



## 1. INTERPRETATION

1.1 **Definitions.** In these Terms and Conditions, the following definitions apply:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England and Wales when banks in London are open for business.

**Contract:** the contract between Qualifications Wales and the Supplier for the supply of Goods and/or Services in accordance with the Purchase Order and these Terms and Conditions.

**Customer Materials:** all materials, equipment and tools, drawings, specifications and data supplied by Qualifications Wales to the Supplier.

**Data Processor:** shall have the same meaning as set out in the DPA.

**DDP:** means delivery paid as per Incoterms 2010 and includes the additional obligation on the Supplier of unloading the Goods from the arriving means of transport on delivery.

**Delivery Date:** the date specified for delivery of an order, as set out in the Purchase Order.

**Delivery Location:** the address for delivery of the Goods, as set out in the Purchase Order.

**DPA:** the Data Protection Act 1998.

**EIRs:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Goods:** the goods (or any part of them) set out in the Purchase Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by Qualifications Wales and the Supplier.

**Information:** has the meaning given under section 84 of FOIA.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 rights, topography 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.

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

**Personal Data:** shall have the same meaning as set out in the DPA.

**Purchase Order:** Qualifications Wales's order for the supply of Goods and/or Services.

**Qualifications Wales:** Qualifications Wales whose principal place of business is Q2 Building, Pencarn Lane, Imperial Park, Coedkernew, Newport, NP10 8AR.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Services:** the services to be provided by the Supplier under the Contract, as set out in the Service Specification.

**Service Specification:** the description or specification for the Services agreed in writing by Qualifications Wales and the Supplier.

**Supplier:** the person or firm from whom Qualifications Wales purchases Goods and/or Services.

**Terms and Conditions:** these terms and Terms and Conditions as amended from time to time in accordance with clause 20.10.

**Welsh Language Obligations:** means the obligations of Qualifications Wales in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards which apply to Qualifications Wales under the Welsh Language (Wales) Measure 2011 (whether or not a compliance notice has been given to Qualifications Wales) or any specific obligations in respect of the use of the Welsh language in connection with the delivery of Goods and/or Services which are notified to the Supplier from time to time by Qualifications Wales.

1.2 **Interpretation.** In these Terms and Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (c) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (d) a reference to writing or written includes fax and email.

## 2. ORDERS

2.1 The Purchase Order constitutes an offer by Qualifications Wales to purchase Goods and/or Services from the Supplier in accordance with these Terms and Conditions.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of the Supplier issuing written acceptance of the Purchase Order or any act by the Supplier consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

2.3 The Contract shall commence on Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until the date set out in the Purchase Order, when it shall terminate automatically without notice.

2.4 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 All of these Terms and Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.6 The Customer may amend or cancel a Purchase Order in whole or in part at any time before delivery by giving the Supplier written notice. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

## 3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;

### Qualifications Wales

Q2 Building, Pencarn Lane  
Imperial Park,  
Newport  
NP10 8AR  
☎ 0333 077 2701



[www.qualificationswales.org](http://www.qualificationswales.org)

### Cymwysterau Cymru

Adeilad Q2, Lôn Pencarn  
Parc Imperial,  
Casnewydd  
NP10 8AR  
☎ 0333 077 2701

- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Qualifications Wales, expressly or by implication, and in this respect Qualifications Wales relies on the Supplier's skill and judgment;
  - (c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months (or such other period set out in the Purchase Order) after delivery; and
  - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing Qualifications Wales considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Qualifications Wales shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

#### **4. DELIVERY OF GOODS**

- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed (and, if applicable packed in accordance with the OEM's recommendation) and secured in such manner as to enable them to reach their destination in good condition;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Purchase Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (c) if the Supplier requires Qualifications Wales to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- (a) on or before the Delivery Date;
  - (b) at the Delivery Location on a DDP basis (unless expressly stated otherwise in the Purchase Order); and
  - (c) during Qualifications Wales's normal business hours, or as instructed by Qualifications Wales.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 The Supplier shall not deliver Purchase Orders in instalments without Qualifications Wales's prior written consent. Where it is agreed that Purchase Orders may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle Qualifications Wales to the remedies set out in clause 6.

4.5 Title and risk in the Goods shall pass to Qualifications Wales on completion of delivery in accordance with clause 4.3.

#### **5. SUPPLY OF SERVICES**

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to Qualifications Wales in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by Qualifications Wales and time is of the essence in relation to any of those performance dates.
- 5.3 In supplying the Services, the Supplier shall:
- (a) co-operate with Qualifications Wales in all matters relating to the Services, and comply with all instructions of Qualifications Wales;
  - (b) perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - (c) only use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
  - (d) ensure that the Services will conform in all respects with all descriptions and specifications set out in the Service Specification;
  - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (f) use the best quality goods, materials, standards and techniques, and ensure all goods and materials supplied and used in the Services or transferred to Qualifications Wales, will be free from defects in workmanship, installation and design;
  - (g) ensure that it obtains and at all times maintains all necessary licences, permissions and consents (statutory, regulatory or otherwise) it may require and which are necessary to enable it to comply with its obligations, and comply with all applicable laws and regulations;
  - (h) observe all health and safety rules and regulations and any other security requirements that apply at any of Qualifications Wales's premises;
  - (i) notify Qualifications Wales in writing immediately upon the occurrence of any change of control of the Supplier;
  - (j) hold all Customer Materials in safe custody at its own risk, maintain Qualifications Wales Materials in good condition until returned to Qualifications Wales, and not dispose or use Qualifications Wales Materials other than in accordance with Qualifications Wales's written instructions or authorisation; and
  - (k) not do or omit to do anything which may cause Qualifications Wales to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Qualifications Wales may rely or act on the Services.

#### **6. CUSTOMER REMEDIES**

- 6.1 If the Supplier fails to:
- (i) deliver the Goods and/or perform the Services by the applicable date (including without limitation the performance dates for Services and/or the Delivery Date for Goods); and/or
  - (ii) comply with the undertakings in clause 3 and/or clause 5 (as applicable), Qualifications Wales shall, without limiting its other rights or remedies (and whether or not it has accepted the Goods), have one or more of the following rights:
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - (c) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - (d) to recover from the Supplier any costs incurred by Qualifications Wales in obtaining substitute goods and/or services from a third party;
  - (e) where Qualifications Wales has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
  - (f) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - (g) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
  - (h) to claim damages for any additional costs, loss or expenses incurred by Qualifications Wales which are in any way attributable to the Supplier's failure to perform its obligations under the Contract.

- 6.2 These Terms and Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **7. CUSTOMER'S OBLIGATIONS**

The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to Qualifications Wales's premises for the purpose of providing the Services; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and Qualifications Wales considers reasonably necessary for the purpose of providing the Services.

## **8. CHARGES AND PAYMENT**

8.1 The Supplier shall pay for Goods and Services in accordance with this clause 8.

8.2 All amounts payable by Qualifications Wales include:

- (a) amounts in respect of all taxes and duties (including value added tax (VAT) and import/export duties); and
- (b) the costs of packaging, insurance, loading and carriage of the Goods and unloading at the Delivery Location.
- 8.3 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Qualifications Wales, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.4 The charges are fixed and are not subject to any variation.

8.5 In respect of Goods, the Supplier shall invoice Qualifications Wales on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Qualifications Wales on completion of the Services. Each invoice shall include such supporting information required by Qualifications Wales to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

8.6 In consideration of the supply of Goods and/or Services by the Supplier, Qualifications Wales shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

8.7 If Qualifications Wales fails to make any payment due to the Supplier under this Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 13, Qualifications Wales shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.8 In relation to payments disputed in good faith, interest under 8.7 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

8.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Qualifications Wales to inspect such records at all reasonable times on request.

8.10 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to Qualifications Wales against any liability of Qualifications Wales to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 In respect of the Goods and any goods that are transferred to Qualifications Wales as part of the Services under this Contract, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Qualifications Wales, it will have full and unrestricted rights to sell and transfer all such items to Qualifications Wales.

9.2 The Supplier assigns to Qualifications Wales, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services.

9.3 The Supplier shall obtain waivers of all moral rights in the products of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9.4 The Supplier shall, promptly at Qualifications Wales's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Qualifications Wales may from time to time require for the purpose of securing for Qualifications Wales the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Qualifications Wales in accordance with clause 9.2.

9.5 All Customer Materials are the exclusive property of Qualifications Wales.

## **10. INDEMNITY**

10.1 The Supplier shall keep Qualifications Wales indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered incurred by Qualifications Wales as a result of or in connection with:

- (a) any claim made against Qualifications Wales for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against Qualifications Wales by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against Qualifications Wales by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of the Contract.

## **11. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

11.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable Laws, statutes and regulations from time to time in force.

11.2 The Customer may immediately terminate the Contract for any breach of clause 11 by the Supplier.

## **12. INSURANCE**

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, employers liability insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Qualifications Wales's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **13. FREEDOM OF INFORMATION**

13.1 The Supplier acknowledges that Qualifications Wales is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by Qualifications Wales to enable Qualifications Wales to comply with its obligations under the FOIA and EIRs;

- (b) transfer to Qualifications Wales all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Business Days of receipt;
- (c) provide Qualifications Wales with a copy of all Information belonging to Qualifications Wales requested in the Request For Information which is in its possession or control in the form that Qualifications Wales requires within 5 Business Days (or such other period as Qualifications Wales may reasonably specify) of Qualifications Wales's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by Qualifications Wales.

13.2 The Supplier acknowledges that Qualifications Wales may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier 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) Qualifications Wales shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### 14. DATA PROTECTION

14.1 The Supplier shall (and shall procure that any of its personnel involved in the provision of this Contract shall) comply with any notification requirements under the DPA and both parties shall duly observe all of their obligations under the DPA which arise in connection with the Contract.

14.2 Notwithstanding the general obligation in clause 14.1, where the Supplier is processing Personal Data as a Data Processor for Qualifications Wales, the Supplier shall ensure that it has in place appropriate technical and organisational security measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accident loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide Qualifications Wales with such information as Qualifications Wales may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
- (b) promptly notify Qualifications Wales of any breach of the security measures to be put in place pursuant to clause 14.2;
- (c) ensure that it does not knowingly or negligently do or omit to anything which places Qualifications Wales in breach of Qualifications Wales's obligations under the DPA; and
- (d) not transfer Personal Data outside of the EEA.

14.3 The provisions of this clause 14 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

#### 15. PREVENTION OF BRIBERY

15.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
- (d) promptly report to Qualifications Wales any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract.

15.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this 15 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Qualifications Wales for any breach by such persons of any of the Relevant Terms.

15.3 Breach of this clause 15 shall be deemed a material breach under clause **Error! Reference source not found.**

15.4 For the purpose of this clause 15, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 15 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

#### 16. HUMAN RIGHTS, EQUALITY AND DIVERSITY, AND ANTI-SLAVERY AND HUMAN TRAFFICKING

16.1 The Supplier shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 and the Modern Slavery Act 2015 in the performance of this Contract.

16.2 The Supplier shall undertake, or refrain from undertaking, such acts as Qualifications Wales requests so as to enable the Supplier to comply with its obligations under the Human Rights Act 1998.

16.3 The Supplier shall:

- (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
  - (i) all applicable equality, anti-slavery and anti-human trafficking Law;
  - (ii) Qualifications Wales's equality and diversity policy and anti-slavery policy as provided to the Supplier from time to time; and
  - (iii) any other requirements and instructions which Qualifications Wales reasonably imposes in connection with any equality, anti-slavery or anti-human trafficking obligations imposed on Qualifications Wales at any time under applicable equality Law; and
- (b) take all necessary steps, and inform Qualifications Wales of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);
- (c) implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains [and report to Qualifications Wales on this as and when requested by Qualifications Wales]; and
- (d) notify Qualifications Wales as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

#### 17. WELSH LANGUAGE

17.1 The Supplier warrants that it will supply the Goods and/or Services in furtherance of Qualifications Wales' obligations under the Welsh Language Obligations.

#### 18. TERMINATION

18.1 Without limiting its other rights or remedies, Qualifications Wales may terminate this Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
- (b) there is a change of control of the Supplier; or
- (c) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

- (d) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - (e) the Supplier's financial position deteriorates to such an extent that in Qualifications Wales's opinion the Supplier's capability to adequately fulfil its obligations under the Contract had been placed in jeopardy.
- 18.2 Without affecting any other right or remedy available to it, Qualifications Wales may terminate this Contract for convenience by giving the Supplier one (1) weeks' written notice.
- 18.3 In any of the circumstances in these Terms and Conditions in which Qualification Wales may terminate the Contract, where both Goods and Services are supplied, Qualifications Wales may terminate the Contract in respect of the Goods, and/or in respect of the Services, and the Contract shall continue in respect of the remaining supply (if any).
- 18.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 18.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 19. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason, the Supplier shall immediately deliver to Qualifications Wales all products forming part of the Services whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then Qualifications Wales may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 20. GENERAL**
- 20.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, of any its obligations under this Contract to the extent that such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for two (2) weeks, the party not affected may terminate this Contract by giving seven (7) days' written notice to the affected party.
- 20.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under this Contract without the prior written consent of Qualifications Wales. If Qualifications Wales consents to subcontracting by the Supplier, the Supplier shall remain responsible for all acts or omissions of its subcontractors as if they were its own.
- 20.3 **Assignment and other dealings.** Qualifications Wales may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Qualifications Wales.
- 20.4 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time during this Contract disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 20.4(b).
  - (b) Each party may disclose the other party's confidential information:
    - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 20.4; and
    - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, including, but not limited to, any disclosures required under the FOIA or EIRs.
  - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Contract.
- 20.5 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case), and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
  - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20.5(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
  - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 20.6 **Severance.** If any provision or part-provision of the 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 shall not affect the validity and enforceability of the rest of the Contract.
- 20.7 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
  - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 20.8 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 20.9 **Third parties.** No one other than a party to this Contract shall have any right to enforce any of its terms.
- 20.10 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.11 **Publicity.** The Supplier shall not:
- (a) make any press announcements or publicise the Contract in any way; or
  - (b) use Qualifications Wales' name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of Qualifications Wales.
- 20.12 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales, as applied in Wales.
- 20.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales, sitting in Cardiff, shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).



