the Initial Term, the Authority shall be entitled by written notice to the Contractor given not less than one month prior to the last day of the Term to extend the Contract for one further period. The provisions in this Contract will apply throughout any such extended period.

41 NOVATION

- 41.1 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority, private sector body or any other body established under statute ("Transferee") provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract.
- 41.2 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor, which relates to the performance of the Contract by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the Contracts for Goods performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

42 SUSTAINABILITY

- 42.1 The Authority is committed to the protection of both the local and wider environment. The Authority is conscious that its activities affect the environment in which it exists and actively wishes to minimise any environmental, social and economic impacts associated with the products and services it purchases.

The Authority requests that Contractors from whom it buys goods and/or services not only comply with all existing legislation pertaining to the

protection of the environment, but that they themselves be pro-active in adopting and implementing environmentally sound business practices in the course of fulfilling this Contract. Where Contractors have any doubts relating to their capacity to fulfill the Authority's request they should bring these to the attention of the Authority.

- (a) **Social** – Contractors employed by the Authority are expected to make every effort to support fair and ethical working conditions and encourage equality and diversity within the workforce.
- (b) **Economic** – The Authority is signed up to the Value Wales “Opening Doors Charter for SME Friendly Procurement” and is committed to generating sustainable communities by using SME's and third sector contractors where appropriate. Contractors employed by the Authority are expected to commit to similar principles.
- (c) **Environmental** – The Authority is committed to reducing environmental impacts associated with the procurement of goods and services by only purchasing goods and services when necessary, minimising the amount of materials used and recycling whenever possible. Contractors employed by the Authority are expected to show the same commitment to the environment by ensuring that, where possible, minimum packaging is used, materials used are recyclable and vehicles used are energy efficient and less polluting. The Authority operates a sustainable disposal policy for all materials used and Contractors are expected to adopt similar principles, ensuring environmentally friendly disposal at all times. Where equipment regulated by the WEEE regulations is purchased, the Contractor shall arrange for its disposal at the end of its life.

43 PROPER LAW JURISDICTION

43.1 These terms and conditions shall be governed and construed in accordance with the laws of England and Wales exclusively.

APPENDICES

Health & Safety Information for Visitors and Contractors Leaflet

Contract Document (where applicable)