



WALES **AUDIT** OFFICE
SWYDDFA **ARCHWILIO** CYMRU

Invitation to tender for Security Services to the Auditor General for Wales (Wales Audit Office)

Closing date: 14:00, Tuesday 28 January 2014
Tender submitted to: Tenders@wao.gov.uk

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Instructions to tenderers

Interpretation

1. In this invitation to tender 'Wales Audit Office' is used to refer to the Auditor General for Wales.

Submission of tenders

2. The tenders shall be submitted in electronic format to Tenders@wao.gov.uk by 14:00 on Tuesday, 28 January 2014. Tenders received after the due date and time may not be considered.
3. If you are unable to complete an electronic tender, you may alternatively submit the tender in hard copy format by post to the address below. The Wales Audit Office, accepts no responsibility for the late delivery of tenders and you are advised to make due allowance for transit time.

Wales Audit Office
For the attention of Gill Greer
24 Cathedral Road
Cardiff
CF11 9LJ

4. Please submit queries in relation to the tender to Tender.Queries@wao.gov.uk. Alternatively, you may contact Gill Greer on 02920 320501.

Alternative tenders

5. The Supplier must submit a tender which complies with the base specifications, but may in addition, submit an alternative tender with such variations being submitted as an attachment to the main quotation document.

Lots

6. The tender is being advertised in two Lots:
 - Lot 1 – 24 Cathedral Road, Cardiff CF11 9LJ
 - Lot 2 – Unit 1A, Dragon 24, Penllergaer, Swansea SA4 9HJ
7. Suppliers may submit a tender for one or both lots. Prospective suppliers submitting a tender for both lots must provide itemised pricing and a response to the specification for all of the services in each Lot as part of the solution.

Details confidential

8. The Supplier (whether his tender is accepted or not) and all other recipients of the Invitation to Tender document (whether they submit a tender or not) shall treat the details of the documents as private and confidential. Any tender received in response to this enquiry shall be treated likewise by the Wales Audit Office except where requested in compliance with the Freedom of Information Act 2000. The Tenderer should refer to Clause 16.2 of the Terms and Conditions of Contract attached.

Prices

9. The prices stated in the tender will be deemed to be the full inclusive value of the supplies and services described in the Specification of Requirements, including all costs and expenses, risks and obligations set forth in or to be implied from the Invitation to Tender. The submission of a tender will be deemed to be an undertaking that the quotation price includes for the above costs.

Value added tax

10. All prices are to be stated in sterling exclusive of value added tax.

Expenses and losses in quotation

11. The Wales Audit Office will not be responsible for, or pay for expenses or losses that may be incurred by a supplier in the preparation of his tender or pre-contract meetings required.

Acceptance of tenders

12. The Wales Audit Office does not bind itself to accept the lowest or any tender, and in addition, reserves the right to accept part only of any tender. No tender shall be deemed to have been accepted unless such acceptance shall have been notified to the Tenderer in writing.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

13. TUPE Regulations apply to the service provisions in Lot 2 only. Information regarding the staff employed by the outgoing supplier is available on request, providing an indication of the staff transfer and cost implications. Contact details of the incumbent supplier will be provided to the successful supplier once the contract has been awarded to enable further information to be obtained.

Award criteria

14. Business shall be awarded to the Tenderer submitting the most economically advantageous offer with regard to the award criteria. The award criteria that will apply to both Lots are:

Criteria	Weighting
Price to include value for money <ul style="list-style-type: none">Overall costs and value for money service	30%
Quality	Total 70%
<ul style="list-style-type: none">Quality Assurance and Environmental Management systems, Health and Safety and Equal Opportunities etc	20%
<ul style="list-style-type: none">Understanding the needs of the Wales Audit Office and the environment in which we operate. Evidence of a proven track record as defined in the specification of requirements to include references from a comparable client	10%
<ul style="list-style-type: none">Ability to provide the quality of services required in terms of suitability, timeliness and flexibility	20%
<ul style="list-style-type: none">Systems and resources available to undertake the requirements and the availability of suitability qualified staff to undertake the work	10%
<ul style="list-style-type: none">Evidence of capacity to fully deliver service, out of hours working including building cover for emergencies, monitoring and weekend external check of the premises (Lot 1 only)	10%

Payment terms

15. The Wales Audit Office payment terms are Net 30 days payable by BACS. Please detail in your tender your standard payment terms or alternative payment terms you offer (including discount for prompt payment).

Welsh Language Scheme requirements

16. The successful supplier must ensure that services provided through this contract are compliant with the Welsh Language Scheme or any successor schemes.

General Equality Duty

17. Under the Equality Act 2010 ('the Act'), the Wales Audit Office is subject to the General Equality Duty. The supplier will assist the Wales Audit Office in meeting its General Equality Duty in exercising its functions and have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;

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- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Introduction and background

18. The Auditor General for Wales is responsible for auditing the Welsh Government, its sponsored and related bodies and NHS organisations in Wales, as well as appointing auditors to local authorities. He also conducts value-for-money / performance studies on Welsh public bodies including the NHS and education sectors. The staff of the Wales Audit Office undertake audit and inspection work on public sector bodies on behalf of the Auditor General for Wales, to promote improvement and standards of public services. Further information about the organisation and its work can be found at the website: www.wao.gov.uk.
19. The Wales Audit Office employs around 230 people, 160 of which are located at its Cardiff headquarters – 24 Cathedral Road, Cardiff CF11 9LJ and 25 at Unit 1A, Dragon 24, Penllergaer, Swansea SA4 9HJ.

Security services

20. The Invitation to Tender covers the services necessary to provide a security service to the Wales Audit Office at 24 Cathedral Road, Cardiff CF11 9LJ and Unit 1A, Dragon 24, Penllergaer, Swansea SA4 9HJ.
21. The security services will include regular daily opening and lockup Monday through Friday. The services will also include a provision for weekend site monitoring and occasional weekend or out of office hours security service as required. Standard business hours are 09:00 to 17:00 but staff work outside of these hours. The Wales Audit Office is closed on all Bank Holidays.
22. You are kindly invited to tender for security services to the Wales Audit Office:
 - Lot 1 – 24 Cathedral Road, Cardiff CF11 9LJ
 - Lot 2 – Unit 1A, Dragon 24, Penllergaer, Swansea SA4 9HJSuppliers may submit a tender for one or both lots.

Guidance

23. Prospective suppliers must provide itemised pricing for all of the services in each Lot they are responding to as part of the solution and highlight any areas which do not fully meet the requirement.
24. Supporting material that is not directly relevant to the tender response should be included as appendices.
25. All prospective suppliers will have the opportunity to visit and survey the sites, if required, prior to making their response. Requests for a site visit to the property can be made by contacting Peter Woolcock on 02920 320505 or by email at peter.woolcock@wao.gov.uk.
26. All prospective suppliers must provide a brief overview of a similar contract they have held within the last three years and a relevant reference customer who would be willing to provide a brief telephone overview of their experience.

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27. The award criteria in **paragraph 14** are brought to the attention of prospective suppliers and tenders should display how you will provide value for money and include evidence of previous work.

Overview of 24 Cathedral Road, Cardiff CF11 9LJ

28. The Cathedral Road property comprises of a period 3 storey building linked to a sympathetic 3 storey modern building with a self-contained coach house (24,305ft²). Floor plates of Cathedral Road, indicative of size and layout, are available on request subsequent to any site visits required.
29. Access control and security systems are installed at the premises. Details of the supplier and required telephone contacts will be provided to the selected supplier following award of the contract. There are several access points to the property, the primary points being one to the front by reception and two to the sides leading to the car park.

Specification or requirements

30. The prospective supplier will provide a security service to Wales Audit Office at 24 Cathedral Road, Cardiff CF11 9LJ. To comply with Safe Systems at Work the prospective supplier will be requested to supply prior to contract commencement (and update annually) all necessary documentation to include as a minimum Risk Assessments, Liability Insurance and Method Statements. Prior to commencement of any works not detailed in the specification eg, working at height, further detailed documentation will be required.
31. Unlocking Services – 07:00 Monday to Friday to include:
 - unlocking front and back doors to main building and separate coach house to instigate access swipe entry, ensuring doors are secure and front door to main building is at the correct operational setting;
 - turning Intruder alarm off; and
 - upon leaving ensuring all doors are securely closed.
32. Lock Up Services – doors must be locked at 20:00 Monday to Thursday and 19:30 on Friday to include:
 - conducting a thorough security sweep of the premises closing all windows, turning off any portable fans/heaters and checking all areas including WC facilities, kitchens and unlit areas;
 - closing blinds on ground floor, front of building only;
 - turning off lights in communal and other areas if required;
 - locking front, back and side doors to main building with key;
 - turning intruder alarm on;
 - ensuring coach house is vacated, intruder alarm on and front and back doors to coach house are locked with key; and
 - ensuring car park is clear.

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33. The selected supplier will be responsible for undertaking the work specified without exception unless agreed by both parties.
 34. In the event of an emergency on opening or closing, the security personnel will be responsible for contacting the emergency keyholder, remote monitoring centre and emergency services where appropriate.
 35. Security personnel will be provided with details of stopcocks for gas and water supply and electricity details in the event of an emergency.
 36. Security personnel have an obligation to observe health and safety procedures, ensuring the safety of staff and themselves.
 37. All security staff must be supplied with a suitable uniform and all must be security vetted (to a minimum CRB checks).
 38. Security personnel will reply to any alarms presented at the premises and notify the remote monitoring centre, police and emergency keyholder as appropriate. At minimum, all entries out of standard opening and lock up times must be produced in a short site attendance report for the Business Services Manager.
 39. In the event of an emergency or break in, security personnel remain on site until the emergency keyholder arrives and police if required. In exceptional circumstances only the security personnel, in the absence of the emergency keyholder, may be required to remain on site.
 40. The security personnel should raise any security issues with the Business Services Manager.
 41. Instructions to conduct activities outside of the normal day to day pattern will be given to security personnel by nominated Wales Audit Office individuals only.
 42. Provide a weekend check (external only) of the premises during the evening, once on Saturday and once on Sunday to ensure vandalism has not taken place, that the building remains secure, car park area (including undercroft area beneath building) is clear and to discourage loitering.
 43. Occasionally, it may be necessary to undertake weekend work, such as during redecoration or maintenance work which is disruptive. In many cases a keyholder will be on site with contractors supervising work. But where this is not necessary, the security supplier will provide security personnel to unlock and remain in the premises for the duration of the work, which will be agreed in advance.
 44. Assist in the arrangement of out-of-hours emergency repairs in the event of a break in or vandalism e.g. windows.

Overview of Unit 1A, Dragon 24, Penllergaer, Swansea SA4 9HJ

45. The Dragon 24 property is a modern 2 storey building, with the Wales Audit Office located on the first floor with access via a communal staircase (3,250ft²).
46. The entrance door on the ground floor has a key lock. The Wales Audit Office area on the first floor is entered via a keypad and lock and security systems are installed at the premises. There is one access point to the property via the main door and double fire exit doors leading to external fire escape stairs. Details of the supplier and required telephone contacts will be provided to the selected supplier following award of the contract.

Specification or requirements

47. The prospective supplier will provide a security service to Wales Audit Office at Unit 1A, Dragon 24, Penllergaer, Swansea SA4 9HJ. To comply with Safe Systems at Work the prospective supplier will be requested to supply all necessary documentation to include as a minimum Risk Assessments, Liability Insurance and Method Statements prior to contract commencement (and update annually). Prior to commencement of any works not detailed in the specification eg, working at height, further detailed documentation will be required.
48. Maintenance and monitoring of Intruder Alarm.
49. Unlocking Services – 07:00 Monday to Friday to include:
 - unlocking main ground floor entrance door, and first floor office door with key and ensuring keypad is operational for entry into office;
 - turning Intruder alarm off; and
 - upon leaving ensuring all doors are securely closed.
50. Lock Up Services – 19:00 Monday to Friday to include:
 - conducting a thorough security sweep of the office on first floor closing all windows, checking fire escape doors are secure and turning off any portable fans/heaters and checking all areas;
 - turning intruder alarm on;
 - locking first floor office with key;
 - conducting a security sweep of communal areas including WC facilities and unlit areas to ensure building is vacated, turning off any lights if required;
 - locking ground floor main entrance door; and
 - ensuring car park is clear.

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51. The selected supplier will be responsible for undertaking the work specified without exception unless agreed by both parties.
 52. In the event of an emergency on opening or closing, the security personnel will be responsible for contacting the emergency keyholder, remote monitoring centre and emergency services where appropriate.
 53. Security personnel will be provided with details of stopcocks for gas and water supply and electricity details in the event of an emergency.
 54. Security personnel have an obligation to observe health and safety procedures, ensuring the safety of staff and themselves.
 55. All security staff must be supplied with a suitable uniform and all must be security vetted (to a minimum CRB checks).
 56. Security personnel will reply to any alarms presented at the premises and notify the remote monitoring centre, police and emergency keyholder as appropriate. At minimum, all entries out of standard opening and lock up times must be produced in a short site attendance report for the Business Services Manager.
 57. In the event of an emergency or break in, security personnel remain on site until the emergency keyholder arrives and police if required. In exceptional circumstances only the security personnel, in the absence of the emergency keyholder, may be required to remain on site.
 58. The security personnel should raise any security issues with the Business Services Manager.
 59. Instructions to conduct activities outside of the normal day to day pattern will be given to security personnel by nominated Wales Audit Office individuals only.
 60. Occasionally, it may be necessary to undertake weekend work, such as during redecoration or maintenance work which is disruptive. In many cases a keyholder will be on site with contractors supervising work. But where this is not necessary, the security supplier will provide security personnel to unlock and remain in the premises for the duration of the work, which will be agreed in advance.
 61. Assist in the arrangement of out-of-hours emergency repairs in the event of a break in or vandalism e.g. windows.

Questionnaire

Please respond to the brief questionnaire below. Your attention is drawn to the Documents and Information to be Submitted section.

1	Quality assurance	
1.1	Does your organisation hold a recognised quality management certification for example BS/EN/ISO 9002 or equivalent?	Yes/No
1.2	If not, does your organisation have a quality management system?	Yes/No
1.3	If you do not have quality certification or a quality management system, please explain why:	
2	Health and safety	
2.1	Does your organisation have a formally documented and implemented health and safety at work policy?	Yes/No
2.2	If 'No' please explain why:	
3	Equal opportunities and code of conduct	
3.1	Does your organisation have a written equal opportunities policy, to avoid discrimination?	Yes/No
3.2	Does your organisation have a Code of Conduct or Code of Ethics?	Yes/No
4	Environmental management	
4.1	Does your organisation operate in accordance with a formally documented and implemented environmental management system? (Eg, BS/EN/ISO 14001 or Green Dragon)	Yes/No
4.2	Has your organisation undertaken an Environmental Risk Assessment or Review in the past two years?	Yes/No
4.3	Does your organisation have a formally documented and implemented sustainability or environmental policy?	Yes/No
5	Security Services Accreditation	
5.1	Does your organisation hold security services accreditation or certificates?	Yes/No
5.2	If yes, please specify	

Health and safety questionnaire

Health and Safety Law requires the Wales Audit Office to ensure that contractors perform their duties with due regard to occupational health and safety. The award of contracts by the Wales Audit Office is therefore determined not only on grounds of price and technical ability, but also on a contractor past record and present ability to carry out work safely and without risk to health.

Health and safety policy

Do you have a company Health & Safety Policy which includes statement, organisation for carrying out the policy – ie, division of duties, delegation of responsibilities, structure chart etc. and the arrangements for carrying out the policy -ie, safety procedures, safety manuals etc.

YES/NO

If the answer is Yes - please return a copy of your safety policy

Enforcement notices

If you have had any improvement or prohibition notices or prosecutions served on your company in the last 3 years by the HSE or Local Authority please give details. If none, please answer NO.

(Disclosure of information will not disbar your company from the tender process). Use a separate sheet as necessary.

Employees awareness

What arrangements does your company have in place to ensure that employees are aware of their health and safety obligations? State how the H&S policy is brought to the attention of all your employees. List current H&S handbooks or written instructions issued to your employees.

Please provide figures for all ACCIDENTS | INCIDENTS and INJURIES for the last 3 years.

Year 01	Fatal accidents	RIDDOR reportable		Non RIDDOR reportable injuries (ie, minor)	RIDDOR reportable dangerous occurrences
		Major injury	3+ days		

Documents and information to be submitted

Your tender should be presented as one document and in addition to the evidence required to satisfy the award criteria must include the following:

- a detailed response to all areas within the Specification of Requirements and a fully itemised fee schedule;
- your response to the questionnaire;
- name, address and telephone contact of a comparable client who would be prepared to offer a reference;
- a description of your internal quality assurance procedures and complaints handling process;
- evidence of sustainability/environmental reviews or assessments undertaken;
- evidence of any formal accreditations held;
- a copy of your Health and Safety policy and the completed Questionnaire;
- copies of all relevant Insurance Policies and
- a description of your security staff vetting process and how you ensure continuity of service.

Auditor General for Wales

Standard terms and conditions of contract for the provision of security services

This Agreement is made on the

Between:

The Auditor General for Wales, whose head office is at 24 Cathedral Road, Cardiff, CF11 9LJ (hereinafter called **'the Authority'**), and a company incorporated in (England and Wales/Scotland) whose registered office is at (hereinafter called **'the Contractor'**).

Whereas:

- the Contractor is engaged in providing a security service;
- the Authority enters into this Agreement for the Contractor to provide a security service all as set out in this Agreement; and
- both parties agree to be bound by the terms and conditions set out in this Agreement.

1. Definitions and Interpretations

1.1 **'Agreement'** means this agreement together with all written schedules and other documents referred to.

1.2 **'the Service'** means the security service that the Contractor will supply and which is described in the specification.

1.3 **'Contractors Account Manager'** means the person nominated by the Contractor and agreed with the Authority as being responsible for managing the delivery of the Service in accordance with the terms of the Agreement.

1.4 **'Authority's Nominated Representative'** means the person appointed by the Authority as being responsible for liaison with the Contractors Account Manager in respect of the Agreement.

1.5 **'Service Specification'** means the Specification of Requirements for a security service together with written response to it and subsequent correspondence.

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- 1.6 **'Default'** means the default or failure of any obligation of the contract
- 1.7 **'Relevant Employees'** means the employees who are the subject of a Relevant Transfer.
- 1.8 **'Relevant Transfer'** means a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006

2. **Description of the Service**

- 2.1 The Contractor shall provide to the employees of the Authority and other nominated individuals such a security service (hereinafter called 'the Service') as the Authority may reasonably require.
- 2.2 The scope of the Service at commencement of this Agreement is set out in the Service Specification.
- 2.3 The times during which the Service shall be provided, together with the response times the Contractor shall meet will be set out by the Authority's Nominated Representative in agreement by both parties.
- 2.4 The Authority has made the Contractor aware of its requirements for the provision of the Service and the Contractor agrees that it has been given the opportunity to ascertain the information necessary for it to provide the Service as set out in the Agreement.

3. **Period of Agreement**

- 3.1 This Agreement shall commence on and, except for early termination in accordance with the terms of the Agreement, shall continue for a period of one year with an option to review and extend for a further two years. Changes to quotations shall be made in agreement by both parties.
- 3.2 Either party may give not less than two months written notice of their intention to terminate this Agreement.

4. **The Provision of Services**

- 4.1 The Contractor shall provide the Services as set out in the Service Specification. The Authority reserves the right to accept all or part of the Specification as set out in the Tender and will instruct the Contractor when to undertake the work.
- 4.2 The Contractor shall ensure that its staff undertaking work in providing the Service to the Authority shall be adequately trained and competent to provide the required services.
- 4.3 The parties recognise that the requirements of the Authority will change over time and this will necessitate forward planning of resource requirements by the

Contractor. To facilitate this planning the Authority will, from time to time, provide to the Contractor information on its future requirements.

- 4.4** The Auditor General does not accept liability for any errors that may arise in the specified work. It is the responsibility of the service provider to ensure that all specified works are accurate. The Auditor General may reject any work, if, in their reasonable opinion, the service provider has failed to provide the security service to the standard and quality specified in the Contract or otherwise conveyed to the service provider in connection with the Contract.

5. Nature of Services

- 5.1** The Authority is not responsible for any acts or omissions of the Contractor. The Contractor will seek prior agreement before undertaking work when acting on behalf of the Authority.

6. Insurance

- 6.1** The Contractor must take out adequate insurance to cover its obligations and potential liabilities under the agreement.

7. Intellectual Property Rights

- 7.1** All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

7.1.1 Furnished to or made available to the Contractor by the Authority shall remain the property of the Authority.

7.1.2 Prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to the Authority, and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except which is in the public domain.

7.1.3 At the termination of the Contract the Contractor shall immediately return to the Authority all materials, work or records held, including any back-up media.

7.1.4 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

8 Responsibility and Progress Reporting

- 8.1** The Contractor shall appoint the Account Manager who shall be responsible for the provision of the Service to the Authority.
- 8.2** The Authority's Nominated Representative shall be responsible for liaising with the Contractors Account Manager to determine that the Authority's requirements are met and to discuss and resolve matters relating to the Agreement.

9 Review Meetings

- 9.1** The Contractors Account Manager shall attend Review Meetings at the premises of the Authority, or such other location that the parties may agree. The Authority's Nominated Representative shall determine the frequency and dates of such Review Meetings.
- 9.2** The Review Meetings shall be to monitor progress and/or performance of the Contractor in providing the Service and to resolve matters arising and cost reduction initiatives that may from time to time be agreed between the parties. The Contractors Account Manager may be called upon to present information to the Management Team in agreement by both parties.

10 Payment

- 10.1** The Contractor shall be entitled to invoice the Authority at the times and in the manner set out in the Agreement on completion of each distinct piece of work or as agreed in advance by both parties.
- 10.2** Provided that the invoice is one which under the Agreement the Contractor is entitled to submit, the Contractor shall invoice the Authority and the Authority shall pay the Contractor within 30 days of receipt of a valid invoice.

11 Employees of the Contractor

- 11.1** The Contractor shall be the employer of the personnel provided to perform the services and shall be entirely responsible for the employment and terms and conditions of employment of the Employees. The Contractor is responsible for all PAYE, Income Tax and National Insurance Deductions of such personnel. The Contractor shall reimburse the Authority any sums the Authority has to pay to the HM Revenue and Customs in respect of their employees.

12 Transfer and Sub-Contracting

- 12.1** The Contract is personal to the Contractor. The Contractor shall not assign, novate, sub-contract or otherwise dispose of the Contract or any part thereof without the previous consent in writing of the Authority.
- 12.2** Notwithstanding any sub-contracting permitted hereunder, the Contractor shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.
- 12.3** The Contractor will notify the Authority of potential Conflicts of Interest and will arrange suitable qualified alternate arrangements in agreement with the Authority.
- 12.4** The Contractor will not carry on in any business which could create a conflict of interest unless the Authority gives prior consent.

13 Protection of Personal Data

- 13.1** The Contractor's attention is hereby drawn to the Data Protection Act 1998. Both parties warrant that they will duly observe all their obligations under the Data Protection Act 1998 which arise in connection with the Contract.

14 Waiver

- 14.1** No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any prejudice any right of that party under the Contract.

15 Force Majeure

- 15.1** Neither party shall be liable for the failure to perform its obligations under the Contract if such failure results from circumstances beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, terrorism, flood or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available.

16 Confidentiality

- 16.1** The Authority and the Contractor shall keep confidential all information of the other party designated as confidential obtained under or in connection with the Contract and shall not divulge the same to any third party without the written consent of the other party, except where disclosure is required by the Freedom Of Information Act 2000, the Environmental Information Regulations, the Data Protection Act 1998, or any other legal requirement.

16.2 The Auditor General is a public authority under the Freedom of Information Act 2000. All information submitted to the Auditor General may therefore need to be disclosed in compliance with the Freedom of Information Act 2000 (the Auditor General reserves the right to decide what is or is not required by the Act), in compliance with other law, or because a court orders them to do so. Respondents should therefore seek to ensure that those parts of their Tender response they would prefer not to be disclosed are covered by exemptions provided by the Freedom of Information Act, identify them as such and explain (in broad terms) why the information should not be disclosed and the time period applicable to that sensitivity. The Auditor General is more likely to be able to justify non-disclosure of information in response to a Freedom of Information request if the suggested 'non-disclosure' items are classified in this way. The Auditor General reserves the right to disclose non-disclosure items if they are satisfied (acting reasonably) that it is in the public interest for the information to be disclosed. Receipt by the Auditor General of any material marked 'confidential' or equivalent should not be taken to mean that the Auditor General accepts any duty of confidence by virtue of that marking. The Auditor General also reserves the right to disagree with a non-disclosure classification.

(Respondents should note that the exemption provided by section 41 of the Freedom of Information Act does not automatically apply to all information marked 'in confidence'. It applies to information provided in confidence and where disclosure would be an actionable breach of confidence. The information should be recognisable as confidential in nature and must not be in the public domain already; it must have been received in circumstances which impose an obligation to maintain confidentiality on the person receiving it, and any unauthorised disclosure would cause harm to the confider.)

16.3 The provisions of Clause 16.1 and 16.2 shall not apply to any information in the public domain otherwise than by breach of Contract.

16.4 The Contractor and the Authority shall divulge confidential information only to those employees who are directly involved in the Contract and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

16.5 The Contractor shall ensure that their employees and its sub-contractors are bound by the requirements of this Clause 16.

16.6 The provisions of this Clause 16 shall continue in perpetuity and at the request of the Authority the Contractor will return any documents and confidential information obtained from the Authority in relation to the services.

17 Termination

17.1 The Authority may at any time by notice in writing terminate the Contract as from the date of service of such notice if:

17.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Contractor or its Parent Company; or

17.1.2 any partner or partners in the firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against them or shall make any composition or arrangement with or for the benefit of their creditors, or shall make any conveyance or assignment for the benefit of their creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or they shall become apparently insolvent within the meaning of the Bankruptcy Act 1985 as amended by the Bankruptcy Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of their estate, or a trust deed shall be granted by them for or on behalf of their creditors or any similar event occurs under the law of any other jurisdiction; or

17.1.3 the Contractor, being a company, passes a resolution, or the Court makes an order that the Contractor or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Contractor or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Contractor or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

17.2 The Authority may at any time by notice in writing terminate the Contract forthwith if the Contractor is in Default of any obligation under the Contract and:

17.2.1 the Default is capable of remedy and the Contractor shall have failed to remedy the Default with fourteen (14) days of written notice to the Contractor specifying the Default and requiring its remedy; or

17.2.2 the Default is not capable of remedy or is not deemed reasonable by the Authority, which includes additional circumstances arising as with conflicts of interest.

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- 17.3** The Authority retains the right to terminate if there is a continuing event of force majeure as defined in Clause 15.1.
- 17.4** Termination in accordance with this Clause 17 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 17.5** The Authority will only be permitted to exercise its rights pursuant to Clause 17.1.1 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Authority has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. The Contractor shall notify the Authority within fourteen (14) days of any change of control taking place.
- 17.6** The Authority or Contractor may terminate the Contract by a minimum of *two (2)* months' notice to take effect at the end of the minimum period, that being *six (6)* months, or any period thereafter, with the exception of circumstances identified in Clause 16.

18. Welsh Language Scheme

- 18.1** The Contractor shall at all times comply with the Welsh Language Scheme (as amended from time to time) as if it were the Authority to the extent that the same related to the provision of the Services.
- 18.2** The Contractor shall deliver the services (in accordance with the specification) through the medium of English and Welsh (or on an equal basis).
- 18.3** The Contractor shall be responsible for promoting the delivery of the services in Welsh or English to the service user and shall use all reasonable steps to achieve this.
- 18.4** The contractor shall be responsible for monitoring the level of take-up for the service through the medium of Welsh and English and shall report to the Authority on a bi-annual basis by providing the following information in writing:
- 18.4.1** The number of users requiring the service in Welsh and English.
- 18.4.2** The percentage increase/decrease from the previous report.
- 18.4.3** The allocation of staff to deliver the services in Welsh and English.
- 18.4.4** Any changes in service delivery made or anticipated by the Contractor as a consequence of the above and, if relevant, the timescale of their implementation.

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- 18.4.5** Any complaints of difficulties indicated by service users or staff of the contractor in delivering the services in compliance with Welsh Language obligations during the report period (and any advice or guidance that is required by the Contractor in delivering such services).
- 18.5** Contractor specific proposals – Schedule to include any specific proposals included by the contractor within their successful tender to deal with Welsh Language requirements.
- 19. Transfer of Undertakings (Protection of Employment) Regulations 2006**
- 19.1** This clause 19 shall apply in the event that an organised grouping of employees has as its principle purpose the fulfilment of the Service or any part thereof.
- 19.2** During the 12 months preceding the expiry of this Agreement or after the Authority has given notice to terminate this Agreement or at any other time as directed by the Authority, and within 15 working days of being so requested by the Authority, the Contractor shall fully and accurately disclose to the Authority any and all information in relation to all personnel engaged in providing the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request.
- 19.3** The Contractor shall warrant the accuracy of all the information provided to the Authority pursuant to clause 19.2 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- 19.4** The Contractor shall indemnify the Authority and any new contractor appointed by the Authority and keep the Authority and any new contractor appointed by the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Authority and any new contractor appointed by the Authority shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Authority or any new contractor appointed by the Authority as a result of or in connection with the employment or termination of employment of any employee of the Contractor during any period prior to the date of expiry or termination of this Agreement.
- 19.5** In the event that the Contractor enters into any sub-contract in connection with this Agreement, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this clause 19 and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Authority as a result of

or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

20 Law and Jurisdiction

- 20.1** This contract shall be governed by the law of England and Wales. All disputes or differences arising under or in connection with it shall be submitted to the exclusive jurisdiction of the High Court in Cardiff.

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