



CWM ENVIRONMENTAL LTD.

STANDARD TERMS OF PURCHASE FOR THE SUPPLY OF GOODS AND SERVICES

1 Interpretation

1.1 In these Purchase Terms

- 1.1.1 “Auditor” means an auditor appointed by the Buyer
- 1.1.2 “Buyer” means CWM Environmental Ltd (registered number 02640102);
- 1.1.3 “Contract” means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services
- 1.1.4 “Contract Price” means the price (exclusive of any applicable VAT), payable to the Seller by the Buyer under the Contract, as set out in the Contract for the full and proper performance by the Seller of its obligations under the Contract.
- 1.1.5 “Data Protection Legislation means
 - 1.1.5.1 to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data
 - 1.1.5.2 to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider is subject, which relates to the protection of Personal Data.
- 1.1.6 “Deliverables” means all documents, products and materials developed by the Seller or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- 1.1.7 “Delivery Address” means the address stated on the Purchase Order.
- 1.1.8 “Dispute” any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Contract or any matter where this Contract directs the parties to resolve an issue by reference to Clause 18 Dispute Resolution Procedure.
- 1.1.9 “Dispute Notice” means a notice served pursuant to Clause 18.1.1
- 1.1.10 “EU GDPR” means the General Data Protection Regulation ((EU) 2016/679).
- 1.1.11 “Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
- 1.1.12 “Goods” means the goods (including any instalment of the goods or any part of them) described in the Purchase Order.
- 1.1.13 “Law” means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the

Seller is bound to comply.

- 1.1.14 “Party” means the Seller, or the Buyer and Parties shall mean both the Seller and the Buyer.
- 1.1.15 “Personal Data” shall have the same meaning as set out in the Data Protection Legislation and relates only to personal data, or any part of such personal data, of which the Buyer is the Controller and in relation to which the Seller is providing Services under these Purchase Terms
- 1.1.16 “Price” means the price of the Goods and/or the charge for the Services
- 1.1.17 “Purchase Order” means the Buyer’s purchase order which refers to these Purchase Terms
- 1.1.18 “Purchase Terms” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller
- 1.1.19 “Seller” means the person so described in the Purchase Order
- 1.1.20 “Services” means the services (if any) described in the Purchase Order
- 1.1.21 “Specification” means the description of the Goods or Services required by the Buyer and/or any other document issued by the Buyer stipulating the Services and/or Goods that are required from the Seller including any plans, drawings, data or other information relating to the Goods or Services
- 1.1.22 “Sub-Contractor” means a contractor that enters into a Sub-Contract with the Seller
- 1.1.23 “Uninsurable” means a) insurance is not available to the Seller in respect of the risks in Clause 12.1 in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide
- 1.1.24 “Working Day” means any day other than a Saturday or Sunday or public holiday in England and Wales.
- 1.1.25 “Writing” and any similar expression, includes facsimile transmission and comparable means of communication, including electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given.
- 1.2 Any reference in these Purchase Terms to a statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted or a provision of a statute enactment, order, regulation or other similar instrument shall be construed as a reference to that statute enactment, order, regulation or other similar instrument as amended, re-enacted or extended at the relevant time.
- 1.3 The Headings are included in the Purchase Terms for ease of reference only and shall

not affect the interpretation or construction of these Purchase Terms.

2 Basis of Purchase

- 2.1 The Purchase Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Purchase Terms
- 2.2 These Purchase Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Purchase Order is accepted or purported to be accepted by the Seller
- 2.3 No variation or modification to the Contract is valid unless it is in writing and signed by the Buyer and the Seller.

3 Specifications

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Purchase Terms, be as specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.
- 3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration.
- 3.3 The Seller shall not –
 - 3.3.1 disclose to any third party any Specification referred to in Clause 3.2 except to the extent that it is or becomes public knowledge through no fault of the Seller; or
 - 3.3.2 use any such Specification except as required for the purpose of the Contract
- 3.4 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.5 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing
- 3.6 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 3.7 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary

course.

4 Price of Goods and Services.

- 4.1 The Price of the Goods and the Services shall be as stated in the Purchase Order and, unless otherwise so stated, shall be:
 - 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
 - 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller.

5 Invoicing

- 5.1 Unless otherwise specified in the Specification the Seller shall invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Purchase Order no later than seven (7) days after the end of each month (or such other frequency as agreed between the Parties in writing).
- 5.2 Every invoice shall include the Purchase Order number provided by the buyer. Invoices shall not be processed by the Buyer without a purchase order number.
- 5.3 If, following a request by the Buyer, the Seller fails without due cause to provide verifiable records to evidence to the reasonable satisfaction of the Buyer's authorised representative the due payment of the Contract price then the Buyer shall be entitled to withhold payment. Once evidence is provided the Buyer shall verify the accuracy of the invoice without undue delay. Any undue delay by the Buyer in verifying invoices pursuant to this Clause 5.3 shall not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 5.4 Each invoice shall contain the information specified in the Specification and shall as a minimum state the purchase order number and a breakdown of the Goods supplied by the Seller to the Buyer. The Buyer shall be entitled to request further information in order to verify whether an invoice is valid and undisputed, and the Seller shall supply any such information requested within seven (7) days of the Buyer making a request. VAT and any other tax payable shall be stated separately on invoices and shall be stated to be a net extra charge.
- 5.5 Where the Seller enters into a Sub-Contract in connection with the provision of the Goods, it shall ensure that a Sub-Contract and any sub-contracts entered into by the Seller's Sub-Contractor contain provisions having the same effect as Clauses 5.1 to 5.3. This Clause 5.5 is without prejudice to any terms for earlier payment that may be

agreed between the Seller and any Sub-Contractor.

6 Payment

- 6.1 Unless otherwise agreed and subject to the terms of this Contract, the Buyer shall pay for Goods and Services delivered. The Buyer shall pay valid and undisputed sums due to the Seller in cleared funds within thirty (30) days of receipt of a valid and undisputed invoice.
- 6.2 In the event that the Buyer requires additional information from the Seller to verify and validate an invoice received from the Seller, payment of valid and undisputed sums shall be made within thirty (30) days of receipt of such supporting documentation from the Seller and provided that the Buyer shall be satisfied that the invoice is valid and undisputed. The Buyer shall be entitled to continue to request information to verify the invoice until such time as the Buyer shall be satisfied that the invoice is valid and undisputed
- 6.3 The Buyer at its discretion shall make all payments to the Seller via the bankers' automated clearing service (BACS).
- 6.4 Except for reasons beyond the control of the Buyer where the Buyer has not made payment to the Seller by the due date, the Buyer shall upon written request by the Seller pay interest to the Seller on any amount outstanding at a rate of 4% above the base rate of HSBC Bank. The Parties agree that such a rate is a substantial contractual remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 and such interest shall be payable from the due date for payment until payment is actually made.
- 6.5 Any overpayment by either Party, whether of the Contract Price or VAT or otherwise, shall be a sum of money recoverable by that Party who made the overpayment from the Party in receipt of the overpayment.
- 6.6 The Buyer shall not be liable to pay the Seller for Goods or Services (or both) supplied in excess of those stated in the Order.

7 VAT

- 7.1 The Seller shall, where it is VAT registered, be entitled to charge the Buyer VAT in relation to the Goods and Services provided to the Buyer.
- 7.2 The Seller shall indemnify the Buyer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Buyer at any time in respect of the Seller's failure to account for or to pay any VAT or other liability relating to payments made to the Seller under the Contract. Any amounts due under this Clause 7.2 shall be paid by the Seller to the Buyer not less than twenty (20) Working Days before the date on which the VAT or other liability is payable by the Buyer.

8 Taxation, NI and Employment Liabilities

- 8.1 The Parties acknowledge and agree that the Contract constitutes a contract for the

provision of services and not a contract of employment. The Seller shall at all times indemnify the Buyer and keep the Buyer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Buyer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract

9 Delivery

- 9.1 The Seller shall supply the Goods and Services in accordance with the Specification and the Purchase Order in consideration for the Contract Price goods
- 9.2 The Seller shall be responsible for the accuracy of all drawings, documents and information supplied to the Buyer by the Seller in connection with the supply of the Goods and Services and shall pay the Buyer any extra costs occasioned by any discrepancies, errors or omissions therein.
- 9.3 The Seller shall:
 - 9.3.1 at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body
 - 9.3.2 to the extent that the standard for the Goods or the Services (or both) has not been specified in the Contract, seek confirmation from the Buyer as to the relevant standard of the Goods or the Services (or both) before commencing the supply of the Goods and Services; and
 - 9.3.3 at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 9.4 The Seller shall ensure that all Staff supplying the Goods and Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Goods and Services in accordance with Good/Services Industry Practice.
- 9.5 Timely supply of the Goods and Services shall be of the essence of the Contract, including in relation to commencing the supply of the Goods and Services within the time agreed or on a specified date.
- 9.6 The Buyer may inspect and examine the manner in which the Seller supplies the Goods or the Services (or both) at the Premises.
- 9.7 If the Seller at any time becomes aware of any material matter which prevents or hinders or may prevent or hinder the Seller from supplying the Goods or the Services (or both) in accordance with the Contract, the Seller shall inform the Buyer immediately.
- 9.8 The Buyer retains the Seller for the supply of the Goods and the Services on a non-

exclusive basis.

- 9.9 The Goods and the Services shall be delivered in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions Goods and the Services shall be delivered between 9am and 4pm on a Working Day.
- 9.10 The issue by Buyer of a receipt note for the Goods or the Services (or both) shall not constitute any acknowledgement of the condition, nature or volume of those Goods or the Services (or both). The Buyer shall not be deemed to have accepted any Goods until it has had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent.
- 9.11 Risk in any Goods shall pass to the Buyer upon delivery without prejudice to any rights of rejection which may accrue to the Buyer under the Contract or otherwise.
- 9.12 Title in any Goods shall pass to the Buyer upon delivery or earlier payment.
- 9.13 The Seller shall:
- 9.13.1 co-operate with the Buyer in all matters relating to the Services, and comply with all reasonable instructions of the Buyer
- 9.14 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the Buyer expressly or impliedly makes known to the Seller;
- 9.15 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design.
- 9.16 obtain and at all times maintain all licences and consents which may be required for the provision of the Services; and
- 9.17 not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Seller acknowledges that the Buyer may rely or act on the Services.

10 Risk and Property

- 10.1 Risk in any Goods shall pass to the Buyer upon delivery without prejudice to any rights of rejection which may accrue to the Buyer under the Contract or otherwise.
- 10.2 Title in any Goods shall pass to the Buyer upon delivery or earlier payment.

11 Warranties

- 11.1 The Seller warrants and represents (and the Buyer has entered into this Contract in reliance of such warranties and representations) that:
- 11.1.1 it has full capacity and authority and all necessary consents to enter into and

perform its obligations under the Contract

- 11.1.2 the Contract is signed or executed (as the case may be) by a duly authorised representative or duly authorised representatives (as the case may be) of the Seller
- 11.1.3 in entering the Contract, it has not committed any Prohibited Act.
- 11.1.4 as at the Commencement Date, all information, statements, and representations communicated by the Seller are true, accurate and not misleading and it will advise the Buyer of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading.
- 11.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Contract.
- 11.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract.
- 11.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Seller or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Seller's assets or revenue.
- 11.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract.
- 11.1.9 the Services shall be provided in a proper, skilful and workmanlike manner.
- 11.1.10 the Services shall be provided and carried out by a sufficient number of appropriately experienced, qualified and trained Staff with all due skill, care and diligence.
- 11.1.11 it shall at all times comply with the Quality Standards and, where appropriate, shall maintain accreditation with the relevant Quality Standards authorisations body; and
- 11.1.12 it shall at all times perform its obligations under the Contract in accordance with Law and Good Industry Practice.

11.2 The Seller warrants to the Buyer that the Goods will:

- 11.2.1 be in accordance with the Specification and free from defects in design, material and workmanship and remain so either for the period of 12 months after the Delivery Date or such longer period (if any) as set out in the Specification.
- 11.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and

without risk to health.

11.2.3 of satisfactory quality within the meaning of the Sale of Goods Act 1979

11.2.4 and fit for purpose as required by the Specification or held out by the Seller.

11.2.5 provided in accordance with the Contract, correspond with the

11.2.6 Specification and any drawings, samples or descriptions provided by the Seller; and

11.2.7 be fit for any purpose held out by the Seller or made known to the Seller by the Buyer expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgement. The Seller acknowledges and agrees that the approval by the Buyer of any designs provided by the Seller shall not relieve the Seller of any of its obligations under this Clause 11.2.

11.3 Without prejudice to the Buyer's right to terminate the Contract, if any of the Goods or Services (or both) supplied are not in accordance with the Contract, the Buyer shall be entitled to:

11.3.1 require the Seller to repair the Goods or to supply replacement Goods in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) working days of a request to do so; or

11.3.2 subject to Clause 12 (Liability), treat the Contract as discharged by the Seller's breach and require the repayment of a proportion of the Contract Price which has been paid together with payment of any additional expenditure over and above the Contract Price reasonably incurred by the Buyer in obtaining replacement Goods.

11.4 The Seller acknowledges that any breach of the warranties in Clause 12.1 shall be remedied by the Seller at no cost to the Buyer and within such period of time notified to the Seller by the Buyer. Failure to comply with the time limit specified by the Buyer pursuant to this Clause 11.2 shall constitute a material breach of this Contract and this Contract may be terminated by the Buyer pursuant to Clause 13.1 (Termination)

12 Insurance and Liabilities

12.1 The Seller shall at its own cost effect and maintain with a reputable insurance company the Required Insurances with, as a minimum, the levels of cover as set out in this Clause 12.1:

12.1.1 Employer's Liability Insurance £10 Million

12.1.2 Public Liability Insurance £10 Million

12.1.3 Product Liability Insurance £10 Million

12.1.4 Professional Indemnity insurance £2 Million

12.2 The limits referred to shall be in respect of any one occurrence of employer's liability, any one claim for public liability and any one period of insurance for products liability (if required). The Contractor shall procure that any Sub-Contractor to take out and

maintain such insurance and shall remain responsible for ensuring that any Sub-Contractor maintains insurance commensurate to the Required Insurances for the duration of the Contract. The obligations in this Clause 12 shall not affect the Contractor's liability for the acts and omissions of Sub-Contractors pursuant to Clause 31.

- 12.3 The cover under the Required Insurances shall be in respect of all risks which
- 12.4 may be incurred by the Seller, arising out of the Seller's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss and shall be for an unlimited number of claims in any one (1) period of insurance. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Seller.
- 12.5 The Seller shall give the Buyer, on request, copies of all insurance policies consisting of the Required Insurances or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 12.6 If, for whatever reason, the Seller fails to give effect to and maintain the Required Insurances, the Buyer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Seller.
- 12.7 The terms of any insurance shall not relieve the Seller of any liabilities under the Contract.
- 12.8 The Seller shall at all times take reasonable steps to minimise and mitigate any loss for which the Buyer is entitled to bring a claim against the Seller.
- 12.9 The Seller shall not take any action or fail to take any reasonable action or permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any insurance policy maintained pursuant to Clause 12.1.
- 12.10 Self-insurance shall not be accepted unless previously authorised in writing by the Buyer
- 12.11 The Buyer reserves the right at its sole discretion to reasonably require that the minimum insurance amounts be revised on review should this be deemed necessary by the Buyer.
- 12.12 Failure by the Seller to comply with its obligations under this Clause may be regarded as a material breach of this Contract and Clause 14 shall apply
- 12.13 Nothing in the Contract or this Clause 12 shall be construed to limit or exclude either Party's liability for:
- 12.13.1 death or personal injury caused by its negligence; or
- 12.13.2 fraud or fraudulent misrepresentation; or
- 12.13.3 any breach of any obligations implied by section 12 of the Sale of Goods Act

1979 or section 2 of the Supply of Goods and Services Act 1982.

- 12.14 Subject to Clause 11.1, the Seller's total aggregate liability in respect of the indemnities in Clauses 7.2 (VAT), 8 (Taxation, NI and Employment Liability), Clause 20 (Intellectual Property), Clause 22 (Data Protection) (and in each case, whether before or after the making of a demand pursuant to the indemnities therein) shall be unlimited.
- 12.15 The Seller shall indemnify and keep indemnified the Buyer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever howsoever arising out of, or in consequence of, the supply, or late or purported supply, of the Goods or the Services (or both) or the performance or non-performance by the Seller or Staff of its obligations under the Contract or the presence of the Seller or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Seller or Staff, or any other loss which is caused directly or indirectly by any act or omission of the Seller or Staff. The Seller shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Buyer or by breach by the Buyer of its obligations under the Contract.
- 12.16 Subject to Clause 12.1 and Clause 12.3, the liability of the Buyer will be limited to the amount paid to the Seller for the Goods and the Services provided in the previous Contract Year or if there is no previous Contract Year the amount paid in the current Contract Year.
- 12.17 In no event shall either Party be liable to the other for any:
- 12.17.1 loss of profits.
 - 12.17.2 loss of business.
 - 12.17.3 loss of revenue; or
 - 12.17.4 loss of or damage to goodwill.
- 12.18 The Buyer may, among other things, recover as a direct loss:
- 12.18.1 any additional operational and/or administrative expenses including fines arising from the Seller's Default;
 - 12.18.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Buyer arising from the Seller's Default; and
 - 12.18.3 the additional cost of any replacement Goods or the Services (or both) for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Seller.
- 12.19 The Seller shall fully indemnify, and the keep the Buyer fully indemnified at all times against any liability arising under this Clause 12 Liability which is Uninsurable.
- 12.20 Nothing in the Contract shall impose any liability on the Buyer in respect of any

liability incurred by the Seller to any other person, but this shall not be taken to exclude or limit any liability of the Buyer to the Seller that may arise in Law by virtue of either a breach of the Contract or by negligence on the part of the Buyer., or the Buyer's employees, servants or agents.

12.21 Under this Clause 12 Liability the Seller shall be responsible as against the Buyer for the acts or omissions of Staff and any Sub-Contractor as if they were the acts or omissions of the Seller.

13 Termination on Insolvency or Related Events

13.1 Without affecting any other right or remedy available to it, the Buyer may terminate this Contract with immediate effect by giving written notice to the Seller if:

13.1.1 the Seller suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or

13.1.2 the Seller commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

13.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Seller; or

13.1.4 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 the Seller; or

13.1.5 the holder of a qualifying floating charge over the assets of the Seller has become entitled to appoint or has appointed an administrative receiver; or

13.1.6 a person becomes entitled to appoint a receiver over the assets of the Seller or a receiver is appointed over the assets of the Seller; or

13.1.7 a creditor or encumbrancer of the Seller 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 the Seller's assets and such attachment or process is not discharged within ten (10) days; or

13.1.8 any event occurs, or proceeding is taken, with respect to the Seller in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Clause 13; or

13.1.9 the Seller suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14 Termination on Default

14.1 Without prejudice to Clause 14 the Buyer may terminate the Contract by giving written notice to the Seller with immediate effect if the Seller commits a Default and

if:

- 14.1.1 the Seller has not remedied the Default to the satisfaction of the Buyer within twenty (20) Working Days, or such other period as may be specified by the Buyer, after issue of a notice specifying the Default and requesting it to be remedied; or
- 14.1.2 the Default is not, in the opinion of the Buyer, capable of remedy.
- 14.2 Notwithstanding Clause 14.1 the Buyer may terminate the Contract by giving written notice to the Seller with immediate effect if:
 - 14.2.1 the Seller repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
 - 14.2.2 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 (the "Regulations") apply or would apply if the Contract had been a public contract awarded pursuant to the Regulations; or
 - 14.2.3 any warranty given by the Seller in this Contract is found to be untrue or misleading; or
- 14.3 If the Buyer fails to pay the Seller valid and undisputed sums of money when due, the Seller shall notify the Buyer in writing of such failure to pay. If the Buyer fails to pay such valid and undisputed sums within ninety (90) Working Days of the date of such written notice, the Seller may terminate the Contract in writing with immediate effect, provided that such right of termination shall not apply where the failure to pay is due to the Buyer exercising its rights under this Contract to recover sums from the Seller.
- 14.4 In respect of any right of the Buyer to terminate the Contract pursuant to Clause 13 (Termination on Insolvency and Other Events) Clause 14 (Termination on Default), the Buyer may in its absolute discretion elect to terminate the Contract in whole or in part.

15 Termination For Convenience

- 15.1 The Buyer may terminate this Contract at any time by giving three (3) Months' written notice to the Seller.

16 Termination Events

- 16.1 Without affecting any other right or remedy available to it, the Buyer may terminate this Contract with immediate effect by giving written notice to the Seller if:
 - 16.1.1 the Seller is convicted of a criminal offence which the Buyer deems relevant to the performance of the Contract; or
 - 16.1.2 there is a risk or a belief by the Buyer, that reputational damage to the Buyer will occur as a result of the Contract continuing; or
 - 16.1.3 pursuant to Clause 29.7 of the Contract and the Buyer elects to terminate the

Contract following the procedure in Clause 29.8 (Prevention of Prohibited Acts, Fraud, Bribery and Corruption); or

16.1.4 the Contract has been subject to a substantial variation which does not comply with any of the principles of variation in Clause 31.3 and the Buyer elects to terminate the Contract pursuant to Clause 31.7 or Clause 31.5.2 (Contract Variation); or

16.1.5 pursuant to Clause 37.3 (Force Majeure); or

16.1.6 pursuant to Clause 39.3 (Conflict of Interest); or

16.1.7 pursuant to Clause 22.9 (Data Protection); or

16.1.8 The Seller, at the time that the Contract was awarded, had been convicted of any one or more of the mandatory grounds for exclusion from participation in a Tender as set out in Regulation 57 of PCR 2015; and

16.1.9 The Contract should not have been awarded to the Seller in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union (the TFEU) and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

17 Consequences of Termination or Expiry

17.1 Subject to Clauses 17.2 and 17.3, where the Buyer terminates the Contract in whole or in part, the Buyer shall be liable to pay to the Seller only such elements of the Contract Price, if any, that have been properly incurred or accrued in accordance with the Contract or the affected part of the Contract prior to the time of termination provided that the Seller evidences the same to the satisfaction of the Buyer. If the termination or partial termination is not immediate, then the Seller shall take all reasonable steps to mitigate any such costs. Where the Seller holds insurance, the Seller shall reduce its unavoidable costs by any insurance sums available.

17.2 The Buyer shall not be liable under Clause 17.1 to pay any sum that:

17.2.1 was claimable under insurance held by the Seller, and the Seller has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

17.2.2 when added to any sums paid or due to the Seller under the Contract, exceeds the total sum that would have been payable to the Seller if the Contract had not been terminated before the expiry of the Contract Period.

17.3 The Buyer shall:

17.3.1 be entitled to recover from the Seller (or its representative as the case may be) such elements of the Contract Price, if any, that have been paid in advance for Goods and Services that have not been delivered at the date of termination.

17.3.2 be entitled to recover from the Seller as a debt the cost reasonably incurred of making other arrangements, including those associated with appointing a

Replacement Seller, and any additional expenditure incurred by the Buyer throughout the remainder of the Contract Period provided that the Buyer shall take all reasonable steps to mitigate such additional expenditure.

- 17.3.3 not be obliged to make any further payments to the Seller until the Buyer has established the final cost of making any alternative arrangements or appointing a Replacement Seller (if applicable).
- 17.3.4 include costs associated with the time spent by its officers in terminating the Contract and making alternative arrangements for the supply of the Goods or the Services (or both) or any part of them when assessing the costs.
- 17.3.5 in the event that any sum of money owed by the Seller to the Buyer exceeds any sum of money owed by the Buyer to the Seller under this Contract then the Buyer shall, at its sole discretion, be entitled to deduct that sum from any current or future contract between the Parties; and
- 17.3.6 be entitled to recover any debt owed by the Seller to the Buyer through the courts of England and Wales or any other relevant jurisdiction.
- 17.4 On termination of the Contract for any reason the Seller shall:
 - 17.4.1 immediately return to the Buyer all Confidential Information, Buyer's Intellectual Property and Personal Data belonging to the Buyer and in its possession or in the possession or under the control of any permitted contractors or Sub-Contractors, which was obtained or produced in the course of providing the Goods or the Services (or both);
 - 17.4.2 immediately deliver to the Buyer. all Property (including materials, documents, information and access keys) provided to the Seller.
 - 17.4.3 assist and co-operate with the Buyer to ensure an orderly transition of the Contract to any Replacement Seller and/or the completion of any work in progress.
 - 17.4.4 promptly provide all information concerning the provision of the Goods or the Services (or both) which may reasonably be requested by the Buyer for the purposes of adequately understanding the manner in which the Goods or the Services (or both) have been provided or for the purpose of allowing the Buyer or the Replacement Seller to conduct due diligence.
 - 17.4.5 grant a licence to the Buyer or its appointed agents to enter (for the purpose of recovery) any premises of the Seller where any of the aforementioned items in this Clause may be held.
 - 17.4.6 permit the Buyer to acquire such of the Equipment owned by the Seller in accordance with the provisions of the Specification. If no such mechanism has been provided, then the Buyer may elect to purchase the Property at market valuation or book value (whichever is the lesser); and
 - 17.4.7 ensure that where the Seller has leased any Equipment, the document between the Seller and the third party shall contain provisions permitting the assignment of the benefit of such lease to either the Replacement Seller or the Buyer as the case may

be on terms no less favourable than those contained in the lease between the Seller and such third party at the Buyer's discretion.

- 17.5 Except as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

18 Dispute Resolution Procedure

- 18.1 If a Dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it then the Parties shall follow the procedure set out in this Clause:
- 18.1.1 either Party shall send to the other the Dispute Notice, setting out its nature and full particulars, together with relevant supporting documents. On service of the Dispute Notice, the Buyer's representative shall attempt in good faith to resolve the Dispute; and
- 18.1.2 if the Buyer's representative is for any reason unable to resolve the Dispute within twenty (20) Working Days of service of the Dispute Notice, the Dispute shall be referred to their respective senior managers who shall attempt in good faith to resolve it; and
- 18.1.3 if the Dispute is not resolved within twenty (20) Working Days of it being referred to the senior managers, the Parties will attempt to settle it by mediation in accordance with the policies adopted by the Civil Mediation Council. Unless otherwise agreed between the parties, the mediator shall be nominated by the Civil Mediation Council. To initiate the mediation, a Party shall serve notice in writing to the other party to the Dispute, requesting a mediation. The Parties shall endeavour to commence the mediation no later than thirty (30) Working Days after the date of the request for mediation.
- 18.2 The commencement of a Dispute or mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute and Clause 42

(Governing Law and Jurisdiction) Clause shall apply at all times.

19 Survival

19.1 The Clauses which shall survive expiry or termination of this Contract are:

19.1.1 Clause 17 Consequences of Termination and Expiry.

19.1.2 Clause 18 Dispute Resolution Procedure.

19.1.3 Clause 12 Liability.

19.1.4 Clause 20 Intellectual Property.

19.1.5 Clause 21 Confidentiality and Publicity.

19.1.6 Clause 22 Data Protection.

19.1.7 Clause 23 Freedom of Information and Environmental Information Regulations.

19.1.8 Clause 25 Record Keeping, Audit Access and Monitoring.

19.1.9 Clause 29 Prevention of Prohibited Acts, Fraud, Bribery and Corruption.

19.1.10 Clause 41 Non-Solicitation; and

19.1.11 Clause 42 Governing Law and Jurisdiction.

20 Intellectual Property

20.1 The Buyer shall retain ownership of all its Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material provided to the Seller by the Buyer.

20.2 Any Intellectual Property Rights created as a result of the Contract, including those prepared or created by or on behalf of the Seller (including Works and inventions), shall belong to the Buyer unless the Buyer's representative has given Approval otherwise.

20.3 The Seller hereby grants, or shall procure the direct grant, to the Buyer (at no cost to the Buyer) of a perpetual, royalty free, irrevocable and non-exclusive licence of its Intellectual Property Rights, and shall allow the Buyer to use the Intellectual Property Rights for any purpose relating to the exercise of the business or function of the Buyer provided in each case that such rights shall not extend to the commercial exploitation of the Seller's Intellectual Property Rights. This licence shall include the right to sub-licence to a third party (including, for the avoidance of doubt, any Replacement Seller or other third party invited by the Buyer to participate in a tendering process for the award of a contract to deliver replacement Goods or Services (or both)).

20.4 The Seller shall obtain necessary approvals before using any material, in relation to the performance of the Contract which is or may be subject to any third-party

Intellectual Property Rights.

- 20.5 The Seller shall indemnify the Buyer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights by the supply of the Goods or the Services (or both), except to the extent that they have been caused by or contributed to by the Buyer's acts or omissions.
- 20.6 At the termination of the Contract the Seller shall at the request of the Buyer immediately return to the Buyer all materials, work or records held in relation to the Contract, including any back-up media.

21 Confidentiality and Publicity

- 21.1 Subject to Clause 21.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their Staff, Sub-Contractors and/or representatives from making any disclosure to any person of any matters relating thereto both during the Contract Period and for a period of 6 years following termination or expiry of the Contract.
- 21.2 Clause 21.1 shall not apply to any disclosure of information:
- 21.2.1 required by any applicable law, provided that Clause 23 (Freedom of Information and Environmental Information Regulations) shall apply to any disclosure required under the FOIA or the EIR.
- 21.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract.
- 21.2.3 that is reasonably required by the Buyer.
- 21.2.4 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 21.1.
- 21.2.5 by the buyer of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information.
- 21.2.6 to enable a determination under Clause 18 (Dispute Resolution Procedure);
- 21.2.7 which is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information.
- 21.2.8 by the Buyer to any other department, office or agency of the government, provided that the Buyer informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- 21.2.9 by the Buyer relating to this Contract and in respect of which the Seller has given its

prior written consent to disclosure.

- 21.3 On or before the expiry of the Contract, the Seller shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Buyer's employees, rate-payers or service users, are delivered up to the Buyer and, where applicable and with the Buyer's Approval undergo Certified Data Wiping.
- 21.4 The Seller shall not make any press announcements or publicise the Contract in any way without the Buyer's Approval.
- 21.5 The Buyer shall be entitled to publicise the Contract in accordance with any legal obligation on the Buyer, including pursuant to FOIA, EIR or to any examination of the Contract by the Auditor.
- 21.6 The Seller shall not do anything, or cause anything to be done, which may damage the reputation of the Buyer or bring the Buyer into disrepute.

22 Data Protection

- 22.1 If the provision of the Goods or the Services (or both) involves the processing of personal data, the following Clauses shall apply.
- 22.2 With respect to the Parties' rights and obligations under this Contract and the Data Protection Legislation, the Parties acknowledge that the Buyer is a Controller, and that the Seller is a Processor.
- 22.3 The Seller shall (and shall ensure that any sub-contractor or third party shall) comply at all times with the Data Protection Legislation and the obligations of a Processor in respect of Personal Data belonging to the Buyer and shall not perform its obligations under this Contract in any such way as to cause the Buyer to breach its obligations under the Data Protection Legislation.
- 22.4 Failure by the Seller to comply with its obligations under this Clause 22 may be regarded as a material breach of the Contract.

23 Freedom of Information and Environmental Information Regulations

- 23.1 The Seller acknowledges that the Buyer is subject to the requirements of the FOIA and the EIR. The Seller shall:
- 23.1.1 provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIR;
- 23.1.2 transfer to the Buyer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- 23.1.3 provide the Buyer with a copy of all Information belonging to the Buyer requested in the Request for Information which is in its possession or control in the form that the Buyer requires within five (5) Working Days (or such other period as the Buyer

may reasonably specify) of the Buyer's request for such Information; and

23.1.4 not respond directly to a Request for Information without Approval.

23.2 The Seller acknowledges that the Buyer may be required under the FOIA and EIR to disclose information (including Confidential Information) without consulting or obtaining consent from the Seller. The Buyer shall take reasonable steps to notify the Seller 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 it to do so but (notwithstanding any other provision in this Contract) the Buyer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIR.

24 Discrimination

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

24.2 The Seller shall take all reasonable steps to secure the observance of Clause 24 (Discrimination) by its Staff.

25 Record Keeping, Audit Access and Monitoring

25.1 The Seller shall keep and maintain until six years after the end of the Contract Period (or as long a period as may either be agreed between the Parties or as required by Law), full and accurate records and accounts of the operation of the Contract including the Goods and Services provided under it, the Contract entered into with the Buyer and the amounts paid by the Buyer

25.2 The Seller shall keep the records and accounts referred to in Clause 25.1 in accordance with good accountancy practice.

25.3 The Seller shall on request afford the Buyer, the Buyer's representatives and/or the Auditor such access to such records and accounts as may be required by the Buyer from time to time.

25.4 The Seller shall provide such records and accounts (together with copies of the Seller's published accounts) requested under this Clause during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Buyer and/or the Auditor.

25.5 The Buyer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Seller or delay the supply of the Goods and Services, except insofar as the Seller accepts and acknowledges the conduct of audits carried out by the Auditor is outside of the control of the Buyer.

25.6 The Seller shall on demand provide the Auditor (and/or representatives of the Buyer.) with all reasonable co-operation and assistance in relation to each audit,

including:

25.6.1 all information requested by the Buyer within the scope of the audit.

25.6.2 reasonable access to sites controlled by the Seller and to Equipment used in the supply of the Goods or the Services (or both); and

25.6.3 access to Staff.

25.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause unless the audit reveals a material Default by the Seller in which case the Seller shall reimburse the Buyer for the Buyer's reasonable costs incurred in relation to the audit.

26 Replacement of Corrupted Data

If, through any Default of the Seller, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Seller shall be liable for the cost of reconstitution of that data and shall reimburse the Buyer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

27 Health and Safety

The Seller shall comply, and it shall procure that all Staff shall comply, with all health and safety legislation in force and any health and safety policies of the Buyer as supplied by the Buyer's representative.

28 Corporate Requirements

28.1 Where identified to the Seller as being relevant to the Contract, the Seller shall be obliged to comply with, and shall ensure that Staff shall comply with, such relevant policies of the Buyer in addition to any policies available from time to time on the Buyer's website which may be relevant to:

28.1.1 equality, social value and diversity policies.

28.1.2 health and safety policies.

28.1.3 safeguarding policies.

28.1.4 sustainability policies.

28.1.5 information security rules.

28.1.6 whistleblowing and/or confidential reporting policies.

28.1.7 all site rules relevant to the fulfilment of the Seller's obligations in the supply of the

Goods and Services.

28.1.8 Modern Slavery; and

28.1.9 rules preventing bribery by person's associated with the Buyer and the Buyer's procedures to prevent bribery by persons associated with the Sellers delivering Goods or the Services (or both) to the Buyer.

29 Prevention of Prohibited Acts, Fraud, Bribery and Corruption

29.1 The Seller:

29.1.1 shall not, and shall procure that the Staff shall not, in connection with this Contract, commit a Prohibited Act; and

29.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Buyer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Buyer before execution of this Contract.

29.2 The Seller shall have a policy or policies (which shall be disclosed to the Buyer on request) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

29.3 The Seller warrants that it has not paid a commission nor agreed to pay any commission to any employee or representative of the Buyer by the Seller or on the Seller's behalf.

29.4 If any breach of this Clause is suspected or known, the Seller shall notify the Buyer immediately.

29.5 If the Seller notifies the Buyer that it suspects or knows that there may be a breach of this Clause 29, the Seller shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Contract.

29.6 The Seller shall:

29.6.1 if requested, provide the Buyer with any reasonable assistance, to enable the Buyer to perform any activity required by any relevant Regulatory Body, government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

29.6.2 within fifteen (15) Working Days of the Contract commencement date, and annually thereafter, certify to the Buyer in writing (such certification to be signed by an officer of the Seller) compliance with this Clause 29 (Prevention of Prohibited Acts, Fraud, Bribery and Corruption) by the Seller and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Seller shall provide such supporting evidence of compliance as the Buyer may

reasonably request.

29.7 The Buyer may terminate this Contract by written notice with immediate effect if the Seller or its Staff (in all cases whether or not acting with the Seller's knowledge) breaches any provisions of this Clause 29.

29.8 Any notice of termination under this Clause must specify:

29.8.1 the nature of the Prohibited Act.

29.8.2 the identity of the party whom the Buyer believes has committed the Prohibited Act; and

29.8.3 the date on which this Contract will terminate.

29.9 Notwithstanding the terms of Clause 18 (Dispute Resolution Procedure) any Dispute relating to the interpretation of this Clause or the amount or value of any gift, consideration or commission, shall be determined by the Buyer and its decision shall be final and conclusive.

29.10 Any termination under this Clause shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Buyer.

29.11 If there is any breach of this Clause by the Seller, the Buyer may report the incident to the relevant Regulatory Body.

30 Law and Change in Law

30.1 The Seller shall comply at all times with the Law in its performance of the Contract.

30.2 If a Change in Law, which was not reasonably foreseeable at the Commencement Date, has a direct effect upon the Contract Price the Seller may notify the Buyer in writing of the full implication of the Change in Law, how it will impact on the Contract Price and request a price change.

30.3 If the request for a change in the Contract Price pursuant to this Clause 30 (Law and Change in Law) is refused or is not acted upon by the Buyer within seven (7) Working Days of notification, the Seller may request a meeting and the Parties shall meet within ten Working Days of this request to discuss the full implications of the Change in Law on the Contract Price. If the Parties, within ten (10) Working Days of this meeting, have not agreed the occurrence or the impact of the Change in Law, the Parties will need to follow the Dispute Resolution Procedure.

30.4 Any agreed additional sums payable as a result of the operation of this Clause shall result in an amended Contract Price provided that such variation to the Contract is in accordance with Clause 31 (Contract Variation). For the avoidance of doubt nothing in this Contract is intended to allow the Seller double recovery of any increase in costs.

31 Contract Variation

31.1 No variation or modification to the Contract is valid unless it is in writing and signed

by the Buyer and the Seller.

31.2 The Buyer shall be entitled to issue to the Seller in writing a variation request requiring the addition, suspension, reduction or cessation of provision of any Goods and/or the provision of Services in an emergency.

31.3 Any variation to the Contract shall adhere to the following principles:

31.3.1 the scope and nature of possible modifications or options and conditions of use stated in the Specification.

31.3.2 the variation shall not alter the overall nature of the Contract and

31.3.3 the requirements of Regulation 72 of the Public Contract Regulations 2015 (as amended) (where relevant).

31.4 The Seller shall notify the Buyer of the associated proposed charge, calculated in accordance with and pro-rata the rates and prices used to calculate the Contract Price, for effecting the requested variation.

31.5 If the Seller is unable to provide or meet the variation to the Contract or where the Parties are unable to agree a change to the Contract Price, the Buyer may:

31.5.1 agree that the Parties continue to perform their obligations under the Contract without the variation; or

31.5.2 terminate the Contract with immediate effect.

31.6 If the Parties agree a variation, the Seller shall carry out such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Contract.

31.7 Notwithstanding any provision in this Clause 31 the Buyer may decide in its absolute discretion acting reasonably that it shall instead of processing a variation of the Contract proceed with termination pursuant to Clause 16.1.5

32 Rights and Remedies

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

33 Third Party Rights

33.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

33.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

34 Waiver

34.1 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy,

nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

34.2 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and served in accordance with the notice provisions and shall not be deemed a waiver of any subsequent breach or default.

35 Severance

If any provision or part-provision of this Contract is or 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 Clause 35 Severance shall not affect the validity and enforceability of the rest of this Contract.

36 Assignment, Sub-Contracting and Responsibility

36.1 The Seller shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval.

36.2 Where the Buyer has provided Approval to the placing of Sub-Contracts, copies of each Sub-Contract shall (and/or any additional information requested by the Buyer in relation to the Sub-Contractor shall) be supplied to the Buyer as soon as reasonably practicable following a request from the Buyer in relation to the same.

36.3 Sub-contracting any part of the Contract shall not relieve the Seller of any of its obligations or duties under the Contract.

36.4 The Seller shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

36.5 The Buyer shall have the absolute right to require the Seller to replace a Sub-Contractor for any reason whatsoever whether or not there are compulsory or non-compulsory grounds for doing so.

36.6 The Buyer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

36.6.1 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Buyer;

36.6.2 any private sector body which substantially performs the functions of the Buyer; or

36.6.3 any other body established by the Buyer to substantially perform any of the functions that had previously been performed by the Buyer; or

36.6.4 as required by Law.

36.6.5 provided that any such assignment, novation or other disposal shall not increase the

burden of the Seller's obligations under the Contract.

36.7 In respect of Sub-Contractors, the following shall apply:

36.7.1 prior to the Commencement Date, the Seller shall inform the Buyer of the name, contact details, legal representatives and if relevant, each Sub-Contractor.

36.7.2 any changes to the information notified to the Buyer pursuant to Clause 36.7.1 including any change to the Sub-Contractor engaged by the Seller in the provision of the Goods or the Services (or both); and

36.7.3 The Buyer shall have the absolute right to require the Seller to replace a Sub-Contractor for any reason whatsoever whether or not there are compulsory or non-compulsory grounds for doing so pursuant to Regulation 57 of the Public Contracts Regulations 2015 (as amended).

37 Force Majeure

37.1 Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

37.2 The Buyer shall be entitled to, totally or partially, suspend the date or dates for delivery of the Goods or the Services (or both) until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Seller against the Buyer nor entitle the Seller to terminate the Contract.

37.3 If a Force Majeure Event prevents either Party from performing its obligations under the Contract in any material respect for a continual period of sixty (60) days, then without prejudice to any accrued rights or remedies under the Contract, either Party may terminate the Contract by notice in writing to the other Party having immediate effect.

38 Disruption and Business Continuity

38.1 The Seller shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Buyer, its employees or any other Seller employed by the Buyer.

38.2 The Seller shall immediately inform the Buyer of any actual or potential industrial action, whether such action will be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

39 Conflict of Interest

39.1 The Seller shall take appropriate steps to ensure that neither the Seller nor any Staff are placed in a position where (in the reasonable opinion of the Buyer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Seller or Staff and the duties owed to the Buyer under the provisions of the Contract.

39.2 The Seller shall promptly notify the Buyer (and provide full particulars to the Buyer)

if any conflict referred to in Clause 39.1 arises or is reasonably foreseeable.

39.3 The Buyer reserves the right to terminate the Contract immediately by giving notice in writing to the Seller and/or to take such other steps it deems necessary where, in the reasonable opinion of the Buyer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Seller and the duties owed to the Buyer under the provisions of the Contract. The actions of the Buyer under this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Buyer.

40 Cost and Expenses

Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

41 Non-Solicitation

41.1 For the duration of the Contract and for a period of twelve months thereafter neither the Buyer nor the Seller shall:

41.1.1 employ or offer employment to any of the other Party's Staff or staff who have been associated with the procurement, the provision of and/or the contract management of the Contract without that other Party's prior written consent; and/or

41.1.2 assist or procure any third party to employ or offer employment contrary to this Clause 41.1.1.

42 Governing Law and Jurisdiction

42.1 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 laws of England and Wales.

42.2 Each Party irrevocably agrees that the courts of England and Wales shall have

42.3 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 disputes or claims).

43 Well-Being of Future Generations (Wales) Act 2015

43.1 The Seller acknowledges that, under the Well-being of Future Generations (Wales) Act 2015 the Buyer is required to consider how Goods and Services which the Buyer procures, improves the economic, social and environmental well-being of the area of the Buyer.

43.2 The Seller shall ensure that, in providing the Goods and Services, it improves the economic, social and environmental well-being of the area of the Buyer in accordance with the requirements of the Specification and the Contract.