

SOUTH WALES FIRE AND RESCUE SERVICE ("SWFRS")

STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY TO SWFRS OF GOODS AND/OR SERVICES ("Conditions")

Conditions 3 to 7 apply only to the provision of Goods and conditions 8 to 13 apply only to the provision of Services

1. **DEFINITIONS**

1.1 The definitions and rules of interpretation in this condition apply to these Conditions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks are open for business.

Claim: the meaning given in condition 16.1.

Confidential Information: the meaning given in condition 17.1.

Deliverables: all Documents, products and materials developed by the Supplier in relation to the Services, including a Project Plan in any form, computer programs, data, reports and specifications (including drafts).

Delivery: completion of delivery of an Order in accordance with condition 5.

Delivery Date: the date specified for delivery of an Order in accordance with condition 2.2.

Delivery Location: the location specified for delivery of an Order in accordance with condition 2.2.

Dispute: the meaning given in condition 26.1.

Dispute Notice: the meaning given in condition 26.1.

Document: includes any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Force Majeure Event: has the meaning given in condition 25.3.

Goods: any goods ordered by and supplied to SWFRS.

Independent Expert: a person appointed in accordance with condition 26.1.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **Intellectual Property Right** means any one of the Intellectual Property Rights.

Key Personnel: any member of the Supplier's staff who is identified as being key in any Project Plan or written instruction from SWFRS and any replacement made in accordance with these Conditions.

month: a calendar month

Order: an order for Goods or Services submitted by SWFRS in accordance with condition 2.

Order Number: the SWFRS reference number to be applied to an Order by the Supplier in

accordance with condition **2.2**.

Project: a project as described in a Project Plan.

Project Milestones: a date by which a part of a Project shall be completed as specified in a Project Plan.

Project Plan: a detailed plan describing, in accordance with the Project Specification, a Project and setting out the timetable (including Project Milestones) and responsibilities for the provision of the Services, agreed in accordance with condition **8** and on such agreement to be attached to and to form part of these Conditions.

Project Specification: a specification for the Project agreed in accordance with condition **8** and on such agreement to be attached to and to form part of these Conditions.

Proposal: the materials handed to SWFRS supporting the Supplier's presentation to SWFRS and describing how the Supplier proposes to carry out the Services.

Services: the services to be provided by the Supplier under these Conditions and the Supplier's obligations, together with any other services which SWFRS agrees to take from the Supplier.

Specification: a specification of any Goods submitted by the Supplier and accepted by SWFRS.

Supplier: the person, firm or company who supplies the Goods or the Services to SWFRS.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its sub-contractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to SWFRS.

SWFRS Equipment: any equipment, systems, cabling or facilities provided by SWFRS and used directly or indirectly in the supply of the Goods or Services.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to other genders.
- 1.6 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this agreement and, in the case of a statute includes any subordinate legislation made under that statute whether before or after the date of this agreement.
- 1.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.8 Documents in **agreed form** are documents in the form agreed by the parties and initialled by them for identification.
- 1.9 References to conditions are to the conditions of these terms (also referred to herein as "**this agreement**").
- 1.10 Conditions **3** to **7** apply only to the provision of Goods and conditions **8** to **13** apply only to the provision of Services.

- 1.11 These Conditions shall:
- (a) apply to and be incorporated into any contract between the parties; and
 - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Supplier's quotation, Proposal, confirmation of order, Specification or other document supplied by the Supplier, or implied by law, trade custom, practice or course of dealing.
- 1.12 The Supplier's quotation for Goods and/or Services constitutes an offer by the Supplier to supply the Goods and/or Services specified in it on these Conditions. No offer placed by the Supplier shall be accepted by SWFRS other than by SWFRS issuing a written and executed Order in acceptance of the quotation for the Goods or Services, at which point a contract for the supply and purchase of those Goods or Services on these Conditions will be established. The Supplier's standard terms and conditions (if any) attached to, enclosed with or referred to in any quotation, Specification or other document shall not govern this agreement.

2. **ORDERS**

- 2.1 The Supplier shall use its best endeavours to supply Goods or Services in accordance with the Orders.
- 2.2 Orders shall be given in writing or, if given orally, confirmed in writing within 2 Business Days. Each Order shall specify the type and quantity of Goods and/or Services ordered and, unless the parties agree that SWFRS may specify the date and location after placing the Order, the date by which the Order is to be delivered (**Delivery Date**), and the delivery location (**Delivery Location**). If the Delivery Date and/or Delivery Location are to be specified after the placing of an Order, SWFRS shall give the Supplier reasonable advance notice of the relevant information.
- 2.3 The Supplier shall ensure that it at all time uses the Order Number in all subsequent correspondence relating to the Order once such Order Number has been assigned by SWFRS.
- 2.4 SWFRS may at any time prior to dispatch of the Goods or commencement of Services amend or cancel an Order by written notice to the Supplier. If SWFRS amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under these Conditions, SWFRS shall have no liability to the Supplier in respect of it.

CONDITIONS RELATING ONLY TO THE SUPPLY OF GOODS (CONDITIONS 3 – 7)

3. **SUPPLY OF GOODS**

- 3.1 The Supplier shall sell and SWFRS shall buy such quantities of Goods as SWFRS may order in accordance with these Conditions.

4. **MANUFACTURE, QUALITY AND PACKING**

- 4.1 The Supplier shall manufacture, pack and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.
- 4.2 Hazardous Goods shall be clearly marked by the Supplier as such, with the international danger symbol and the name of the material stated in English. Such Goods will be packaged, labelled and carried in accordance with UK law and internationally accepted agreements. All necessary information as to handling, storage and proper use of such Goods will be supplied on delivery.
- 4.3 The Goods supplied shall:
- (a) conform to any Specification;

- (b) be of satisfactory quality (within the meaning of Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by SWFRS;
 - (c) be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and comply with all applicable statutory and regulatory requirements.
- 4.4 The Goods shall be properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 4.5 The Supplier shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to manufacture/supply the Goods in accordance with these Conditions.
- 4.6 SWFRS shall have the right to enter the Supplier's premises to:
 - (a) Inspect the manufacturing facilities and the equipment used by the Supplier relating to the Goods;
 - (b) Inspect and take samples of the raw materials, the packaging and the Goods.
- 4.7 At any time prior to the Delivery Date SWFRS shall have the right to inspect and test the Goods at all times and if the results of such inspection or testing cause SWFRS to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or any Specifications, SWFRS shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition SWFRS shall have the right to require and witness further testing and inspection.
- 4.8 Inspections carried out pursuant to condition **4.7** shall be carried out during business hours on reasonable notice to the Supplier. If SWFRS considers that the Goods are not or are not likely to be as warranted under condition **4.3**, SWFRS shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under condition **4.3**. SWFRS shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.
- 5. **DELIVERY**
- 5.1 The Supplier shall deliver each Order to the Delivery Location by the Delivery Date. The Supplier shall not deliver an Order more than 5 Business Days in advance of the Delivery Date without the prior written consent of SWFRS.
- 5.2 Delivery of an Order shall be complete on the completion of unloading of the Order at the Delivery Location.
- 5.3 The Supplier shall not deliver Orders by instalments except with the prior written consent of SWFRS. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in this agreement to Orders shall, where applicable, be read as a reference to instalments. When delivery by instalments is agreed, this agreement shall be construed as a separate agreement in respect of each instalment but failure by the Supplier to deliver one instalment shall entitle SWFRS to treat all instalments as repudiated.
- 5.4 Where a delivery time and the Delivery Date is specified in the Order, time and date of delivery will be of the essence. In the absence of a Delivery Date being specified, time and date of delivery will be 3.00 p.m. on the fourteenth day following the date of the Order and in which case that date will be of the essence. If the fourteenth day falls on a day when SWFRS offices are closed, the Delivery Date will be the next following day when the SWFRS offices are open and it is the responsibility of the Supplier to find out such dates.
- 5.5 If an Order is not delivered on the Delivery Date, without limiting any other right or remedy SWFRS may have, SWFRS may:
 - (a) refuse to take any subsequent attempted delivery of the Order;

- (b) terminate this agreement with immediate effect;
- (c) obtain substitute goods from another supplier and recover from the Supplier any costs and expenses reasonably incurred by SWFRS in obtaining such substitute goods; and
- (d) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date,

provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the failure of SWFRS to comply with its obligations under these Conditions.

- 5.6 Each Order shall be accompanied by a delivery note which shows the Order Number, the date of the Order, the type and quantity of Goods included in the Order and, in the case of an Order being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.7 If the Supplier requires SWFRS to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense, otherwise SWFRS shall be at liberty to deal with such materials as it thinks fit without accounting to the Supplier.
- 5.8 Prices quoted by the Supplier are deemed to be inclusive of delivery charges and packaging unless the contrary is clearly specified in writing prior to acceptance of the Order by the Supplier.
- 5.9 Any Goods delivered which do not comply with the description specified in the Order will be removed by the Supplier at the Supplier's expense within 2 Business Days of delivery and if the Supplier fails to do so SWFRS may arrange to return the Goods at the Supplier's expense. In the event that the Goods are identified as not complying with the Order at the time of attempted delivery, the Goods will be removed forthwith from the premises of SWFRS at the Supplier's expense.

6. ACCEPTANCE AND DEFECTIVE GOODS

- 6.1 SWFRS shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 6.2 If any Goods delivered to SWFRS do not comply with condition 4.3, or are otherwise not in conformity with these Conditions, then, without limiting any other right or remedy that SWFRS may have, SWFRS may reject those Goods and:
 - (a) require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within 5 Business Days of being request to do so; or
 - (b) require the Supplier to repay the price of the rejected Goods in full (whether or not SWFRS has previously required the Supplier to repair or replace the rejected Goods); and
 - (c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with these Conditions.
- 6.3 The rights and remedies of SWFRS under condition 6 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and compliance with sample implied into this agreement by the Sale of Goods Act 1979.
- 6.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6.5 If the Supplier fails to promptly repair or replace rejected Goods in accordance with condition

6.2(a), SWFRS may without affecting its rights under condition **6.2(c)**, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse SWFRS for the cost it incurred in doing so.

6.6 If the parties dispute whether any Goods comply with condition **4.3**, either party may refer the matter to an Independent Expert for determination in accordance with condition **26**.

7. **TITLE AND RISK**

7.1 The risk in the Goods shall remain with the Supplier until Delivery has taken place in accordance with condition **5.2** and condition **5.5**.

7.2 Title in the Goods shall pass to SWFRS when Delivery has taken place in accordance with condition **5.2** or condition **5.5**. Without prejudice to this condition, if payment or part payment for an Order is made in advance of delivery, title in the Goods will pass to SWFRS at the time of such payment and, once title has passed to SWFRS, the Supplier shall have no lien or other rights in the Goods.

CONDITIONS RELATING ONLY TO THE SUPPLY OF SERVICES (CONDITIONS 8 – 13)

8. **PROJECT PLANS AND PROJECT SPECIFICATIONS**

8.1 Project Plans and Project Specifications shall be agreed in the following manner:

(a) SWFRS may provide the Supplier with a request for a Project Plan and Project Specification, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, dates by which each stage of the work is to be started and finished, Deliverables, and any other requested information;

(b) the Supplier shall, within 14 days of receipt of a request for a Project Plan and Project Specification, provide SWFRS, at no cost, with a draft Project Plan and Project Specification; and

(c) the Supplier and SWFRS shall discuss and agree the draft Project Plan and draft Project Specification and when they have been agreed, they shall both sign a copy of them and they shall become subject to these Conditions.

8.2 Once the Project Plan and Project Specification have been agreed and signed in accordance with condition **8.1(c)**, no amendment shall be made to it except in accordance with condition **11** and condition **28**.

9. **SUPPLIER'S RESPONSIBILITIES**

9.1 The Supplier shall provide the Services, and deliver the Deliverables to SWFRS or as SWFRS may direct, in accordance with any applicable Project Plan and Project Specification and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

9.2 The Supplier shall meet and time is of the essence as to any performance dates Project Milestones specified in any Project Plan and, in any case where condition **8** applies, the time stipulated for the delivery of a draft Project Plan and Project Specification. If the Supplier fails to do so, SWFRS may (without prejudice to any other rights it may have):

(a) terminate the agreement in whole or in part without liability to the Supplier;

(b) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(c) purchase substitute services elsewhere;

(d) hold the Supplier accountable for any loss and additional costs incurred; and

- (e) have refunded by the Supplier all sums previously paid by SWFRS to the Supplier.

9.3 The Supplier shall:

- (a) co-operate with SWFRS in all matters relating to the Services;
- (b) ensure that the Supplier's officers, agents and employees use reasonable skill and care in the performance of the Services;
- (c) observe, and ensure that the Supplier's officers, agents and employees observe, all health and safety rules and regulations and any other security requirements that apply at any SWFRS premises. SWFRS reserves the right to refuse the Supplier access to SWFRS premises, which will only be given to the extent necessary for the performance of the Services;
- (d) notify SWFRS as soon as any Key Personnel cease being available for the Services and immediately obtain SWFRS written consent for proposed replacement Key Personnel (such consent not to be unreasonably withheld by SWFRS);
- (e) observe and comply with all SWFRS policies and instructions in relation to security, including the completion of any additional clearance procedures required by SWFRS, and return of any passes as required;
- (f) ensure that no employees, agents or subcontractors carry out any business or trading activity within the confines of SWFRS premises and no advertisement, sign or notice of any description shall be exhibited without prior approval, in writing, from SWFRS;
- (g) notify SWFRS as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services;
- (h) provide the Services in accordance with the SWFRS environmental policy;
- (i) at all times comply with the requirements of the Welsh Language Scheme where it applies to this agreement; and
- (j) before the date on which the Services are to start, obtain and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to:
 - (i) the Services;
 - (ii) the installation of the Supplier's Equipment;
 - (iii) the use of all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement including computer programs, data, reports and specifications or any pre-existing materials specified in the Project Plan; and
 - (iv) the use of the SWFRS Equipment in relation to the Supplier's Equipment.

9.4 The Supplier acknowledges and agrees that:

- (a) SWFRS is entering into this agreement on the basis of a Proposal or a Project Plan and that the Proposal or Project Plan is accurate and complete in all material respects, and is not misleading;
- (b) if it considers that SWFRS is not or may not be complying with any of the SWFRS obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under this agreement:
 - (i) to the extent that it restricts or precludes performance of the Services by the Supplier; and
 - (ii) if the Supplier, promptly after the actual or potential non-compliance has

come to its attention, has notified details to the SWFRS in writing.

10. **SWFRS OBLIGATIONS**

10.1 SWFRS shall:

- (a) provide such access to SWFRS premises and data, and such office accommodation and other facilities as may reasonably be required by the Supplier and agreed with the SWFRS, in advance, for the purposes of the Services; and
- (b) provide such information as the Supplier may reasonably request and SWFRS considers reasonably necessary, in order to carry out the Services, in a timely manner, and ensure that it is accurate in all material respects; and
- (c) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any SWFRS premises.

11. **CHANGE CONTROL**

11.1 The parties shall meet as necessary to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

11.2 If SWFRS requests a change to the scope or execution of the Services:

- (a) the Supplier shall, within a reasonable time (and in any event not more than five working days after receipt of the request from SWFRS), provide a written estimate to the SWFRS of:
 - (i) the likely time required to implement the change;
 - (ii) any necessary variations to the Supplier's charges arising from the change;
 - (iii) any other impact of the change on the terms of this agreement.
- (b) if SWFRS does not wish to proceed, there shall be no change to any applicable Project Plan or this agreement; and
- (c) if the SWFRS wishes the Supplier to proceed with the change, the Supplier shall do so after agreement on the necessary variations to its charges, the Services, any the Project Plan and any other relevant terms of this agreement to take account of the change and this agreement shall be varied in accordance with condition **28.1**.

11.3 If the Supplier requests a change to the scope of the Services, SWFRS shall not unreasonably withhold or delay consent to it. If SWFRS wishes the Supplier to proceed with the change, the Supplier shall do so, following a variation of this agreement in accordance with condition **28.1**. Unless the Supplier's request was attributable to non-compliance by SWFRS with its obligations, neither the Supplier's charges, any the Project Plan or any other terms of this agreement shall vary as a result of such change.

12. **QUALITY OF SERVICES**

12.1 The Supplier warrants to SWFRS that:

- (a) the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
- (b) the Services will conform with all descriptions and specifications provided to SWFRS by the Supplier, including any Proposal or Project Specification or Project Plan; and
- (c) the Services and Deliverables will be provided in accordance with all applicable

legislation from time to time in force and the Supplier will inform SWFRS as soon as it becomes aware of any changes in that legislation.

12.2 The rights of SWFRS under this agreement are in addition to the statutory terms implied in favour of SWFRS by the Supply of Goods and Services Act 1982 and any other statute.

12.3 The provisions of this condition **12** shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

13. **INTELLECTUAL PROPERTY RIGHTS**

13.1 The Supplier assigns to SWFRS, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

13.2 The Supplier shall, promptly at the request of SWFRS, do or procure to be done all such further acts and things and the execution of all such other documents as SWFRS may from time to time require for the purpose of securing for SWFRS the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to SWFRS in accordance with condition **13.1**.

CONDITIONS RELATING TO BOTH THE SUPPLY OF GOODS AND SERVICES (CONDITIONS 1,2 AND 14 – 34.

14. **PRICE AND CHARGES**

14.1 The price of the Goods shall be stated clearly on the Order.

14.2 The price of the Goods is exclusive of amounts in respect of VAT. SWFRS shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of Goods.

14.3 Unless stated clearly in the Order the price of the Goods is inclusive of the cost of packaging, insurance and carriage of the Goods.

14.4 Condition **14.5** shall apply if the Supplier provides the Services on a time and materials basis. Condition **14.6** shall apply if the Supplier provides the Services for a fixed price. The remainder of this condition **14** shall apply in either case.

14.5 Where the Services are provided on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as set out in any Proposal;
- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);
- (c) the Supplier shall not be entitled to charge on a pro rata basis for part-days worked unless it has the prior written consent of SWFRS to do so;
- (d) the Supplier shall ensure that it complete time sheets recording time spent on the Services, and, subject to the written approval of them by SWFRS the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition **14.5(e)**; and
- (e) the Supplier shall invoice SWFRS monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition **14.5**. Each invoice shall set out the time spent by each member of the Supplier's provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

14.6 Where the Services are provided for a fixed price, the total price for the Services shall be the

amount set out in any Project Plan or any Proposal. The total price shall be paid to the Supplier in instalments, with each instalment being conditional on the Supplier achieving the corresponding Project Milestone. On achieving a Project Milestone in respect of which an instalment is due, the Supplier shall invoice SWFRS for the charges that are then payable, together with expenses, the costs of materials (and VAT, where appropriate) calculated as provided in condition **14**.

14.7 The Supplier's charges for the Services shall exclude:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by the Supplier in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost price. The Supplier shall obtain SWFRS written approval before incurring any such expense, material or service; and
- (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

14.8 Claims for payment in respect of materials purchased by or services provided to the Supplier relating to Services , or for reimbursement of expenses, shall be payable by SWFRS only if accompanied by relevant receipts.

15. **TERMS OF PAYMENT**

15.1 The Supplier shall be entitled to invoice SWFRS for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order Numbers.

15.2 SWFRS shall pay invoices in full by 30 days of receipt.

15.3 If SWFRS disputes any invoice or other statement of monies due, SWFRS shall promptly notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of SWFRS giving notice to the Supplier, the dispute shall be resolved in accordance with condition **26**.

15.4 If SWFRS specifies that the Supplier's invoice is to be sent to an address other than the address to which the Goods are delivered or Services performed, no payment will be made until such invoice is received at the correct address.

15.5 SWFRS may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Supplier against any amounts payable by it to the Supplier. The Supplier may only set off any amounts owed to it by SWFRS if such set off is either approved by SWFRS in writing or adjudged to be owed by SWFRS upon conclusion of the dispute resolution procedures contained herein.

15.6 All payments payable to the Supplier or SWFRS under this agreement shall become due immediately on its termination. This condition **15.6** is without prejudice to any right to claim for interest under the law or under this agreement.

16. **INDEMNITY AND INSURANCE**

16.1 The Supplier shall indemnify SWFRS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (each a **Claim**) suffered or incurred by SWFRS arising out of or in connection with breach of this agreement or in connection with:

- (a) any claim made against SWFRS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods or Services;
- (b) any claim made against SWFRS by a third party arising out of, or in connection with,

the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or subcontractors; and

- (c) any claim made against SWFRS by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

16.2 During the term of this agreement and for an adequate period thereafter, the Supplier shall maintain in force and shall procure that any sub-contractor maintains in force with a reputable insurance company adequate professional indemnity, public liability and public indemnity insurance and shall, on the request SWFRS, produce both the insurance certificate giving details of cover and the receipt for the current year's premium. The provisions of this condition **16.2** shall survive termination, howsoever arising.

16.3 Where in compliance with condition **16.2** the Supplier effects, or is to procure that a sub-contractor effects, professional indemnity insurance, the requisite insurance shall cover liabilities under this agreement, or sub-contract as the case may be, from the commencement of the Services, or the services under any sub-contract as the case may be, until 6 years after completion of the Services or termination of this agreement (whichever is the earlier).

16.4 If, for whatever reason, the Supplier fails to maintain, or fails to procure that any sub-contractor maintains, the insurance required by this condition **16.2**, SWFRS may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Supplier.

17. CONFIDENTIALITY AND DISCLOSURE

17.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, operations, plans, product information, designs, operating secrets, software or initiatives (**Confidential Information**), which are of a confidential nature and have been disclosed to the Supplier by SWFRS, its employees, agents or sub-contractors and any other Confidential Information concerning SWFRS business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its other employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to SWFRS and the Supplier shall ensure that all other employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Supplier.

17.2 SWFRS reserves all rights in its Confidential Information. No rights or obligations in respect of its Confidential Information other than those expressly stated in this agreement are granted to the Supplier or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable either now or in the future.

17.3 SWFRS reserves the general right to disclose information about this agreement to any party, unless otherwise agreed in writing.

18. SWFRS PROPERTY

18.1 SWFRS Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by SWFRS to the Supplier shall, at all times, be and remain the exclusive property of SWFRS, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the SWFRS, and shall not be disposed of or used other than in accordance with the written instructions or authorisation of SWFRS.

19. TERMINATION

19.1 SWFRS may terminate this agreement at any time and for any reason without any liability to the Supplier and without any obligation other than to give the Supplier one month's notice.

19.2 Without prejudice to any other rights or remedies which the SWFRS may have, SWFRS may

terminate this agreement without liability to the Supplier immediately on giving notice to the Supplier if:

- (a) the performance of the Services or the delivery of the Goods is delayed, hindered or prevented by circumstances beyond the Supplier's reasonable control; or
- (b) the Supplier commits a material breach of any of the terms of this agreement and fails to remedy that breach within 14 days of being notified in writing of the breach; or
- (c) the Supplier commits a series of persistent minor breaches which, when taken together, amount to a material breach; or
- (d) an order is made or a resolution is passed for the winding up of the Supplier, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Supplier; or
- (e) an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Supplier, or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (f) a receiver is appointed of any of the Supplier's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier, or if any other person takes possession of or sells the Supplier's assets; or
- (g) the Supplier makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (h) the Supplier ceases, or threatens to cease, to trade; or
- (i) the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or
- (j) there is a change of control of the Supplier (as defined in section 574 of the Capital Allowances Act 2001).

19.3 Termination of this agreement shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

19.4 On termination of this agreement for any reason the Supplier shall immediately deliver to SWFRS:

- (a) all materials and all copies of information and data provided by SWFRS to the Supplier. The Supplier shall certify to SWFRS that it has not retained any copies of such materials or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in condition **17**; and
- (b) all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to SWFRS (to the extent that they have not already done so by virtue of condition **13**), who shall be entitled to enter the premises of the Supplier to take possession of them.

19.5 If the Supplier fails to fulfil its obligations under condition **19.4**, then SWFRS may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

20. **REMEDIES**

20.1 If the Supplier fails to comply with, any terms of this agreement, SWFRS shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

- (a) to rescind this agreement; or
- (b) to refuse to accept the provision of any further Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by SWFRS to the Supplier under this agreement; or
- (c) to require the Supplier, without charge to SWFRS, to carry out such additional work as is necessary to correct the Supplier's failure; and
- (d) in any case, to claim such damages as it may have sustained in connection with the Supplier's breach or breaches of this agreement not otherwise covered by the provisions of this condition **20**.

21. **SURVIVAL OF OBLIGATIONS**

21.1 On termination of this agreement conditions **16, 17, 19, 26** and **34** shall survive and continue in full force and effect

22. **CORRUPT GIFTS AND THE PAYMENT OF COMMISSION**

22.1 The Supplier shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to this agreement for Goods/Services, or any other contract with SWFRS.

22.2 The Supplier shall not conspire with any person to do any of the acts mentioned in condition **22.1**.

22.3 Any breach by the Supplier of condition **22.1** or any commission of any offence by the Supplier under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract shall entitle the SWFRS to terminate the Contract and recover from the Supplier the amount of any loss resulting from such termination and recover from the Supplier the amount of value of any such gift, consideration or commission.

22.4 The decision of the SWFRS in relation to condition **22** shall be final and conclusive.

23. **DISCRIMINATION**

23.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 and 2000, the Sex Discrimination Acts 1975 and 1986, the Disability Discrimination Act 1995 and 2005, Equal Pay Act 1970, Welsh Language Act 1993, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion and Belief) Regulations 2003, Human Rights Act 1996, The Equality Act 2006 (The Gender Equality Duty), Employment Equality (Age) Regulations 2006 and shall take all reasonable steps to ensure that all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of this agreement do not unlawfully discriminate.

24. **OCCUPATION OF SWFRS PREMISES**

24.1 Any land or premises (including temporary buildings) made available to the Supplier by the SWFRS in connection with this agreement shall (unless otherwise agreed in writing) be made available to the Supplier free of charge and shall be used by the Supplier solely for the purposes of performing its obligations under this agreement. The Supplier shall have the use of such land or premises as licensee only and shall not have exclusive possession of any such land or premises, and shall vacate the same upon completion or determination of this agreement. Any utilities required by the Supplier shall be subject to such charges as may be set out by SWFRS.

25. **FORCE MAJEURE**

25.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this agreement so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

25.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event:

- (a) notify the other party of the nature and extent of such Force Majeure Event; and
- (b) use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

25.3 For the purposes of this condition **25**, a **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

26. **DISPUTE RESOLUTION PROCEDURE**

26.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this agreement, the parties shall follow the dispute resolution procedure set out in this condition:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the parties shall attempt in good faith to resolve the Dispute;
- (b) if the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by referring it to a panel of two independent mediators (**Independent Expert(s)**), each party nominating one mediator each;
- (c) if the mediators appointed in the above condition are unable to resolve the Dispute, the Dispute shall be referred to an Umpire and the parties agree that the Dispute shall be resolved in accordance with the provisions set down in the Arbitration Acts of 1950 and 1996 and any statutory modification or re-enactment thereof.

27. **SEVERANCE**

27.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

27.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

28. **VARIATION AND WAIVER**

28.1 Any variation of these terms shall be in writing and signed by or on behalf of the parties.

28.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

28.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent or

restrict any future exercise or enforcement of such right or remedy.

- 28.4 No single or partial exercise of any right or remedy under this agreement shall prevent or restrict the further exercise of that or any other right or remedy.

29. **FURTHER ASSURANCE**

- 28.1 Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this agreement and the transactions contemplated by it.

30. **ASSIGNMENT**

- 30.1 The Supplier shall not, without the prior written consent of SWFRS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

- 30.2 SWFRS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

31. **NO PARTNERSHIP OR AGENCY**

- 31.1 Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

32. **RIGHTS OF THIRD PARTIES**

- 32.1 No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

33. **NOTICES**

- 33.1 Notice given under this agreement shall be in writing, sent for the attention of the person, and to the address or fax number, given by each party for the purpose of this agreement (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery (in the absence of any address being given by SWFRS, all notices shall be sent by the Supplier to the Director of Legal Administration & ICT at SWFRS headquarters). A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition **33** is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

34. **GOVERNING LAW AND JURISDICTION**

- 34.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

- 34.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.