

NATIONAL LIBRARY OF WALES

STANDARD CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND/OR SERVICES

1. DEFINITIONS AND INTERPRETATIONS

(i) In these Conditions:

“Authorised Officer” means our employee specifically authorised by us to sign our Order, confirmation of which may be obtained from our Director of Finance;

“Conditions” means the standard terms & conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions set out on the Order;

“Confidential Information” means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either party in writing of that ought to be considered as confidential (in whatever form or medium and whether disclosed orally or in writing, together with all reproductions in whatsoever form or medium and any part or parts of it) including commercially sensitive information and confidential information which relates to the business, affairs, properties, assets, trading practices, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data (as such terms are defined in the Data Protection Legislation);

“Contract” means the contract for the purchase of the Goods and/or the supply of the Services formed in accordance with condition 2. The documents which form the Contract comprise the Conditions and any other documents referred to in the Order.

“Data Protection Legislation” refers to:

- (i) the Regulation (unless and until it is no longer directly applicable in the UK);
- (ii) any UK implementing laws, regulations and secondary legislation under the Regulation (as amended or updated from time to time);
- (iii) any successor legislation to the Regulation

“Regulation” refers to the EU General Data Protection Regulation (2016/679)

“Deliverables” means any products, materials and/or articles created or developed by you for us as part of or in relation to the Services;

“EIRs” means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“FOIA” means the Freedom of information Act 2000 and any subordinate legislation made under the Act from time to time;

“Goods” means the products, materials and/or articles described in the Order;

“Health & Safety Policy” means our health and safety policy as provided to you on or before entering into the Contract and as subsequently provided to you from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensure compliance with applicable Law regarding health and safety;

“ITT” means an invitation to tender or request for quote or similar document issued by us in connection with our proposed procurement of the Goods and/or Services;

“Information” has the meaning given under section 84 of the FOIA;

“Information Commissioner” and **“Information Tribunal”** have the meanings given under Data Protection Legislation.

“IPR” means collectively any and all intellectual property rights arising or subsisting in any part of the world including: (a) inventions, patents, registered designs, domain names, trade marks (whether registered or unregistered) applications for any of the foregoing and the right to apply therefor in any country of the world; (b) copyrights, rights in the nature of copyrights, moral rights, design rights and database rights; (c) trade names and logos; (d) know-how and trade secrets; and (e) all or any similar equivalent rights.

“Key Personnel” means the personnel who are identified in the Order;

“Order” means either:

- (a) a written purchase order or request issued by us in respect of the Goods and/or Services; or
- (b) an award letter issued by us following a competitive tender process or request for quote in relation to the provision of the Goods and/or Services,

and in each case including the Specifications;

“Order Amendment” means an amendment to our Order issued by an Authorised Officer;

“Package” or **“Packaging”** means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers;

“Price” means the price set out in the Order or calculated in accordance with the provisions of the Order;

“Regulated Activity” in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

“Regulated Activity Provider” shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006;

“Request for Information” means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;

“Services” means the work and services described in the Order;

“Specifications” means any specifications, requirements, service levels and performance criteria issued by us to you (whether pursuant to an ITT or otherwise) or issued by you (whether pursuant to a Tender Response or otherwise) and subsequently agreed in writing by us including any drawings, timetables, timescales, plans, data or other information relating to the Goods or Services;

“Tender Response” means your bid or offer documents (if any) submitted in response to our ITT;

“We”, “Us” and **“Our”** means The National Library of Wales or any wholly owned or associated subsidiary thereof named on the Order;

“Working Day” means Monday to Friday, excluding any public holidays in England and Wales; and

“You” and **“Your”** means the person to whom the Order is addressed.

- (ii) If there is any conflict or inconsistency between: (a) these Conditions; (b) any term of the Order; (c) the ITT; or (d) the Tender Response, unless otherwise specified in the Order, the order of priority shall be as follows: (i) the Order, (ii) the Conditions; (iii) the ITT; and (iv) the Tender Response.
- (iii) Any reference to a “person” shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality);
- (iv) Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- (v) The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. CONTRACT FORMATION

- (i) Subject to Condition 2(ii) below, your commencement of performance of the Order and/or any implied or express acceptance of the Order by you or your use of the number of the Order in any order acknowledgement shall conclusively evidence your agreement to the Order and its provisions on and subject to these Conditions and a contract shall be formed accordingly.
- (ii) Where the Order has been issued by us following the completion of a competitive tendering process, your tender response is deemed to be an offer by you to supply the Goods and/or Services to us on these Conditions and a contract shall be formed upon us submitting the Order to you.
- (iii) Subject to any variation under condition 15, these Conditions are the only conditions upon which we are prepared to contract with you and they shall govern the Contract to the exclusion of all other terms and conditions.
- (iv) No terms or conditions endorsed upon, delivered with or contained in any quotation, acknowledgement, Tender Response, acceptance of order or other similar document provided by you shall form part of the Contract and you waive any right which you may otherwise have to rely on such terms or conditions.

3. SUPPLY OF GOODS

- (i) You shall ensure that the Goods shall:
 - (a) correspond with the Order, any descriptions therein and the Specifications therefor;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 (as amended)) and fit for any purpose held out by you, including in any Tender Response or made known to you by us, expressly (including in any ITT) or by implication, and in this respect we rely on your skill and judgement.

- (c) be free from defects in design, materials and workmanship and remain so for 12 months after delivery (or such other period as may be expressly set out in the Order or the Specifications); and
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, Packaging, storage, handling and delivery of the Goods.
- (ii) You shall at your own expense provide any programmes of manufacture and delivery that we may reasonably require notifying us without delay in writing if progress falls behind or may fall behind any of these programmes.
 - (iii) You shall not unreasonably refuse any request by us to inspect and test the Goods during manufacture, processing or storage at your premises prior to dispatch, and you shall provide us with all cooperation, assistance, information and facilities reasonably require by us for such inspection and testing.
 - (iv) If following such inspection or testing we consider that the Goods do not conform or are unlikely to comply with our undertakings at condition 3(i) above, we shall inform you within 10 days of inspection or testing and you shall immediately take such remedial action as is necessary to ensure compliance.
 - (v) Notwithstanding any such inspection or testing, you shall remain fully responsible for the Goods and any inspection or testing shall not reduce or otherwise affect your obligations or liabilities under the Contract, and we shall have the right to conduct further inspections and tests after you have carried out any remedial actions.

4. DELIVERY OF GOODS

- (i) You shall ensure that the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition
- (ii) you shall deliver the Goods:
 - (a) on the date specified in the Order or, if no such date is specified, within 14 days of the date of the Order;
 - (b) to our premises at Penglais Road, Aberystwyth SY23 3BU or such other location as is set out in the Order or as instructed by us before delivery (the "Delivery Location");
 - (c) during our normal hours of business or as instructed by us.
- (iii) Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- (iv) You shall not deliver the Goods in instalments without our prior written consent. Where it is agreed that the Goods are delivered by instalments, the Order will be treated as a single Order and not severable.
- (v) If you or your carrier delivers any Goods at the wrong time or to the wrong place, then we may deduct from the price any resulting costs incurred by us for temporary insurance, storage or transport. We shall not be responsible for any loss or damage to incorrectly delivered Goods.
- (vi) We shall be entitled to reject any Goods which are not in accordance with the Order and shall not be deemed to have accepted any Goods until we have had a reasonable time to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent.

5. SUPPLY OF SERVICES

- (i) You shall from the date set out in the Order and (where applicable) for the duration of the Order provide the Services to us.
- (ii) You shall meet any timescales, performance dates and milestones for the Services that are specified in the Order or Specifications.
- (iii) In providing the Services you will:
 - (a) co-operate with us in all matters relating to the Services, and comply with our reasonable and lawful instructions;
 - (b) perform the Services with the best care, skill and diligence and in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform the tasks assigned to them and in sufficient number to ensure that your obligations are fulfilled in accordance with the Contract;
 - (d) ensure that the Services and Deliverables will conform with the Specifications and that the Deliverables shall be fit for any purpose expressly or impliedly made known to you by us (including any in our ITT);

- (e) provide at your own cost all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality materials, standards and techniques, and ensure that the Deliverables and other materials supplied or used in the Services or transferred to us, are free from defects in workmanship, installation and design; and
- (g) not to do or omit to do anything which may cause us to lose any licence, authority, consent or permission upon which we rely for the purposes of conducting our business, and you acknowledge that we may rely or act on the Services.

6. KEY PERSONNEL

- (i) You shall use all reasonable endeavours to ensure that the Key Personnel remain your employees and are available to participate in the provision of the Goods and/or Services during the term of the Contract.
- (ii) You shall notify us in writing of any matter or circumstance which could affect the availability of the Key Personnel promptly upon becoming aware of the same.
- (iii) If any of the Key Personnel are unavailable at any time during the Contract, you shall propose a suitable replacement (with equivalent levels of skill and similar experience) to us in writing. No replacement for any Key Personnel shall be permitted to participate in the provision of the Goods and/or Services unless we have given you our prior written approval of such replacement (such approval not to be unreasonably withheld or delayed). If no replacement reasonably acceptable to us can be found, we shall be entitled by notice in writing to you to terminate the Contract with immediate effect.

7. PACKAGING

Unless otherwise stated in the Contract, Packaging shall be deemed to be collected and removed by you at your own expense. We shall not be obliged to return to you any Packaging. If any specific written agreement is made for Packaging to be returned by us after delivery, you must give us full disposal instructions before the time of delivery. Packaging must be clearly marked to show to whom it belongs. You must make suitable arrangements in advance of any return to cover the cost of all associated carriage and handling. We shall not be liable for any Packaging lost or damaged in transit.

8. GENERAL OBLIGATIONS

- (i) You shall ensure that at all times you maintain all the licences, permissions, authorisations, consents and permits that are needed to carry out your obligations under the Contract in respect of the Goods and/or Services, including but not limited to the manufacture, Packaging, packing and delivery of the Goods.
- (ii) You warrant that all information provided to us in connection with the Contract, including in any quotations or Specifications or Tender Response is complete, accurate and not misleading in any way.
- (iii) You shall observe all health and safety rules and regulations and any other security requirements that apply at any of our premises; and
- (iv) You shall hold all materials, equipment and tools, drawings, Specifications and data supplied by us to you (the "Customer Materials") in safe custody at your own risk, maintaining the Customer Materials in good condition until returned to us, and not disposing or using the Customer Materials other than in accordance with our written instructions or authorisation.

9. VOLUMES & VALUES OF BUSINESS

Any written or verbal estimates of potential volumes or values of business, which we have stated may be required under the Contract (for example in any ITT), but which are not part of an Order, are provided only for guidance, and are not binding and no guarantee is given regarding the overall extent to which the Contract will be used.

10. PRICE

- (i) You will sell us the Goods or provide the Services for the firm price stated in the Contract, unless no such price is stated in the Contract and we have agreed list prices in relation to the provision of the Goods and/or Services, in which case those list prices in force at the date of the Contract will apply.
- (ii) The price shall be inclusive of all charges for storing, Packaging, shipping, carriage, insurance and delivery of any Goods to the delivery address, installation and commissioning (as applicable) and any other duties, imposts or levies, other than value added tax.
- (iii) No increase in price may be made whether on account of increased material, labour or transport costs, fluctuation in exchange rates or otherwise without our prior written consent.
- (iv) We shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by you, whether or not shown in your own terms and conditions of sale.

11. PAYMENT

- (i) Except as stated otherwise on the Order, you shall be entitled to invoice us for the Price at any time after completion of delivery of the Goods and/or performance of the Services in compliance with the terms and conditions of the Contract and to our reasonable satisfaction.
- (ii) Subject to condition 12, we shall pay correctly rendered and undisputed invoices within 30 days of receipt. Your invoice must be addressed to the department indicated on the Order and must quote the full Order number. VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge. We shall not be held responsible for delays in payment caused by your failure to comply with our invoicing instructions.
- (iii) Subject to the provisions of conditions 11(i), 11(ii) and 27, if payment of any sum due to you under the Contract is not made by us on or before the due date, you shall be entitled to charge interest on the overdue amount from the date on which payment became due until the date on which you receive payment (whether before or after judgment has been obtained against us), at the rate of 2 % per annum above the Bank of England's base rate. Such interest shall accrue on a daily basis and be compounded quarterly.
- (iv) We shall be entitled to set off against the Price any outstanding sums owed to us by you.

12. DEFAULT IN PERFORMANCE

(i) **Delivery times for Goods and Deliverables**

If the Goods and/or Deliverables or any part of them are not delivered by the time or times specified in the Contract then we may by written notice cancel any undelivered balance of the Goods and/or Deliverables. We may also return for full credit and at your expense any Goods and/or Deliverables that in our opinion cannot be used owing to this cancellation.

(ii) **Services**

In the case of Services failing to be carried out to the standards or quality levels required by the Contract or within the programme of dates or times required by the Contract, we may at our sole discretion adopt one or more of the following remedies:

- (a) have the work performed by alternative means and any additional costs reasonably so incurred shall be charged to you;
- (b) deduct from any invoice presented by you such sum as we consider reasonable for the unsatisfactory Services concerned or to meet any additional costs arising from condition 12(ii)(a); and/or
- (c) terminate the Contract either for the specific Services which have not been carried out in accordance with the Contract or for all the Services. In either such case you will not be entitled to payment by way of compensation, other than due consideration for those parts of the Service which have been carried out satisfactorily but subject to condition 12(ii)(a).

In the event of termination you shall co-operate in the transfer of Services, particularly under TUPE provisions, to any other organisation in accordance with advice from us.

(iii) **Goods and Deliverables**

Unless otherwise specified in the Order, any Goods and/or Deliverables provided to us shall be covered by a minimum warranty period of 12 calendar months from delivery of such Goods and/or Deliverables. Your warranty is that such Goods and/or Deliverables shall comply with the requirements in condition 3(i). Without prejudice to any other remedy of ours, if any Goods and/or Deliverables are not supplied or do not comply with the requirements in condition 3(i) during the warranty period, we shall be entitled:

- (a) to require you to repair the Good and/or Deliverables or to supply replacement Goods and/or Deliverables that do so comply within 14 days; or
- (b) at our sole option, and whether or not we have previously required you to repair the Goods and/or Deliverables or to supply any replacement Goods and/or Deliverables, to treat the Contract as discharged by your breach and require the repayment of any part of the Price which has been paid to you.

Repairs or replacements pursuant to this condition 12 will themselves be covered by the above warranty but for a period of 12 months from acceptance by us.

13. TERMINATION

- (i) We shall be entitled to cancel the Order in respect of all or part only of the Goods and/or Services without liability to you by giving you notice at any time prior to delivery or performance unless, in the case of Goods, such Goods have been specifically manufactured to our requirements. In that event, our sole liability will be to pay for the price of the Goods in respect of which we have exercised our right of cancellation, less your net saving of cost arising from cancellation.
- (ii) We shall be entitled to terminate the Contract without liability by giving notice to you at any time if:
 - (a) you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or (being a company) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) you have any partner to whom any of the foregoing apply;
 - (b) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors, other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of you with one or more other companies or your solvent reconstruction;
 - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up (being a company) other than the sole purpose of a scheme for your solvent amalgamation with one or more other companies or your solvent reconstruction;
 - (d) you (being an individual) are the subject of a bankruptcy petition order;
 - (e) a creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
 - (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you (being a company);
 - (g) a floating charge holder over your assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
 - (i) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in condition 13(ii)(a) to condition 13(iv)(g) (inclusive); or
 - (j) you suspend or threaten to suspend, or cease to threaten to carry on, all or a substantial part of your business.
- (iii) We may terminate the Contract by giving you 30 Business Days written notice if:
 - (a) you repeatedly breach any of the terms of the Contract in such a manner as to reasonably justify the opinion that your conduct is inconsistent with you having the intention or ability to give effect to the terms of the Contract;
 - (b) the Contract has been subject to a substantial modification which would have required a new tender process in accordance with regulation 72(9) of the Public Contracts Regulations 2015 (the "PCR");
 - (c) you, at the time of the award of the Contract, have been in one of the situations referred to in regulation 57(1) of the PCR, including as a result of the application of regulations 57(2) of the PCR, and should therefore have been excluded from any tender process carried out in respect of the Contract; or
 - (d) the Contract should have not been awarded to you in view of a serious infringement of the obligations under the Treaty on European Union, the Treaty on the Functioning of the European Union or European Directive 2014/24 that has been declared by the Court of Justice of the European Union in a procedure under Articles 258 of the Treaty on the Functioning of the European Union.

14. TERMINATION FOR NON-OBSERVANCE OR BREACH

If you breach or fail to observe any provision of this Contract we may give you written notice of such breach or non-observance and you shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. For a material breach of Contract, a maximum period of 7 days will be given in which to rectify the breach. Should you fail to rectify the breach, non-observance or material breach within the stipulated time, we shall have the right to terminate the Contract with immediate effect and without penalty.

15. VARIATIONS

- (i) We shall have the right, before delivery, to send you an Order Amendment adding to, deleting or modifying the Goods.
- (ii) If the Order Amendment will cause a change to the Price or delivery date then you must suspend performance of the Contract and notify us without undue delay of the new Price and delivery date. You must allow us a reasonable period of time to consider any new Price and delivery date.
- (iii) The Order Amendment shall take effect only if our Authorised Officer accepts in writing the new Price and delivery date within the time you stipulate.
- (iv) If our Authorised Officer declines the revised Price or delivery date, he shall have the right to exercise the option either to confirm that the performance of the Contract shall immediately resume as though the said Order Amendment had not been issued, or that the original Order may be cancelled.

16. PROPERTY AND RISK IN GOODS

- (i) You shall bear all risks of loss or damage to the Goods until they have been correctly delivered and offloaded to the Delivery Location, and you shall insure them accordingly. Subject to conditions 4(vi) and 12, risk in the Goods shall pass to us upon delivery of the Goods in accordance with the Contract.
- (ii) Ownership of the Goods shall pass to us when they have been paid for in full.

17. LIABILITY AND INDEMNITY

- (i) You shall indemnify us and keep us indemnified against all liabilities, costs, expenses, damages, and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of or damage to reputation, and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us as a result of or in connection with any breach of the Contract or the negligent performance or failure or delay in performance of the Services or delivery of the Goods by you, your employees or your sub-contractors.
- (ii) Without prejudice to the provisions of condition 17 (iii) to which the provisions of this condition 17(ii) shall not apply, each party's total aggregate liability to the other party under or in connection with the Contract, shall be capped at the total value of the Contract, irrespective of the number of claims made, or such other sums as set out in the Order.
- (iii) Nothing in this Agreement shall limit or exclude the liability of either party for:
 - (a) death or personal injury resulting from negligence;
 - (b) the Supplier's breach or negligent performance or non-performance of the Contract;
 - (c) fraud or fraudulent misrepresentation;
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (e) the deliberate or wilful misconduct of that party, its employees, agents or sub-contractors.

18. INSURANCE

- (i) You shall, with effect from the date of the Order, put in place and maintain during the time it takes you to provide the Goods and/or Services under the Contract and for a period of 6 years thereafter suitable insurance policies with reputable insurance companies or underwriters against all risks normally insured against by a prudent supplier of such Goods and/or Services and pay all premiums due in respect of the same. It is understood and agreed that it shall be your responsibility to ensure that the amount of cover pursuant to the policies affected by you are adequate in accordance with industry custom and practice and the particular circumstances of the Contract. Without prejudice to the generality of the foregoing, you shall insure the Goods and/or Services for their full replacement value against all risks of damage and loss, unless the Order or the Specification states otherwise.
- (ii) You shall give us, on request, copies of all insurance policies referred to in this condition or a broker's verification of insurance to demonstrate that the required insurances set out in condition 18(i) are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- (iii) If, for whatever reason, you fail to give effect to and maintain the required insurances, we may but are not obliged to make alternative arrangements to protect our interests and may recover the costs of such arrangements from you.
- (iv) The terms of any insurance or the amount of cover shall not relieve you of any liabilities under the Contract.

19. HOURS OF WORK

When carrying out Services at our premises, we may specify the period during which you shall carry out your operations and/or that work shall be performed in such a manner that our business is interfered with as little as possible.

20. WORK ON OUR PREMISES

- (i) If the Contract involves Services which you perform on our premises or the installation of Goods at our premises, you will, if requested by us in writing, supply the following documentation to use for review, either prior to or during the Contract:
- (a) your safety policy;
 - (b) your safety plan;
 - (c) your fire safety plan;
 - (d) your risk assessments;
 - (e) your accident statistics for the last 5 years;
 - (f) your valid insurance documents;
 - (g) any improvement notice received you have received; and
 - (h) any prosecution or pending prosecution against you under health and safety legislation.
- (ii) You shall perform your obligations under the Contract (including those in relation to the Services) in accordance with:
- (a) all applicable legislation or regulations regarding health and safety; and
 - (b) our Health and Safety Policy whilst at our premises.

21. ARTICLES ON LOAN AND USE OF INFORMATION

All tools, materials, drawings, Specifications and other equipment and data (the "Articles") loaned by us to you in connection with the Contract shall remain always our property and be surrendered to us on demand in good and serviceable condition (fair wear and tear allowed) and are to be used by you solely for the purpose of completing the Contract. You agree that no copy of any of the Articles will be made without the consent in writing of our Authorised Officer. Until you return all the Articles to us they shall be at your risk and insured by you at your expense against the risk of loss, theft or damage. Any loss of or damage to such Articles shall be made good by you at your expense including, in the case of loss of premises keys, or computerised door access cards, the costs of re-suiting necessary to recover the original level of building security. All scrap arising from the supply of such Articles must be disposed of at our discretion and all proceeds of sales of such scrap must promptly be paid to us in full.

22. OWNERSHIP OF DELIVERABLES

- (i) Unless the Order states otherwise, you acknowledge and agree that any and all IPR in and to the Deliverables which are created or developed by you for us in connection with the Goods and/or Services, but excluding any pre-existing or third party Deliverables ("Deliverables IPR") shall belong to and be vested in us absolutely and you hereby:
- (a) Assign to us absolutely with full title guarantee all worldwide right, title and interest in and to any and all future copyrights, rights in the nature of copyright, database rights and UK and European unregistered design rights comprised within the Deliverables IPR to the tent and with the effect that all such rights shall vest in us automatically and immediately on the date that such rights are created by you; and
 - (b) Agree to assign to us absolutely with full title guarantee all worldwide right, title and interest in and to all other Deliverables IPR
- for the full term therefore, including all renewals thereof and extensions thereto, together with all rights, benefits or powers arising or accrued therefrom, including the right to sue for damages and other remedies in respect of any part or existing infringements of the Deliverables IPR.
- (ii) Where the Order states that the Deliverables IPR is not assigned to us with absolute title but has instead been licensed to us by you, this will be an exclusive licence for us to use the Deliverables IPR for the purpose of our full enjoyment of the Goods and/or Services and which shall survive any termination of these conditions, unless otherwise agreed between the parties.

23. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- (i) With the exception of Goods made to our design, you warrant that the Goods, the Deliverables and any software comprised within the Goods or the Deliverables shall not infringe any patent, registered design, trade mark, copyright or other third party rights and indemnify us against all actions, claims, demands, costs and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right as a result of our use or ownership of such Goods, Deliverables or software.
- (ii) If at any time any allegation of infringement of any patent, registered design or copyright is made in respect of the Goods or software or in your reasonable opinion is likely to be made, you may at your own expense modify or replace the infringing Goods or Deliverables, without detracting from overall performance. At the same time you will make good any loss of use by us of such Goods or Deliverables during modification or replacement, so as to avoid the infringement.

24. ENVIRONMENTAL POLICY

- (i) You must comply with your obligations under any applicable environmental law and any environmental policy put in place by us and brought to your attention from time to time.
- (ii) We are an environmentally aware organisation and you must make every effort to reduce the environmental impact of the processes involved in the design, manufacture and construction of the Goods and/or Deliverables supplied by you and your sub-contractors to us and your provision of the Services. The processes involved shall be considered in relation to reducing energy usage, using materials with high-recycled content, reduction of waste generation and use of good disposal methods as well as recyclability of the product at the end of its useful life. Any design shall incorporate consideration of the reduction of the environmental impact of the product both during manufacture and throughout the whole life cycle of the Goods and/or Deliverables.

25. ASSIGNMENT AND SUB-CONTRACTING

- (i) You shall not without our prior written consent (such consent not to be used unreasonably withheld or delayed) assign, novate, transfer, charge or deal in any other manner with the Contract or any of the rights thereunder, or purport to do so, nor sub-contract any or all of the obligations under the Contract.
- (ii) You shall promptly provide us with any information requested by us in respect of any proposed dealing with the Contract which is notified to us pursuant to condition 25(i), including any sub-contracting. In relation to any sub-contracting or assignment such information shall include details regarding the proposed sub-contractor or assignee and its technical capacity, experience and financial standing.
- (iii) For the avoidance of doubt and without limiting its discretion in any way whatsoever, the parties agree that it shall be reasonable for us to refuse our consent to any sub-contracting, assignment or other dealing proposed by you where:
 - (a) we consider that the proposed sub-contractor or assignee does not fulfil the criteria for selection outlined in any tender process carried out by us in respect of the Contract; or
 - (b) we consider such sub-contracting, assignment or other dealing could result in you (or the proposed third party applicable) being unable to fulfil the criteria for selection outlined in any tender process carried out by us in respect of the Contract; or
 - (c) we consider that such sub-contracting, assignment or dealing:
 - (i) could result in a substantial modification to the Contract; or
 - (ii) such sub-contracting, assignment or dealing is aimed at, or has the result of, circumventing the application of the Treaty on the Functioning of the European Union, EU Directive 2014/24 or the PCR (as such term is defined in condition 13(iii)(b)).
- (iv) Any sub-contracting by you which is permitted by us shall:
 - (a) be procured by you on terms and conditions which are equivalent (so far as is commercially reasonable) to the terms and conditions set out in the Contract. You shall also consider and verify any invoices submitted to you by the sub-contractor in a timely fashion and pay any sums due under such invoices no later than a period of 30 days from the due date; and
 - (b) not relieve you of any of your obligations under the Contract and you shall be responsible for the acts and omissions of your sub-contractors as though they were your own.
- (v) For the avoidance of doubt, we shall be entitled to assign, novate, transfer, sub-contract and otherwise dispose of any or all of our rights and obligation under the Contract without your prior consent, and you shall enter into such agreements, including deeds of novation, as we may require from time to time in connection therewith.

26. MATTERS BEYOND CONTROL

- (i) Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control (a "Force Majeure Event").
- (ii) You shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of your obligations.
- (iii) If a Force Majeure Event prevents, hinders or delays your performance of your obligations for a continuous period of more than 30 Business Days, we may terminate the Contract immediately by giving written notice to you.

27. DISPUTE RESOLUTION

- (i) All disputes or differences between us and you arising out of or in connection with the Services performed under the Contract including any question regarding its or their existence, validity or termination ("**Dispute**") shall, at the written request of either party, be referred to our respective Contract managers.
- (ii) If our respective Contract managers do not agree a resolution of the Dispute within 7 days of the date of the service of such request, the Dispute shall, at the written request of either party, be referred to our president and to your managing director, chief executive or equivalent.
- (iii) If the individuals referred to in condition 27(ii) do not agree a resolution of the Dispute within 14 days of the date of service of any request, either party may require the other party by notice in writing to attempt to settle the Dispute by mediation in accordance with the Centre for Dispute Resolution ("**CEDR**") Model Mediation Procedure. Within 7 days of the date of service of such notice the parties shall each propose a mediator and shall seek to agree as to the selection of a mediator
- (iv) If the parties are unable to agree on a mediator within 14 days of the date of service of the notice referred to in 28(iii) or the mediator agreed upon is unable or unwilling to act and the parties cannot agree upon a substitute, either you or we may apply to CEDR to appoint a mediator as soon as practicable.
- (v) Within 7 days of the appointment of the mediator, both us and you will meet with the mediator in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations.
- (vi) All negotiations connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future proceedings.
- (vii) If any agreement is reached on the resolution of the Dispute, such agreement shall be reduced to writing and, once it is signed by each of our reciprocal duly authorised representatives, shall be and remain binding on both us and you.
- (viii) The costs and expenses of the mediation shall be borne equally by us and you. Each party shall bear its own costs and expenses of its participation in the mediation.
- (ix) If an agreement is not reached within 14 days of a Mediator being appointed then the Dispute may be referred to the courts. Both us and you agree and undertake not to refer any Dispute to the courts until the dispute resolution procedures of this condition 27 have been followed and the period of 14 days has expired, except in circumstances where immediate injunctive or other relief is required from the courts.

28. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- (i) You shall:
 - (a) ensure that all individuals engaged in any Regulated Activity under the Contract are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);
 - (b) monitor the level and validity of the checks under this condition 28(i) for each member of staff; and
 - (c) not employ or use the services of any person who is barred from or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to our service users.
- (ii) You warrant that at all times for the purposes of this Contract you have no reason to believe that any person who is or will be employed or engaged by you in the provision of the Goods and/or Services is barred from that activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- (iii) You shall immediately notify us of any information that we reasonably request to enable us to be satisfied that the obligations of this condition 28 have been met.
- (iv) You shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in your opinion, such person has harmed or poses a risk of harm to our service users, children or vulnerable adults.

29. CONFIDENTIALITY AND DATA PROCESSING

- (i) You shall keep in strict confidence any information of a confidential nature disclosed to you by us or obtained from us or our personnel concerning our business, processes, customers, products, services and/or initiatives. You shall only disclose such confidential information to those of your personnel who need to know it for the purpose of discharging your obligations under the Contract, and shall ensure that your personnel comply with the obligations set out in this condition as though they were a party to the Contract. You may also disclose such of our confidential information as is required to be disclosed by law, any governmental request or which is requested to be disclosed by any regulatory authority or by a court of competent jurisdiction.
- (ii) You shall:
- (a) only carry out processing of any Personal Data (being any personal data processed in connection with the provision of the Services ("Personal Data")) on and in accordance with our instructions;
 - (b) implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and accidental loss or damage;
 - (c) not transfer any Personal Data to any country outside the European Economic Area;
 - (d) ensure that access to any Personal Data is limited to those of your personnel who need access to the Personal Data to meet your obligations under the Contract and that all such Personnel are informed of the confidential nature of the Personal Data;
 - (e) comply with your obligations under any applicable Data protection law, and shall not, by act or omission, put us in breach of, or jeopardise any registration under, any such Data Protection Law;
 - (f) promptly and fully notify us in writing of any notices received by you in connection with the processing of any Personal Data, including subject access requests, and provide such information and assistance to us in connection with any such notices as we may reasonably require;
 - (g) promptly and fully notify us in writing if any Personal Data is disclosed other than in compliance with this condition 29(ii) and take every step to enable us to comply promptly with any security breach notification procedures it may have; and
 - (h) without prejudice to the provisions of condition 17, indemnify us against any loss or damage suffered as a result of any breach by you, your employees, agents or sub-contractors of your obligations under this condition 29(ii).

30. ANTI-BRIBERY

- (i) You shall procure that you and all persons associated with you in accordance with the Contract shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (the "Relevant Requirements");
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such an activity, practice or conduct had been carried out in the UK;
 - (c) not do, or omit to do, any act that would cause or lead us to be in breach of any of the Relevant Requirements ;
 - (d) immediately notify us if a foreign public official becomes an officer or employee of yours or acquires a direct or indirect interest in you (and you warrant that you have no foreign public officials as officers, employees or direct or indirect owners at the time of this Contract).

31. WELSH LANGUAGE SCHEME

You shall conform with the requirements of the Welsh Language (Wales) Measure 2011, giving equal validity to the Welsh and English languages. If the provisions of the Goods or Services includes a Welsh language element, you should seek our assistance and advice with all translation tasks as to ensure a consistent and quality provision.

32. WAIVER

A failure at any time to enforce any provision of the Contract shall in no way effect the right at a later date to require complete performance of the Contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

33. VALIDITY OF PROVISIONS

- (i) If any provision or part-provision of this Contract becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of this Contract.
- (ii) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend 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.

34. NOTICE

All notices and communications required to be sent to you by us in this Contract shall be made in writing and sent by either facsimile, first class mail or email (electronic mail) to your registered or head office and if sent by you to us sent to our Authorised Officer and shall be deemed to have reached the party to whom it is addressed on the next business day following the date of transmission or posting.

35. AMENDMENT

Subject to condition 15, no addition, alteration or substitution of these Conditions will bind us or form part of the Contract unless and until accepted in writing by our Authorised Officer.

36. EQUALITY AND DIVERSITY

- (i) You shall:
 - (a) perform your obligations under this Contract in accordance with:
 - (i) all applicable equality legislation and regulations (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and
 - (ii) any other requirements and instructions which we reasonably impose in connection with any equality obligations imposed on us at any time under applicable equality law; and
 - (b) take all necessary steps, and inform us of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

37. CONFIDENTIALITY

- (i) Each party will:
 - (a) keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent its representatives from making any disclosure to any person of any matters relating hereto;
 - (b) shall treat all Confidential information belonging to the other party as confidential and safeguard it accordingly; and
 - (c) shall not disclose to any person any Confidential Information belonging to the other party without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this Contract but only then where such persons are subject to or have executed a confidentiality undertaking in terms no less stringent than those set out in this condition 37 prior to disclosure of such Confidential Information to them except where disclosure is otherwise expressly permitted by the provision of this Agreement.
- (ii) The provisions of condition 37 (i) shall not apply to any Confidential Information received by one party from the other;
 - (a) which is in or becomes part of the public domain (otherwise than by breach of this condition 37);
 - (b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (d) is independently developed without access to the Confidential Information; or
 - (e) which is required to be disclosed in accordance with a statutory, legal or regulatory obligation placed upon the party making the disclosure (including any Request for Information) or is requested by a governing body or supervisory body to whose jurisdiction the recipient is subject.

- (iii) In the event that one party fails to comply with this condition 37, the other party reserves the right to terminate this Contract by notice in writing with immediate effect.

38. FREEDOM OF INFORMATION

- (i) You acknowledge that we are subject to the requirements of the FOIA and the EIRs.
- (ii) We may, at our discretion, notify you that a Request for Information concerning this Contract has been submitted.
- (iii) You shall;
 - (a) Provide all necessary assistance and operation as reasonably requested by us to enable us to comply with our obligations under the FOIA and EIRs.
 - (b) Transfer to us all Requests for Information relating to this Contract that are received as soon as practicable and in any event within 2 Working Days of receipt.
 - (c) Provide us with a copy of all Information belonging to us requested in the Request for Information which is in your possession or control on the form that we require within 5 Working Days (or such other period that we may reasonably specify) of our request for the Information.
 - (d) Not respond directly to a Request for Information unless authorised in writing to do so by us.
- (iv) You acknowledge that we may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from you. We shall take reasonable steps to notify you of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for us to do so but (notwithstanding any other provision in this Contract) we shall be responsible for determining at our absolute discretion whether any commercially sensitive information and/or other information is exempt from disclosure in accordance with the FOIA and EIRs.

39. GOVERNING LAW AND JURISDICTION

- (i) This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- (ii) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual dispute or claims).