

## **GENERAL TERMS**

### **1. DEFINITIONS**

- 1.1 In the Contract, unless the context otherwise requires the words and expressions shall as set out in Schedule 1 shall have the meanings assigned to them therein.
- 1.2 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.5 Any reference in these Conditions to a statute or statutory provision is a reference to it as it is in force from time to time and will include all subsequent amendments, re-enactments and modifications and shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to writing or written includes faxes.
- 1.7 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### **2. PRECEDENCE**

- 2.1 To the extent of and only to the extent of any conflict between the documents that form the Contract, the conflict shall (unless otherwise specified in the General or Special Conditions) be resolved in accordance with the following order of precedence:
  - 2.1.1 Contract Order (excluding any attachments, appendices or annexes)
  - 2.1.2 Special Conditions;
  - 2.1.3 General Conditions;

2.1.4 Any attachments, appendices or annexes to the Contract Order;

2.1.5 Any other document referred to in the Contract.

2.2 Unless expressly agreed, a document varied pursuant to condition 24 shall not take higher precedence than specified here.

### 3. **CONTRACT PERIOD**

3.1 The Contract shall commence on the date specified in the Contract Order and, subject to earlier termination in accordance with the terms of the Contract, end on the last date of the Contract Period.

3.2 The Contractor shall perform the Services within the time stated in the Contract Order, Time shall be of the essence for all times, dates and periods specified in the contract for the Contractors performance of its obligations.

### 4. **CO-OPERATION**

4.1 NRW shall appoint a Contract Supervisor who shall be entitled to take actions in relation to the Contract as representative and on behalf of NRW.

4.2 The Contractor shall comply and co-operate with any reasonable instructions given by NRW or the Contract Supervisor.

4.3 The Contractor shall, throughout the term of the Contract, maintain Documentation in respect of all aspects of the Services and promptly provide to NRW copies of the Documentation or such other information and reports as NRW may reasonably require in connection with matters relating to the provision of the Services.

4.4 The Contractor shall provide to NRW's other suppliers as are notified to the Contractor periodically, such reasonable co-operation, information, Documentation, advice and assistance in connection with the Services as requested by NRW, to include enabling any such person to create and maintain technical or organisational interfaces with the Services and, on the expiry of the Contract for any reason, to enable the timely transition of the Services (or any part of them) to any Replacement Contractor.

### 5. **THE SERVICES**

5.1 NRW shall perform NRW Obligations and the Contractor shall perform its obligations in accordance with the Contract.

- 5.2 The Contractor shall ensure that, as an enduring obligation throughout the Contract Period it shall use the latest version of anti virus definitions available and check for and delete any malicious software.
- 5.3 The Contractor shall, in performance of the Services, comply with requirements on data handling, issued by NRW or the Welsh Government from time to time, and shall be responsible for compliance with and ensure that all obligations are performed in accordance with the Security Policies.
- 5.4 The Contractor shall perform its obligations in accordance with the Contract Order and the Timetable. In particular the Contractor shall design, develop and following successful completion of the Tests to deliver the Service in accordance with the Contract Order which shall include for the avoidance of doubt requirements in respect of bandwidth, the use of dedicated servers, availability of the Site and access to third parties;
- 5.5 The Contractor shall provide the Services in accordance with the Service Levels following successful completion of the Tests.
- 5.6 Ensure that the specified (or if not specified, appropriate) communication links are in place and operational to allow NRW, it's suppliers and customers such access as necessary to the Service to meet NRW's reasonably anticipated requirements.
- 5.7 The Contractor shall perform, as a minimum, daily secure back-ups of all the Software, Data and other materials hosted on the Service. The Contractor shall ensure that such back-ups are stored off-site and in accordance with any business continuity and disaster recovery plan NRW has in place or requires the Contractor to have in place. The Contractor shall ensure that such back-ups are available to NRW at all times upon request and are delivered to NRW at no less than 3 monthly intervals or as requested by NRW.
- 5.8 NRW may monitor the performance of the Services by the Contractor.
- 5.9 The Contractor shall co-operate, and shall procure that any Sub-contractors co-operate, with NRW in carrying out the monitoring referred to in condition 5.8 at no additional charge to NRW
- 5.10 The Contractor shall only provide the Services at the Delivery Location unless otherwise agreed in writing by NRW.

- 5.11 The Contractor shall, in performance of the Services, comply with the Health and Safety Requirements and the Standards.
- 5.12 The Contractor is deemed to have satisfied himself as to the scope, extent and location of work to be carried out under the Contract.
- 5.13 The Contractor shall, unless the Contract Order specifically states otherwise, be responsible at its own cost for the sourcing, supply and provision of all Staff, equipment, materials and any other requirements necessary for the performance of the Contract.
- 5.14 The Contractor shall only employ Staff to perform its obligations who are suitable and appropriately skilled and experienced. In particular, the Contractor shall comply with NRW's Staff Vetting Procedure in respect of all Staff employed or engaged in the provision of the Services whose role involves the handling of information of a sensitive or confidential nature or information that is subject to any relevant security measures.
- 5.15 The Contract Supervisor may object to and require the Contractor to remove any person employed in or about the Contract who, in their reasonable opinion is unsuitable, guilty of misconduct, incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the prior written consent of NRW.
- 5.16 The Contractor shall provide training on a continuing basis for all Staff engaged in the provision of the Services particularly in respect of the Security Policies, Health Safety Requirements and Standards.

## 6. **REQUIREMENTS**

- 6.1 The Contractor acknowledges that it:
- 6.1.1 has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of NRW;
  - 6.1.2 understands the requirements as set out in the Contract Order; and
  - 6.1.3 understands the Operating Environment upon which the Services are to be implemented;

and is satisfied that it is able to deliver the Services.

6.2 The Contractor shall provide the Services in accordance with the relevant Timetable.

## 7. ACCESS

7.1 The Contractor shall provide all such access to the Service as is reasonably necessary to allow NRW or its third party suppliers receive the benefit of the Service which as a minimum shall include:

7.1.1 update any or all Software, Data and other materials hosted by the Service with Materials provided from time to time by NRW;

7.1.2 maintain and support the Software, Data and other materials;

7.2 For the avoidance of doubt access shall include remote access or, where necessary physical access to the Service.

## 8. ACCEPTANCE AND TESTING

8.1 Once the Contractor has completed the design and development of the Service the Contractor shall notify NRW. Upon receipt of notice, NRW shall be entitled, but not required, to Test the hosting Service. In the event that, in NRW reasonable opinion, the hosting Service fails the Tests NRW shall in the first instance provide the Contractor with a reasonable opportunity to remedy any failures identified following which NRW may re-Test the hosting Service.

8.2 In the event that the hosting Service fails the Tests on 2 or more occasions, or the Contractor fails remedy the failure identified pursuant to condition 3.1 or 3.2.2, then NRW may, at its sole discretion:

8.2.1 provide the Contractor with further opportunities to remedy any failures; or

8.2.2 terminate this Contract with immediate effect.

8.3 Notwithstanding the successful completion of the Tests pursuant to condition 8.1 NRW reserves the right to further Test, and contract third party suppliers to Test, the Services such Tests to include but not be limited to penetration and other security related tests. The Contractor shall co-operate with NRW or such third party suppliers in connection with any such Tests.

## 9. TESTING

- 9.1 When the Contractor has completed the Services (or completed a milestone where the Contract Order specifies milestones) it shall submit the New Software and any associated deliverables for Testing.
- 9.2 Save where condition 9.4 applies, each party shall bear its own costs in conducting the Tests.
- 9.3 If the Contractor successfully completes the requisite Tests, NRW shall confirm its acceptance within a reasonable period following conclusion of the Tests. Notwithstanding NRW confirming its acceptance, the Contractor shall remain solely responsible for ensuring that the Services as designed and developed meet the requirements and are implemented in accordance with the Contract
- 9.4 If the Contractor does not successfully complete or pass any Test, then NRW may at its discretion (without waiving any rights in relation to the other options) choose to:
- 9.4.1 Allow the Contractor to remedy the Test issues or non-conformities and resubmit for Testing pursuant to condition 9.1; or
  - 9.4.2 Accept the Services conditional on the remediation of the Test issues, or the non-conformities of the deliverable; and/or
  - 9.4.3 Terminate the Contract in whole or in part; and/or
  - 9.4.4 require the Contractor to pay the Test Failure Payments for each subsequent re-test or further review

save that NRW shall not exercise the options under 9.4.3 and 9.4.4 unless two Tests had already been conducted and failed.

- 9.5 Where the Contract Order does not identify the Test Failure Payment the Authority reserves its rights to recover from the Contractor, any reasonable additional costs it may incur as a direct result of further review or re-Testing. For the avoidance of doubt the payment or otherwise of the Test Failure Payment does not exclude or remove any other rights of NRW to recover damages or other losses which it may incur due to a failure of the Contractor to comply with its obligations under the Contract.

## 10. **NEW RELEASES**

- 10.1 Where the Software has been accepted pursuant to condition 9.3, and unless specified otherwise in the Contract Order, the Contractor shall provide to NRW such

new version releases or updates to the Software (including maintenance releases and bug fixes) as it may develop from time to time without charge to NRW. Any such new releases shall be licensed on the same terms as are contained herein.

10.2 NRW shall be entitled to test all new releases whether new version, releases, maintenance releases or otherwise, prior to and in respect of implementation of the same.

10.3 No such release shall be implemented in a live environment until such Tests have been successfully concluded.

## 11. LICENCE TERMS

11.1 The Contract hereby licences to NRW the right to use, execute, load, transmit, and copy the Software. Such licence shall be perpetual, non-exclusive and free from any other restrictions including but not limited to server or user numbers. Furthermore, unless a licence fee is specified in the Contract Order the licence shall be royalty free.

11.2 The NRW may sub-license the rights granted to it pursuant to condition 11.1 to any third party (including for the avoidance of doubt any Replacement Contractor).

## 12. DELIVERY AND IMPLEMENTATION

12.1 The Contractor shall deliver the Software by the date and in the manner specified in the Contract Order. Where the Contract Order requires the Contractor to implement the Software, the Contractor shall so implement in accordance with the Contract and any reasonable instructions of NRW from time to time.

12.2 Upon receipt of the Software, or following implementation where the Contractor is responsible for implementation, NRW shall be entitled, but not required, to Test the Software. In the event that, in NRW reasonable opinion, the Software fails the Tests NRW shall in the first instance provide the Contractor with a reasonable opportunity to re-deliver and, if applicable, implement the Software following which NRW may re-Test the Software.

12.3 In the event that the Software fails the Tests on 2 or more occasions, or the Contractor fails to re-deliver and implement the Software pursuant to condition 12.2 or 12.3.1, then NRW may, at its sole discretion:

12.3.1 provide the Contractor with further opportunities to re-deliver and implement the Products in line with condition 12.2; or

12.3.2 to return the Software and terminate this Contract with immediate effect.

12.4 Where the Software has been accepted pursuant to condition 12.2, and unless specified otherwise in the Contract Order, the Contractor shall provide to NRW such new version releases or updates to the Software (including maintenance releases and bug fixes) as it may develop from time to time without charge to NRW. Any such new releases shall be licensed on the same terms as are contained herein.

13. **FIXES**

The Contractor shall maintain a database containing information on known program defects, defect corrections, restrictions and bypasses in respect of the Software and shall provide NRW with access to such database at no additional charge during the term of the licence.

14. **ESCROW**

The Contractor shall, not more than 10 Working Days following a request by the Authority deposit the source code of the Software (including any New Software) in escrow with NCC on the basis of the appropriate standard agreement. The Contractor shall ensure that the deposited version of the source code is the current version of the Software (including and New Software) and that the deposited version is kept up-to-date as the Software is modified or upgraded.

15. **REPORTS AND DOCUMENTATION**

15.1 Further to the obligation to provide the Documentation, the Contractor shall provide NRW monthly reports in respect of the performance of the Service. Such reports to include:

15.1.1 Performance against each individual Service Level;

15.1.2 Number of issues identified (whether notified by NRW or identified by the Contractor) together with the issue classification where specified in the Contract Order;

15.1.3 Number of issues resolved;

15.1.4 Number of issues not resolved at month end;

15.1.5 Any further information identified in the Contract Order

15.2 Furthermore the Contractor shall create and maintain a log of all issues raised together with the technical details of how such issues were resolved. Such log shall be provided to NRW upon request and in any event upon termination.

## 16. **DOCUMENTATION**

16.1 Throughout the Services the Contractor shall maintain a complete set of technical documents which as a minimum will include:

16.1.1 Detailed design of the New Software and associated deliverables;

16.1.2 Detailed configuration of the implementation;

16.1.3 Known defects and resolution and/or workarounds.

All such documentation will be made freely available to NRW upon request during the Contract and in any event will be provided within 1 month of termination of the Contract.

## 17. **SERVICE LEVELS**

17.1 During the Contract Period, the Contractor shall provide the Services to meet or exceed the Service Levels.

17.2 If the Contractor fails, or believes that it will fail one or more Service Levels the Contractor shall notify NRW and immediately take all remedial action that is necessary to rectify or to prevent the Service Level failure from taking place and recurring.

17.3 For the avoidance of doubt the Contractor shall not be deemed to have failed a Service Level where such failure is solely due to NRW failing to fulfil its obligations in respect of the Services.

## 18. **SERVICE CREDITS**

18.1 Where Service Credits are specified in the Contract Order as being applicable to the Service Level failure the Contractor shall automatically credit NRW with Service Credits. Service Credits shall be shown as a deduction from the amount due from NRW to the Contractor in the next invoice then due to be issued under this Agreement. If no invoice is due to be issued then the Contractor shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Contractor as a debt within 10 Working Days of issue.

18.2 Where Service Credits are provided such Service Credits shall be without prejudice to any other rights remedies available to NRW.

19. **BUSINESS CONTINUITY AND DISASTER RECOVERY PLANS**

19.1 The Contractor, as part of the Service, shall ensure it creates, maintains and complies with such business continuity and disaster recovery plans as required by the Contract Order, or otherwise as NRW may require from time to time.

20. **WARRANTIES**

20.1 The Contractor warrants and represents that:

20.1.1 the operation of the Service will be uninterrupted and free of errors and material defects; and

20.1.2 the Service shall be performed in accordance with the Service Levels; and

20.1.3 in performing its obligations under this Agreement, all Software used by or on behalf of the Contractor:

(a) will be currently supported versions of that Software; and

(b) will perform in all material respects in accordance with its specification.

20.2 The Contractor warrants and represents that for a period of 180 days from the date of acceptance (or delivery if not Tested) the Software shall operate in accordance with the requirements and specification set out in, or attached to, the Contract Order and any information provided by the Contractor in respect of the Software.

20.3 For the purpose of the warranty in condition 20.2, in the event of any conflict between the requirements and specification set out in, or attached to, the Contract Order and any information provided by the Contractor, the former shall take precedence.

20.4 The Contractor warrants and represents that:

20.4.1 It will develop the New Software in accordance with the then current software development coding standards identified by NRW within the Contract Order, or if none identified, in accordance with Good Industry Practice;

20.4.2 The Services shall perform in accordance with the requirements specified in the Contract Order and such other information as to performance which the Contractor has provided NRW for a minimum period of 6 months.

**21. INTELLECTUAL PROPERTY RIGHTS – OPEN SOURCE**

Condition 11 of the General Conditions shall apply as written save in the event that the Services are enhancing or developing Open Source Software and the licence terms of the Open Source Software conflicts with that condition 11 of the General Conditions. In the event of such a conflict the terms of the Open Source Software licence shall take precedence.

**22. PROPERTY**

22.1 All NRW Property shall remain the property of NRW, and shall only be used by the Contractor in performance of its obligations hereunder.

22.2 The Contractor shall be solely responsible for keeping all NRW Property and Contractor equipment and materials secure and in good condition. For the avoidance of doubt NRW shall not be liable for any loss incurred by the Contractor in respect of the loss or damage to the Contractors equipment and/or materials even where the same occurs on NRW Premises.

22.3 Furthermore, it shall store NRW Property separately from any other equipment or materials, clearly marked as the property of NRW.

22.4 On expiry or earlier termination of the Contract, the Contractor shall, if so required, either surrender such NRW Property to NRW or otherwise dispose of it as instructed by the Contract Supervisor.

**23. ASSIGNMENT**

23.1 The Contractor shall not assign, transfer, sub-contract or in any way dispose of the Contract, or any part of it, without the prior written consent of the Contract Supervisor.

23.2 Where consent is provided pursuant to condition 23.1, any sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract and the Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

23.3 NRW may at any time novate, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

23.4 In the event that NRW decides to novate any or all of its rights or obligations under this Contract, the Contractor shall execute any such documents as NRW may reasonably require to cause the novation to have effect.

23.5 The Contractor shall ensure that a term is included in any sub-contract permitted under this Contract which requires the Contractor to pay any undisputed sums due to the relevant sub-contractor within a specified period that does not exceed 30 days from the date the Contractor receives the sub-contractor's invoice.

## 24. **VARIATIONS**

24.1 Either party may propose a variation to the this Contract provided that, any such variation shall:

24.1.1 Follow the process set out in this condition 24; and

24.1.2 no such variation shall take effect unless agreed and confirmed in writing by both parties.

24.2 On either party proposing a variation, the Contractor shall, no later than 5 Working Days following receipt of the variation proposal, provide NRW with a proposed contract variation identifying, as a minimum:

24.2.1 The nature of the proposed variation;

24.2.2 The impact on the current Services;

24.2.3 Any cost implications on the Contract, including any ongoing Charges associated with the variation;

24.2.4 The timescales and man days effort in delivering the variation;

24.2.5 Such other information as the NRW may require at the time the proposal is issued.

25. The value of any such proposed variation shall be determined by reference to the rates contained in the Contract Order. If the rates contained in the Contract Order are

not relevant to the proposed variation, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

25.1 Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.

## 26. **TERMINATION**

26.1 NRW may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by notice in writing to the Contractor, if the Contractor:

26.1.1 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, or has a receiver, administrator, or administrative receiver appointed by a Court or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or

26.1.2 commits, or any of its directors, partners or senior staff commit an offence as set out in Regulation 23 of the Public Contract Regulations 2006 (as amended) or is guilty of any fraud or dishonesty or acts in any manner which in the opinion of NRW brings or is likely to bring the Contractor or NRW into disrepute or is materially adverse to the interests of NRW; or

26.1.3 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of s123 of the Insolvency Act 1986 or the Contractor ceases to trade; or

26.1.4 commits any serious or repeated breach or non-observance of any of the provisions of this Contract or refuses or neglects to comply with any reasonable and lawful directions of NRW; or

26.1.5 undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the contract.

- 26.2 NRW may only exercise its right under condition 26.1.5 within 6 months of the date a change of controls occurs and shall not be permitted to do so where it has agreed in writing in advance to the particular change of control that occurs. The Contract shall notify the Contract Supervisor immediately when any change of control occurs.
- 26.3 Without prejudice to any other rights or remedies which NRW may have under the Contract, NRW reserves the right to terminate the Contract or any part of the Contract at any time by giving not less than one month's written notice of the Contractor).
- 26.4 Either party may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the other party with immediate effect if that other party commits a Default and if :
- 26.4.1 the Default is not remedied within 30 days, or such other period as may be agreed between the parties, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - 26.4.2 the Default is not capable of remedy.
- 26.5 Notwithstanding any other rights of termination set out in this Contract, NRW may terminate this Agreement by giving written notice of termination to the Contractor if:
- 26.5.1 the Contractor is materially failing the Service Levels. For the purpose of this provision material shall mean that the failure is materially affecting NRW's ability to use the Services or access the Software Data, other materials hosted by the Services, or other items being supported and maintained by the Contractor; or
  - 26.5.2 The Contractor fails 3 or more Service Levels in 3 consecutive months.

### **Termination of Licence**

- 26.6 A licence granted hereunder shall survive the termination or expiry of the Contract.
- 26.7 The Licensor may only terminate a licence granted hereunder with 30 days notice in writing (or such other period as agreed by the parties) if:
- 26.7.1 NRW uses the Software for any purpose expressly prohibited by the Contract; or

26.7.2 NRW commits any material breach of the these Licence Terms which, if the breach is capable of remedy, is not remedied within 30 Working Days after the Contractor giving NRW and any replacement contractor (if applicable) written notice specifying the breach and requiring its remedy.

All other rights of termination in respect of the Licence, including those rights specified in condition 9 of the General Conditions are hereby excluded to the fullest extent permitted by the law.

26.8 When the licence granted hereunder ends for whatever reason, NRW shall:

26.8.1 cease use of the Software; and

26.8.2 at the discretion of NRW, return or destroy the Software;

26.9 In the event that the Contract is terminated pursuant to condition 2.2 then NRW shall be under no obligation to pay the Contract Price. In the event that the Contract Price, or any part thereof, has been paid in advance the Contractor shall reimburse the same within 20 days of the date of termination

#### **New Software**

26.10 Further to the termination rights set out in the General Conditions, NRW reserves the right to terminate immediately upon notice pursuant to condition 2.4.3 of these Special Conditions.

26.11 In the event that NRW exercises the right of termination pursuant to condition 7.1, NRW may further:

26.11.1 Return all New Software and deliverables previously accepted as earlier milestones; or

26.11.2 Retain such New Software and deliverables.

Provided that where NRW retains such New Software and deliverables it shall pay a pro-rated amount agreed between the parties as representing the value of those items so retained. In the event that NRW has made any payment prior to termination this payment shall be reimbursed by the Contractor:

26.11.3 in full where NRW has exercised its right pursuant to condition 26.11.1; or

26.11.4 In part taking into account the pro-rated amount agreed, where NRW has exercised its rights pursuant to condition 26.11.2

All such payments to be made within 20 days of notice being issued.

26.12 Any dispute in respect of the pro-rated amount to be agreed pursuant to condition 26.11 may be referred by either party to the dispute resolution procedure set out in condition 34 of the General Conditions.

## 27. **CONSEQUENCES OF TERMINATION**

27.1 On termination pursuant to condition 26.1.1, 26.1.3, 26.1.5 or 26.2 NRW shall

27.1.1 pay the Contractor sums due and reasonably incurred up to the date of termination where NRW has received Services to the equivalent value.

27.1.2 pay the Contractor sums due for expenditure incurred after the date of termination only so far as it is as a result of commitments entered into by the Contractor in good faith before the date on which notice of termination was given and which cannot be voided or otherwise mitigated on or before the termination date. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence of losses reasonably and actually incurred by the Contractor as a result of termination within 5 days of receiving the notice of termination.

provided that any such sum payable in accordance with this condition would have been payable by NRW if the Contract if it had not been terminated and does not exceed the Contract Price.

27.2 NRW shall not be liable under condition 27.1.2 to pay any sum which was claimable under insurance held (or that should be held in accordance with the Contract) by the Contractor.

27.3 On expiry or termination of this agreement for whatsoever reason, the Contractor shall provide all such assistance and do all things reasonably requested by NRW to ensure a smooth transfer of the Services either to NRW or a Replacement Contractor. Such actions shall include as a minimum:

- 27.3.1 promptly returning to NRW all Software, Data and other materials hosted on the Service together with a configuration document identifying the environment and configuration of the Service; and
  - 27.3.2 providing knowledge transfer in relation to the Services and the Software and in such manner as NRW may reasonably request.
- 27.4 In the event that the Contract is terminated pursuant to condition 3.2.2 then NRW shall be under no obligation to pay the Contract Price. In the event that the Contract Price, or any part thereof, has been paid in advance the Contractor shall reimburse the same within 20 days of the date of termination.

## 28. INDEMNITY

- 28.1 Without prejudice to NRW's other remedies for Default or other breach of Contract, the Contractor shall fully indemnify and keep indemnified NRW and its staff against any liability, loss, costs (including legal costs), expenses, claims, actions, damages or proceedings arising out of in respect of or in connection with the Contract including in respect of:
- 28.1.1 death or injury to any person;
  - 28.1.2 loss or damage to any property (including NRW Property);
  - 28.1.3 infringement of third party Intellectual Property Rights;
  - 28.1.4 financial loss arising from any advice given or omitted to be given by the Contractor;
  - 28.1.5 any other loss which might arise as a consequence of the actions or negligence of the Contractor, its Staff or agents in the execution of the Contract.
- 28.2 Condition 28.1 shall not apply to the extent that the damage, injury or death can be demonstrated to be as a direct result of the actions, or negligence of NRW or its staff.
- 28.3 The indemnity provided under condition 28.1.3 shall not apply to the extent that any such claim refers solely to designs, techniques or methods of working specified by NRW or the use of data supplied by NRW which is not required to be verified by the Contractor under any provision of the Contract.

29. **LIMIT OF LIABILITY**

- 29.1 Subject to condition 29.3 the Contractor's liability for each and every claim arising under, or in connection with, the Contract whether by way of indemnity or by reason of breach of contract, any tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be limited to shall be 125% of the Contract Price or five million pounds whichever is the greater.
- 29.2 Subject to condition 29.3, NRW's total liability arising under, or in connection with, the Contract, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows
- 29.2.1 for non-payment of invoices for Services purchased, to the amount unpaid; or
  - 29.2.2 for any other type of liability, to the amount paid for the Services under the Contract in the preceding 12 months.
- 29.3 Neither party excludes or limits liability to the other for death or personal injury caused by its negligence, for any breach of any obligations implied by Section 12 of the sale of Goods Act 1979, or any other such liability which it is not permissible to exclude the law. Furthermore the liabilities arising from the indemnity in condition 28.1 shall be unlimited.
- 29.4 Subject to condition 29.3, neither party will be liable to the other for :
- 29.4.1 any indirect; special or consequential loss or damage; or
  - 29.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 29.5 Subject to the limit in condition 29.1 NRW may, amongst other things, recover as a direct loss:
- 29.5.1 any additional operational and/or administrative costs and expenses arising from the Contractor's Default;
  - 29.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by NRW arising from the Contractor's Default;
  - 29.5.3 the additional cost of procuring replacement services for the remainder of the Contract Period; and

29.5.4 any anticipated savings identified in the Contract Order.

**30. INSURANCE**

30.1 The Contractor shall procure and maintain insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor arising out of performance of the Contract, including death or personal injury, loss of or damage to property, employers liability, financial loss arising from any advice given or omitted to be given by the Contractor of any other loss.

30.2 If specifically required by NRW, nominated insurances shall be in the joint names of the Contractor and NRW.

30.3 The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

**31. CONFLICTS AND INDUCEMENTS**

31.1 The Contractor confirms that at the date of the Contract, neither the Contractor nor any of its Staff or suppliers are placed in a position where there is or may be any actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to NRW under the provisions of the Contract and that it shall take appropriate steps to ensure that there is no such conflict throughout the Contract Period. The Contractor will disclose to NRW full particulars of any such conflict of interest which may arise.

31.2 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of NRW any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, any act in relation to the obtaining or execution of the Contract or any other contract with NRW, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

31.3 The Contractor shall not enter into the Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of NRW by the Contractor or on the Contractor's behalf, unless, before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to NRW.

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

## 32. **AUDIT**

32.1 The Contractor shall allow NRW and/or its agents, representatives and auditors and/or a Regulatory Body access at all times to:

32.1.1 Records and other materials and assets used in the Contractor's provision of the Services;

32.1.2 The Contractor's Staff involved in the provision of the Services;

32.1.3 Reasonable access to any sites or premises controlled by the Contractor and to any equipment or systems used (whether exclusively or non-exclusively) in the performance of the Services; and

32.1.4 Witness, conduct or access results of, any tests of security processes and counter-measures required to be in place in accordance with condition 38 and condition 45.1.3.

32.2 Where the Services are being performed at a location other than NRW's premises, reasonable notice to inspect shall be given to the Contractor of any audit. The Contractor shall give all such facilities as the auditor may reasonably require for such inspection and examination.

32.3 The Contractor shall co-operate with any audit carried out pursuant to this condition and shall make available all such information and records as are reasonably required by the auditor to conduct the audit free of charge and on a timely basis and shall allow the auditor to take copies of all such information and records.

## 33. **EQUALITY AND EQUAL OPPORTUNITIES**

33.1 The Contractor shall not, and shall ensure that its Staff shall not, unlawfully discriminate (whether directly or indirectly) against any person.

- 33.2 The Contractor shall, and shall ensure that its Staff involved in the provision of the Services shall, comply with NRW's policy on equal opportunities (as amended from time to time).
- 33.3 In the event of any finding of unlawful discrimination being made against the Contractor or any of its Staff engaged by the Contractor during the term of the Contract by any Court or tribunal, or of any adverse finding in any formal investigation by an official body over the same period, the Contractor must immediately inform NRW of this in writing and must immediately take all necessary steps to prevent repetition of the unlawful discrimination. The Contractor must on request, provide NRW with written details of all steps taken under this condition 33.3.

#### 34. **NRW DATA**

- 34.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to any NRW Data.
- 34.2 The Contractor shall not store, copy or disclose or use NRW Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by NRW.
- 34.3 To the extent that NRW Data is held and/or processed by the Contractor, and on receipt of a request by NRW, the Contractor shall supply a copy of that NRW Data to NRW in the format specified in the request.
- 34.4 The Contractor shall take responsibility for preserving the integrity of NRW Data and preventing the corruption or loss of NRW Data.
- 34.5 In the event that the Contractor is required to undertake any work on a live Operating Environment, the Contractor shall be responsible, as a minimum, for ensuring a full back-up of all NRW Data is performed. Such back up shall be stored securely by the Contractor and provided to NRW upon request.
- 34.6 The Contractor shall ensure that any system on which the Contractor holds any NRW Data, including back-up data, is a secure system that complies with the Security Policies and that it has in place appropriate technical and organisational measures to ensure the security of the same.
- 34.7 If NRW Data is corrupted, lost or degraded as a result of the Contractor's Default so as to be unusable, NRW may:

- 34.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of NRW Data to the extent and in accordance with the requirements specified by NRW; and/or
  - 34.7.2 itself restore or procure the restoration of NRW Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified by NRW.
- 34.8 If at any time the Contractor suspects or has reason to believe that NRW Data has or may become corrupted, lost or sufficiently degraded in any way for any reason then the Contractor shall notify NRW immediately and inform NRW of the remedial action the Contractor proposes to take.

35. **DATA PROTECTION ACT**

- 35.1 With respect to the parties rights and obligations under this Contract the parties agree that NRW is the data controller and that the Contractor is the data processor.
- 35.2 Where the Contractor is processing personal data (as defined by the DPA) as a data processor for NRW the Contractor shall ensure that it has implemented appropriate technical and organisational measures to ensure the security of the personal data and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of or damage to the personal data and having regard to the nature of the personal data to be protected.
- 35.3 Notwithstanding the generality of condition 35.2, the Contractor will:
  - 35.3.1 process the personal data only in accordance with instructions from NRW;
  - 35.3.2 process the personal data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
  - 35.3.3 obtain permission from NRW in order to transfer the personal data to any Staff for the provision of the Services;
  - 35.3.4 ensure that any Staff required to access the personal data are informed of the confidential nature of the personal data and comply with the obligations set out in this condition 35 and take reasonable

steps to ensure the reliability of any Staff who have access to personal data;

35.3.5 ensure that none of the Contractor's personnel publish, disclose or divulge any of the personal data to any third party unless directed in writing to do so by NRW;

35.3.6 notify NRW (within five (5) Working Days) if it receives:

- (a) a request from a data subject to have access to that person's personal data; or
- (b) a complaint or request relating to NRW's obligations under the DPA,

and provide NRW with full cooperation and assistance in relation to any complaint or request made including by:

- (a) providing NRW with full details of the complaint or request;
- (b) complying with any data access request within the relevant time scales in the DPA and in accordance with NRW's instructions;
- (c) providing NRW with any personal data it holds in relation to a data subject (within the timescales required by NRW); and
- (d) provide NRW with any information requested by NRW.

35.3.7 permit NRW or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by NRW to enable NRW to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;

35.3.8 provide a written description of the technical and organisational methods employed by the Contractor for processing personal data (within the timescales specified by NRW);

35.3.9 not process personal data outside the European Economic Area without the prior written consent of NRW and, where NRW consents to a transfer, to comply with any reasonable instructions

notified to it by NRW and ensure compliance with the obligations of a data controller under the eight data protection principle as set out in Schedule 1 of the DPA by providing an adequate level of protection to any personal data transferred;

35.3.10 provide NRW with such information as NRW may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

35.3.11 promptly notify NRW of any breach of security measures; and

35.3.12 ensure that it does nothing knowingly or negligently which places NRW in breach of NRW's obligations under the DPA.

35.4 The Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause NRW to breach any of its applicable obligations under the DPA.

35.5 The provisions of this condition 35.5 shall apply during the Contract Period and indefinitely after its expiry or termination.

## 36. **RIGHT TO PUBLISH**

36.1 The Contractor acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. NRW shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for NRW to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

36.2 NRW may consult with the Contractor to inform its decision regarding any exemptions but NRW shall have the final decision in its absolute discretion.

36.3 The Contractor shall assist and cooperate with NRW to enable NRW to publish this Contract.

37. **CONFIDENTIALITY**

37.1 Each party:

37.1.1 shall treat all Confidential Information belonging to the other as confidential and safeguard it accordingly; and

37.1.2 shall not disclose any Confidential Information belonging to the other party to any other person 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 the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

37.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from NRW under or in connection with the Contract:

37.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

37.2.2 is treated as confidential and not disclosed (without the prior written consent of NRW) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract; and

37.2.3 that its Staff or professional advisors or consultants are aware of the Contractor's confidentiality obligations under the Contract and shall sign a confidentiality undertaking on the same terms before commencing work in connection with the Contract.

37.3 This condition 37 shall not apply to Confidential Information which:

37.3.1 is or becomes publicly available (otherwise than by a breach of any obligation of confidentiality); or

37.3.2 was known to a party, without restriction as to its disclosure, before the information was disclosed to it by the other party; or

37.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

- 37.3.4 is required to be disclosed by Law including any requirement for disclosure under the DPA, FOIA or EIR; or
  - 37.3.5 is independently developed by a party without direct or indirect access to, or use or knowledge of, the information disclosed to it by the other party.
- 37.4 Nothing in this Contract shall prevent NRW from disclosing the Contractors Confidential Information, including the Management Information:
  - 37.4.1 to any crown body or any other Contracting Authority who shall be entitled to further disclose the Confidential Information to other crown bodies or Contracting Authorities on the basis it is confidential and not to be disclosed to a non crown body or non-Contracting Authority third party;
  - 37.4.2 for the purpose of examination and certification of NRW's accounts; or
  - 37.4.3 for the examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which NRW has used its resources.

NRW shall use all reasonable endeavours to ensure that if it discloses any Confidential Information under this condition that party is made aware of NRW's obligations of confidentiality.

- 37.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Contract are granted to the other party, or to be implied from this Contract.
- 37.6 Nothing in this condition 37 shall prevent either party from using techniques, ideas or know how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 37.7 On termination of this Contract, each party shall:
  - 37.7.1 return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

37.7.2 erase all the other party's Confidential Information from its computer systems (to the extent possible); and

37.7.3 certify in writing to the other party that it has complied with the requirements of this condition , provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by Law. The provisions of this condition 37 shall continue to apply to any such documents and materials retained by a recipient party.

Provided that this condition 37.7 shall not apply to any Confidential Information provided by the Contractor to NRW in performing its obligations under this Contract and which is necessary for NRW to benefit from the Services following termination.

37.8 Except as expressly stated in this Contract, no party makes any express or implied warranty or representation concerning its Confidential Information.

37.9 The provisions of this condition 37 shall continue to apply after termination of this Contract.

## 38. **MONITORING AND MANAGEMENT INFORMATION**

38.1 Where requested by NRW, the Contractor shall supply the Management Information to NRW and/or to the Welsh Government during the Contract Period.

38.2 The Contractor acknowledges and agrees that NRW may provide the Welsh Government with information relating to the Services and any payments made under the Contract.

38.3 Upon receipt of the Management Information supplied by the Contractor under condition 38.1 or receipt of information provided by NRW to the Welsh Government under condition 38.2, NRW and the Contractor hereby consent to the Welsh Government:

38.3.1 Storing and analysing the Management Information and producing statistics; and

38.3.2 Sharing the Management Information or any statistics produced using the Management Information with any other Contracting Authority.

38.4 In the event that the Welsh Government shares the Management Information or information provided under condition 38.2 in accordance with condition 38.3.2, any Contracting Authority receiving the Management Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body who is not a Contracting Authority (unless required by Law).

38.5 NRW may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) months written notice of any changes.

### 39. **FREEDOM OF INFORMATION AND ENVIRONMENTAL REGULATIONS**

39.1 The Contractor acknowledges that NRW is subject to the requirements of the Code of Practice on Government Information, "FOIA" and the "EIR" and shall assist and cooperate with NRW (at the Contractor's own expense) to enable NRW to comply with these requirements.

39.2 The Contractor shall and shall ensure that all Staff shall:

39.2.1 transfer to NRW all requests for information that it receives as soon as practicable and in any event within 2 working days of receiving a request for information;

39.2.2 provide NRW with a copy of all information in its possession or power in the form that NRW requires within 5 working days (or such other period as NRW may specify) of NRW's request; and

39.2.3 provide all necessary assistance as reasonably requested by NRW to enable NRW to respond to a request for information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

39.3 NRW shall be responsible for determining at its absolute discretion whether any information, whether commercially sensitive information or otherwise, is exempt from disclosure in accordance with the provisions of the Code of Practice on Governmental Information (the "Code"), FOIA or the EIR or is to be disclosed in response to a request for information and in no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by NRW.

39.4 In responding to a request for information, including information in connection with the Contract (including but not limited to tender documents, subsequent contractual

information or information classified as confidential or sensitive) NRW will, where in its absolute discretion it deems necessary, use reasonable endeavours to consult the Contractor. Notwithstanding this the Contractor acknowledges that NRW may, in accordance with the Code, disclose information concerning the Contractor or the Services without consulting the Contractor, or following consultation with the Contractor having taken its views into account provided that NRW shall take reasonable steps where appropriate to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

39.5 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall provide all necessary assistance as reasonably requested by NRW to enable NRW to respond to a request for information within the time for compliance and shall permit NRW to inspect such records as requested from time to time.

39.6 The Contractor acknowledges that any commercially sensitive information identified by the Contractor is of indicative value only and that NRW may be obliged to disclose it in accordance with condition 39.4.

#### 40. **SECURITY**

40.1 The Contractor acknowledges that NRW places great emphasis on confidentiality, integrity and availability of information and consequently on the security of Premises and the security of any of the Contractor's systems. The Contractor also acknowledges the confidentiality of NRW's Data.

40.2 The Contractor shall be responsible for the security of any of its systems and shall at all times provide a level of security which:

40.2.1 is in accordance with Good Industry Practice and Law;

40.2.2 complies with any Security Policies or any policy NRW requires the Contractor to develop, implement and maintain;

40.2.3 meets any specific security threats to any of the Contractor's systems;

40.2.4 complies with ISO/IEC27002 and ISO/IEC27001;

40.2.5 the minimum set of security measures and standards required where the system will be handling "protectively marked" or sensitive

information (as determined by the Cabinet Office Manual of Protective Security or equivalent); and

40.2.6 any other extent national information security requirements and guidance issued from time to time.

40.3 The Contractor should avoid the use of removable media to store NRW Data or information wherever possible. In the event that removable media is used the Contractor shall ensure:

40.3.1 NRW Data or information transferred to the removable media is the absolute minimum necessary to carry out the Services, both in terms of the number of people covered by the information and the scope of information held; and

40.3.2 the removable media should be encrypted to a standard of at least FIPS 140-2 or equivalent and must be protected by an authentication mechanism;

40.3.3 user rights to transfer NRW Data to removable media should be strictly limited to staff for whom it is absolutely necessary.

40.4 Without limiting this condition 40, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (in accordance with Good Industry Practice for the UK public sector):

40.4.1 loss of integrity of NRW Data;

40.4.2 loss of confidentiality of NRW Data;

40.4.3 unauthorised access to, use of, or interference with NRW Data by any person or organisation;

40.4.4 unauthorised access to network elements, Premises and tools used by the Contractor in the provision of the Services;

40.4.5 use of the Contractor's systems or Services by any third party in order to gain unauthorised access to any computer resource or NRW Data; and

40.4.6 loss of availability of NRW Data due to any failure or compromise of the Services.

40.5 Either party shall notify the other immediately upon becoming aware of any malicious software or breach of security including, but not limited to, an actual, potential or attempted breach, or threat to any security plan that NRW have in place or may require the Contractor to develop and put in place.

40.6 Upon becoming aware of any circumstances referred to in condition 40.4 the Contractor shall immediately take all reasonable steps necessary to:

40.6.1 remedy such breach or protect the Contractors systems against any such potential or attempted breach or threat; and

40.6.2 prevent an equivalent breach in the future

Such steps shall include any action or changes reasonably required by NRW.

40.7 In the event of any circumstances referred to in condition 40.4 the Contractor shall as soon as reasonably practicable provide to NRW full details (using such reporting mechanism as may be specified by NRW from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

#### 41. **PREMISES**

41.1 Notwithstanding the generality of condition 40, in relation to the Premises the Contractor shall:

41.1.1 ensure that all persons carrying out the Services on the Premises comply with the security and safety policies and regulations, including the Health and Safety Requirements, from time to time in force on the Premises; and

41.1.2 comply with all instructions of NRW, notified to it in relation to its access to such Premises (including the removal of any person where required by NRW).

#### 42. **CONTRACT PRICE, INVOICING AND PAYMENT**

42.1 NRW will pay undisputed sums due to the Contractor within 30 calendar days of receipt and agreement of invoices.

- 42.2 In addition to the Contract Price, NRW will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable. Where applicable, tax should be shown separately on all invoices as a strictly net extra charge.
- 42.3 The Contractor shall be entitled to invoice for the Contract Price (or part thereof) in accordance with the Payment Profile or, if no Payment Profile is specified, upon completion of the Services to the satisfaction of NRW together with reasonable Expenses (if permitted by reference to the Contract Order) incurred in performing the Services.
- 42.4 All invoices shall contain the purchase order number (provided by NRW from time to time), all appropriate references, and a detailed breakdown of the Services (including where appropriate time sheets signed by the Contract Supervisor) and Expenses and will be accompanied by such other information as NRW may reasonably require to verify the Contractor's invoice.
- 42.5 Invoices shall be submitted to such address (including in electronic format where agreed with the Contractor) as NRW may notify the Contractor from time to time.
- 42.6 NRW may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of NRW.

#### 43. **INTELLECTUAL PROPERTY RIGHTS**

- 43.1 All Prior Rights used in connection with the Services shall remain the property of the party introducing them.
- 43.2 Save in respect of the Software, the Contractor hereby grants to NRW a non-exclusive, irrevocable, royalty free perpetual licence in respect of all the Contractor's Prior Rights necessary in order for NRW to make use or exploit and allow others to make use of the Services and the Resulting Rights.
- 43.3 NRW hereby grants to the Contractor the right to use NRW's Prior Rights solely to the extent necessary for the Contractor to perform the Services.
- 43.4 All Resulting Rights shall be vested in NRW upon creation. In the event that the Resulting Rights do not vest with NRW upon creation the Contractor hereby assigns, by way of future assignment, to (or shall procure the assignment to) NRW all Resulting Rights

43.5 The Contractor confirms that all Prior Rights it intends to use or provide in delivering the Service have been identified in the Contract Order.

43.6 The Contractor waives, or shall procure the waiver, of any moral rights in the Resulting Rights, to which it is not or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

#### 44. **EXPLOITATION**

44.1 The parties recognise that any development work may give rise to potential exploitation possibilities in the wider marketplace. Where the Contractor identifies that such potential exists, it will notify NRW and the parties shall work in good faith

#### 45. **WARRANTY**

45.1 The Contractor warrants and represents that

45.1.1 It has the full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

45.1.2 All obligations of the Contractor hereunder shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill care ability and diligence including but not limited to Good Industry Practice and in accordance with its own established internal procedures;

45.1.3 All Staff used to provide the Services will be vetted in accordance with Good Industry Practice and, where applicable, will be subject to the Staff Vetting Procedure or equivalent and any Security Policies;

45.1.4 The Services shall be to the reasonable satisfaction of NRW and shall be fit for NRW's intended purpose and meet any requirements so far as these have been communicated to the Contractor, or which he would reasonably be expected to know;

45.1.5 The Services shall conform in all respects with the requirements of any applicable Law from time to time in force and that it has and will continue to hold all necessary (if any) regulatory approvals from

any Regulatory Body necessary to perform the Contractors obligations under the Contract;

45.1.6 It is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract;

45.1.7 The Prior Rights and the Resulting Rights, supplied or licensed by the Contractor shall not in any way infringe any Intellectual Property Rights of any third party.

45.2 For the avoidance of doubt the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination NRW may have in respect of breach of that provision by the Contractor.

#### 46. **RECOVERY OF SUMS DUE**

46.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to NRW in respect of any breach of the Contract), NRW may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with NRW.

#### 47. **EMPLOYMENT REGULATIONS**

47.1 In the event that the termination of this Contract could constitute a "relevant transfer" within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Contractor undertakes to NRW to comply with any of its obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and to co-operate with NRW and or any Replacement Contractor in the event of a relevant transfer. Such co-operation shall include an obligation to provide, as soon as reasonably practicable, such information as NRW may reasonably require in respect of such potential transfer.

47.2 The parties agree that the Contracts (Rights of Third parties) Act 1999 shall apply to this condition 47 to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the

Replacement Contractor by the Contractor in its own right pursuant to section 1(1) of the Contracts (Rights of Third parties) Act 1999.

48. **ENVIRONMENT**

48.1 The Contractor shall in all his operations, including purchase of materials, goods and services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and be able to provide proof of so doing to the Contract Supervisor on demand.

48.2 The Contractor shall provide all Services with due consideration of any NRW environmental targets and shall use reasonable endeavours to assist NRW to contribute to such targets including for example in the choice of any packaging, ensuring that it has given preference to materials that contain maximum recycled content and capacity for recycling or, where cost-effective recycling is impracticable, maximum biodegradability.

49. **PUBLICITY**

49.1 Except as required by Law, the Contractor shall not advertise or publicly announce that it is supplying Services, entering into a contract with, or undertaking work for NRW (whether before, at or after completion) without the prior written consent of the Contract Supervisor.

50. **WAIVER**

50.1 No delay, neglect or forbearance by NRW in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of NRW under the Contract, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

50.2 No waiver by NRW shall be effective unless made in writing and shall only apply to the party to whom it is addressed and for the specific circumstances for which it is given.

50.3 No waiver by NRW of a breach of the Contract shall constitute a waiver of any subsequent breach.

50.4 Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract are cumulative and may be exercised

concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **51. ENFORCEABILITY**

51.1 If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid, unenforceable or illegal, that part will be severed from the remainder of the Contract and the other provisions will remain in force and effect as if the Contract had been executed with such invalid, illegal or unenforceable provision eliminated.

## **52. DISPUTE RESOLUTION**

52.1 All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by NRW and the Contractor.

52.2 If the parties' negotiators are unable to resolve the dispute within a period of 10 days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).

52.3 If the parties' respective senior managers or directors are unable to resolve the dispute within 10 days either party may refer the dispute to be settled in accordance with the CEDR Model Mediation Procedure. Upon referral the Centre for Effective Dispute Resolution shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.

52.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.

52.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall be binding on the parties.

52.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.

52.7 Any of the time limits in this condition 52 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

### 53. **GENERAL**

53.1 Neither party to the Contract will be liable to the other for any delay in or failure to perform its obligations under the Contract if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the Contract. If either party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall notify the other as soon as reasonably possible and shall estimate the period such failure or delay shall continue. If a party is unable to perform its obligations under the Contract as a result of Force Majeure for a period in excess of 3 months (commencing on the date of the notice provided) the other party may terminate the agreement by notice in writing with immediate effect.

53.2 The Contract and any documents referred to in it constitute the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral in relation to the subject matter of the Contract. It is accepted that the Contract has not been entered into on the basis of any representations, statements, assurances or warranties of any person that are not expressly contained in (or referred to in) the Contract.

53.3 Nothing in this agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. The Contractor shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of NRW or any representative of NRW or bind NRW in any way.

53.4 Subject to condition 47.2, a person who is not a party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

### 54. **NOTICE**

54.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or by commercial courier, to each Party required to receive the notice at its address as set out in the Contract Order or at such other address as the relevant Party may specify by notice in writing to the other.

54.2 Any notice shall be deemed to have been duly given:

54.2.1 if delivered personally, when left at the address referred to in the Service Order; or

54.2.2 if delivered by commercial courier, on the date of signature of the courier's receipt.

54.3 The provisions of this condition shall not apply to the service of any process in any legal action or proceedings where the normal legal rules as to delivery will apply.

55. **LAW AND JURISDICTION**

This Contract and all disputes or claims arising out of or in connection with it or its subject matter shall be governed and construed in accordance with the laws of England and Wales as it applies in Wales, and subject to the exclusive jurisdiction of the courts of England and Wales.

## **SCHEDULE 1**

### **DEFINITIONS**

<b>NRW</b>	the Environment NRW, its successors and assigns
<b>NRW Data</b>	<p>the data text drawings diagrams images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:</p> <p>(a) supplied to the Contractor by or on behalf of NRW; or</p> <p>(b) which the Contractor is require to generate, process, store or transmit pursuant to the Contract</p>
<b>NRW Obligation's</b>	those obligations specified in the Contract Order as being the responsibility of NRW
<b>NRW Property</b>	all property issued or made available for use by NRW to the Contractor in connection with the Contract
<b>Capacity</b>	agent, consultant, director, employee, owner, partner, shareholder or in any other capacity
<b>Confidential Information</b>	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including the Management Information, information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998

<b>Contract</b>	these General Conditions including the Contract Order, any Special Conditions and other documents referred to in or attached to any of the above specified documents
<b>Contract Order</b>	the Contract Order attached to these General Conditions
<b>Contract Period</b>	the time period stated in the Contract Order or otherwise provided in the Contract, for the performance of the Services
<b>Contract Price</b>	the price exclusive of VAT set out in the Contract Order for which the Contractor has agreed to supply the Services
<b>Contract Supervisor</b>	the duly authorised representative of NRW identified in the Contract Order
<b>Contracting Authority</b>	has the meaning given to it in Regulation 3 of the Public Contracts Regulations 2006
<b>Contractor</b>	the person, firm company or body who undertakes to supply the Services to NRW as defined in the Contract Order
<b>Default</b>	any breach of the obligations of either party (including but not limited to fundamental or persistent breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such party is liable to the other
<b>Delivery Location</b>	unless otherwise agreed in writing by NRW, the location set out for delivery in the Contract Order
<b>Documentation</b>	any description of the Services, Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures and all such other documentation as is required to be supplied

by the Contractor to NRW, is required by the Contractor in order to provide the Services or has been or shall be generated for the purpose of or in connection with the provision of the Services

**DPA**

the Data Protection Act 1998

**EIR**

the Environmental Information Regulations 2004

**Expenses**

those expenses incurred by the Contractor in performing the Services which are identified as being recoverable within the Contract Order. Provided that all such expenses shall be payable by NRW at the rates and in accordance with NRW's then current expenses policy

**FOIA**

the Freedom of Information Act 2000

**Force Majeure**

any event or occurrence which is outside the reasonable control of the party concerned, and which is not attributable to any act or failure to take preventative action by the party concerned, including (but not limited to) mandatory compliance with any governmental regulations, acts of God (including fire, flood, earthquake, or other natural disaster), war or terrorist attack. For the avoidance of doubt, it does not include any strikes, lock outs or other industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation or any non performance by the Contractor's suppliers and sub-contractors

**General Conditions**

the conditions set out in this document

**Good Industry Practice**

using standards, practice, methods and procedures and exercising that degree of skill and care, diligence, prudence and foresight which one would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances

<b>Health and Safety Requirements</b>	all applicable health and safety legislation, rules, policies and regulations and other reasonable health and safety requirements that NRW has in force from time to time
<b>Intellectual Property Rights</b>	all Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, database rights, utility models, trade and service marks and applications for same, copyright, know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected
<b>Issues</b>	all errors, problems defects, failures or other similar issues arising in respect of those items being supported and maintained as part of the Services
<b>Law</b>	any applicable law, statute, bye-law, regulations, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body
<b>Management Information</b>	the information required from the Contractor as described in the Service Order or otherwise specified by NRW from time to time
<b>New Software</b>	software and other deliverables which fall within the definition of the Resulting Rights
<b>Open Source Software</b>	open-source software as defined by the Open Source Initiative ( <a href="http://opensource.org">http://opensource.org</a> ) or the Free Software Foundation ( <a href="http://www.fsf.org">http://www.fsf.org</a> )

<b>Operating Environment</b>	NRW's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) whether hosted and maintained by NRW or a third party on its behalf;
<b>Payment Profile</b>	the payment profile and any milestones for payment identified in the Contract Order
<b>Premises</b>	the location at which the Services are to be provided as specified in the Service Order
<b>Prior Rights</b>	the intellectual property rights in any information or material that was in existence prior to this Contract including for the avoidance of doubt the Software
<b>Products</b>	any products agreed in the Contract Order to be supplied to NRW by the Contractor (including any part or parts of them)
<b>Regulatory Body</b>	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the agreement or any other affairs of NRW
<b>Replacement Contractor:</b>	a firm, company or organisation with which NRW contracts to provide the Services or service which is substantially the same type of services (in whole or in part) after termination of the Contract
<b>Resulting Rights</b>	all Intellectual Property Rights that are originated, conceived, written or made by the Contractor, whether alone or with others in the performance of the Services or otherwise resulting from the Contract which for the avoidance of doubt includes the New Software

<b>Security Policies</b>	the security policies as specified in the Contract Order, or if none specified, the standard security policies of NRW from time to time
<b>Service Credits</b>	the service credits and calculation methodology specified in the Contract Order
<b>Service Levels</b>	the service levels specified in the Contract Order or, in the event that no Service Levels have been so specified, the Service Levels shall be deemed to be those reasonably determined by the parties from time to time as being best practice in the industry. In the event the parties fail to agree what is best practice, either party may invoke the dispute resolution procedure in condition 34 of the General Conditions.
<b>Services</b>	all Services, including such Products, Software, New Software, detailed in the Contract Order
<b>Special Conditions</b>	the specific conditions attached to the General Conditions relating the type of services being procured
<b>Software</b>	shall mean all software and other intellectual property generally identified in the Contract Order, which fall within the definition of Prior Rights which are provided to NRW by the Contractor in performing its obligations hereunder
<b>Staff</b>	all persons employed by the Contractor to perform the contract including the Contractor's servants, agents and sub contractors used in the performance of the Contract
<b>Staff Vetting Procedure</b>	NRW procedures and departmental policy for the vetting of personnel
<b>Standards</b>	the standards as specified in the Contract Order, or if none specified, the relevant standards adopted by

NRW that are applicable to the Services from time to time

<b>Test Failure Payment</b>	the cost of NRW's testing team, as specified in the Contract Order
<b>Test or Testing</b>	such tests as are required by NRW's then current Testing Procedure or such other tests as NRW may deem appropriate to ensure it meets its requirements and specifications and interoperates with its Operating Environment
<b>Timetable</b>	the timetable for the provision and completion of the Services as specified in the Contract Order
<b>Working Days</b>	a day when the clearing banks are open for business other than a Saturday, Sunday or public holiday in England or Wales
<b>Working Hours</b>	the Contractors minimum hours that he shall dedicate to the Services as set out in the Contract Order