

CONTRACT FOR THE PROVISION OF LAND MANAGEMENT OF RHYDYMWYN

9th November 2010

**SECTION 1
FORM OF CONTRACT**

THIS CONTRACT is made on the day of 2010

BETWEEN:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR ("the Authority");

AND

- (2) NORTH EAST WALES WILDLIFE LTD, registered in England and Wales under number 3889382 whose registered office is situated at Brynford House, Brynford Street, Holywell CH8 7RD ("the Contractor")

WHEREAS

- a) The Authority requires the provision of the Services detailed in the attached Specification Schedule.
- b) The Authority has appointed the Contractor to provide the Services and the Contractor hereby agrees to provide those Services in accordance with the terms set out below.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

- 1.1 The Contractor shall provide the Authority with the Services in accordance with the terms and conditions of this Contract which shall comprise of all of the documents set out below in paragraph 1.2 (as the same may be supplemented or varied from time to time).
- 1.2 This Contract comprises of the following Sections and Schedules:
- | | |
|-------------|-------------------------------------|
| Section 1: | Form of Contract |
| Section 2: | General Conditions of Contract |
| Schedule 1: | Specification Schedule. |
| Schedule 2: | Pricing Schedule. |
| Schedule 3: | Change Control Note. |
| Schedule 4: | Commercially Sensitive Information. |
- 1.3 The Contract shall take effect on the 01/04/2006 ("the Commencement Date") and shall expire automatically on 31/03/2016, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise extended.
- 1.4 This agreement is intended to supersede any previous written or verbal agreements relating to the management of the site. It is designed to formalise pre-existing arrangements to facilitate payment and ensure contractual consistency.

AS WITNESS whereof the hands of the duly authorised representatives of the Parties the day and year first herein written.

SIGNED for and on behalf of AUTHORITY

SIGNED for and on behalf of COUNTERPARTY

SIGN

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SECTION 2
GENERAL TERMS AND CONDITIONS

CONTENTS

- A. GENERAL PROVISIONS
 - A1 Definitions and Interpretation
 - A2 Authority's Obligations
 - A3 Contractor's Status
 - A4 Initial Contract Period
 - A5 Notices
 - A6 Mistakes in Information
 - A7 Conflicts of Interest

- B. THE SERVICES
 - B1 The Specification
 - B2 Provision and Removal of Equipment
 - B3 Manner of Carrying Out the Services
 - B4 Key Personnel
 - B5 Contractor's Staff
 - B6 Inspection of Premises
 - B7 Licence to Occupy Premises
 - B8 Property
 - B9 Offers of Employment
 - B10 Employment Provisions

- C. PAYMENT AND CONTRACT PRICE
 - C1 Contract Price
 - C2 Payment and VAT
 - C3 Recovery of Sums Due
 - C4 Contract Price During Extension of the Initial Contract Period
 - C5 Euro

- D. STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS
 - D1 Prevention of Corruption
 - D2 Prevention of Fraud
 - D3 Discrimination
 - D4 The Contracts (Rights of Third Parties) Act 1999
 - D5 Environmental Requirements
 - D6 Timber and Wood Derived Products
 - D7 Health and Safety

- E. PROTECTION OF INFORMATION
 - E1 Authority Data
 - E2 Data Protection Act Compliance
 - E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989
 - E4 Confidential Information

- E5 Freedom of Information
- E6 Publicity, Media and Official Enquiries
- E7 Security
- E8 Intellectual Property Rights
- E9 Audit

F. CONTROL OF THE CONTRACT

- F1 Failure to meet requirements
- F2 Monitoring of Contract Performance
- F3 Remedies in the event of inadequate performance or failure to perform
- F4 Transfer and Sub-Contracting
- F5 Waiver
- F6 Variation
- F7 Severability
- F8 Extension of Initial Contract Period
- F9 Remedies Cumulative
- F10 Entire Agreement
- F11 Counterparts

G. LIABILITIES

- G1 Liability, Indemnity and Insurance
- G2 Warranties and Representations

H. DEFAULT, DISRUPTION, TERMINATION, RETENDERING AND HANDOVER

- H1 Termination on Insolvency and Change of Control
- H2 Termination on Default
- H3 Termination on Notice
- H4 Consequences of Expiry or Termination
- H5 Disruption
- H6 Recovery upon Termination
- H7 Retendering and Handover
- H8 Exit Management
- H9 Exit Procedures

I. DISPUTES AND LAW

- I1 Governing Law and Jurisdiction
- I2 Dispute Resolution

A.

GENERAL PROVISIONS

A1

A1.1

Definitions and Interpretation

In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

"Approval" means the written consent of the Authority.

"Authorised Authority Representative" means the Authority representative named in CCN as authorised to approve agreed Variations to the Contract.

"Authority" means the Secretary of State for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London, SW1P 3JR.

"Authority Data" means

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or

(b) any Personal Data for which the Authority is the Data Controller.

"Authority Software" means software which is owned by or licensed to the Authority, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software.

"Authority System" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

"Authority's Premises" means any premises occupied by or under the control of the Authority where the Services are to be supplied, as set out in the Specification.

"BPSS" means the recognised standard for HMG for staff vetting which comprises verification of (1) identity, (2) employment history, (3) nationality and immigration status (including the right to work), and Criminal Records Bureau check (including a five (5) year address history check).

"Change Control Note" ("CCN") means the agreed Schedule 3 annexed to the Contract containing details of agreed Variations to the Contract.

"Commencement Date" means the date set out in paragraph 1.3 of the Form of Contract.

"Commercially Sensitive Information" means the information listed in the Commercially Sensitive Information Schedule comprised of information:

(a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or

- (b) that constitutes a trade secret.

"Completion Date" means the date of expiry of the Contract set out in clause A 4.1 (Initial Contract Period) of the Contract.

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

"Contract" means this written agreement between the Authority and the Contractor consisting of the following documents: Section 1 (Form of Contract); Schedule 2 (Pricing Schedule); Schedule 1 (Specification Schedule); Section 2 (General Terms and Conditions); Schedule 3 (Change Control); and such of Schedules 4 (Commercially Sensitive Information); 5 (Non Disclosure Agreement); 6 (Contractor and Third Party Software); 7 (Security Requirements, Policy and Plan); 8 (Business Continuity and Disaster Recovery) and 9 (Research and Development Provisions) as are specified in the Form of Contract. In the event of any conflict between any of these documents, they shall be given precedence in the order listed save that to the extent that any Special Conditions of Contract are inserted at the end of Section 2 (General Terms and Conditions) the Special Conditions of Contract shall take precedence over any other provisions in the Contract.

"Contract Period" means the period from the Commencement Date to:

- (a) the date of expiry set out in clause A4 (Initial Contract Period), or
- (b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

"Contract Price" means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract.

"Contracting Authority" means any contracting authority (other than the Authority) as defined in regulation 3 of the Public Contracts Regulations 2006 (SI 2006/5).

"Contractor" means the person, firm or company with whom the Authority enters into the Contract.

"Contractor Software" means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 6 (Third Party Software) to this Contract.

"Contractor System" means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly.

"Crown" means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and "Crown Body" is an emanation of the foregoing.

"Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under that 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.

"Environmental Information Regulations" means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

"Equipment" means the Contractor's equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that 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.

"Form of Contract" means the document comprising Section 1 of the Contract signed by or on behalf of the Parties confirming their willingness to enter into and be bound by the terms of the Contract.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and

experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

"HMG Security Policy Framework" means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division) as updated from time to time.

"ICT Environment" means the Authority System and the Contractor System.

"Information" has the meaning given under section 84 of the FOIA.

"Initial Contract Period" means the period from the Commencement Date to the date of expiry set out in clause A4 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

"Intellectual Property Rights" means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"IP Materials" has the meaning given to it in clause E8.1 (Intellectual Property Rights).

"Key Personnel" means those persons named in the Specification as being key personnel.

"Know-How" means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

"Malicious Software" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

"Month" means calendar month.

"Party" means a party to the Contract.

"Premises" means the location where the Services are to be supplied, as set out in the Specification.

"Pricing Schedule" means the Schedule containing details of the Contract Price.

"Property" means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

"Purchase Order" means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract.

"Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

"Receipt" means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause A5.4 (Notices) or at any other address given by the Authority to the Contractor for the submission of invoices.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

"Relevant Conviction" means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.

"Replacement Contractor" means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

"Request for Information" means a request for information under the FOIA or the Environmental Information Regulations.

"Returning Employees" means those persons listed in a schedule to be agreed by the Parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

"Schedule" means a schedule to Section 2 (General Conditions of Contract) attached to, and forming part of, the Contract.

"Services" means the services to be supplied as specified in the Specification (including any modified or alternative services as may be provided in accordance with clause E8.10 (Intellectual Property Rights)).

"Special Conditions of Contract" means any additional conditions of contract agreed between the Parties.

"Specification" means the description of the Services to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

"Specification Schedule" means the Schedule containing details of the Specification.

"Staff" means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

"Staff Vetting Procedure" means the Authority's procedures for the vetting of personnel to the HMG standard of BPSS who have access to any of the Authority's Premises, the Authority's IT systems, or whose role will involve the handling of any

data, information (including personal data as defined in the DPA and/or data to which any security classification has been applied), or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Acts 1911-1989 and as advised by the Authority to the Contractor.

"Sub-Contractor" means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services and/or goods are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and "Sub-Contract" shall be construed accordingly.

"Tender" means the document(s) submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Services.

"Third Party IP Claim" has the meaning given to it in clause E8.7 (Intellectual Property Rights).

"Third Party Software" means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 6 (Third Party Software) to this Contract.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

"Valid Invoice" means an invoice containing the detailed information set out in clause C2 (Payment and VAT).

"Variation" means any amendment of or change to the Contract.

"VAT" means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of

- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a proper inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B2.6 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to those Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.
- B3 Manner of Carrying Out the Services**
- B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.
- B4 Key Personnel**
- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B4.5 The Authority may, by written notice to the Contractor, ask the Contractor to remove any Key Personnel whose continued presence would, in the reasonable opinion of the Authority, be undesirable. The Contractor shall comply with any such request immediately.

B5 Contractor's Staff

B5.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

B5.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B5.3 The Contractor shall ensure that all Staff employed or engaged in the provision of the Services and who have access to the Authority's Premises, the Authority System or any data or information of the Authority, or handle any data or information of the Authority, have been cleared in accordance with the Staff Vetting Procedures. The Contractor confirms that all Staff employed or engaged by the Contractor were either vetted by the Authority in accordance with the Staff Vetting Procedures or recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and this was accepted by the Authority.

B5.4 If the Contractor fails to comply with clause B5.2 immediately upon request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B5.5 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

B6 Inspection of Premises

B6.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender or other offer to supply the Services and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

B7
B7.1

Licence to Occupy Premises

Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

B7.2

The Contractor shall limit access to the land or Premises referred to in clause B7.1 to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.

B7.3

Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

B7.4

The Contractor shall (and shall ensure that any Staff that are engaged within the boundaries of the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises or for the use of such Authority Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.5

The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B8

Property

B8.1

All Property shall be and remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

B8.2

The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.

B8.3

The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B8.4

The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

B9.1 Except in respect of any transfer of Staff under TUPE, for the duration of the Contract and for a period of twelve (12) Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the procurement and/or the contract management of the Services without prior Approval.

B10 Employment Provisions

B10.1 Not later than twelve (12) Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:

- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law; and
- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in (a) above; and
- (c) the terms and conditions of employment/engagement of the Staff referred to in (a) above, their job titles and qualifications; and
- (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.2 At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty (30) days) immediately prior to the end of the Contract Period the Contractor shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to clause B10.1.

B10.3 At the time of providing the information disclosed pursuant to clauses B10.1 and B10.2, the Contractor shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Contractor.

B10.4 The Authority may use the information it receives from the Contractor pursuant to clause B10.1 and B10.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.

B10.5 Where TUPE applies to the transfer of the Services on expiry or termination of the Contract, the Contractor shall indemnify and keep indemnified and hold the Authority and the Crown (both for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:

- (a) the provision of information pursuant to clause B10.1; and

- (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period; and
- (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under Regulation 13 of TUPE; and
- (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
- (e) any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.

B10.6 If the Contractor becomes aware that the information it provided pursuant to clause B10.1 has become untrue, inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date information.

B10.7 This clause applies during the Contract Period and indefinitely thereafter.

B10.8 The Contractor undertakes to the Authority that, during the twelve (12) Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without prior Approval (such Approval not to be unreasonably withheld or delayed):

- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
- (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause C2 (Payment and VAT).

C1.2 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2 Payment and VAT

C2.1 The Contractor shall submit a Valid Invoice to the Authority at the periods specified by the Authority in the Pricing Schedule. A Valid Invoice must contain the reference number of the relevant Purchase Order.

C2.2 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable. The Contractor shall show the amount of VAT payable separately on all invoices as an extra charge. Where the Contractor fails to show VAT on any invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.

C2.3 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing. The Authority shall provide the Contractor with a Purchase Order number and the Contractor shall include that number on every invoice submitted. Invoices without a valid Purchase Order number will be rejected.

C2.4 The Valid Invoices submitted in accordance with clause C2.1 above (and checked and signed by Contractor's Representative as being accurate and complete) shall, where required by the Authority, be accompanied by supporting timesheets, and contain at least the following information:

- the Contractor's full name, address and title of the project;
- the name of the individuals to whom the timesheet relates and hourly rates for each;
- identification of which individuals are Contractor's staff and which are Sub-Contractors;
- the address of the Premises and the date on which work was undertaken;
- the time spent on the Premises by the individuals concerned;
- the time spent working on the Premises by the individuals concerned (i.e. clocking on and off);
- details of the type of work undertaken by the individuals concerned;
- details of any plant or materials operated and on standby;
- separate identification of any time spent travelling and/or meal or rest breaks;
- where appropriate, details of the journey(s) made and distances travelled; and
- Purchase Order number.

The timesheets must be signed, dated and verified by the Contract Manager or Authority supervising officer on the Premises before the Contractor departs each day. If properly completed and verified timesheets fully covering the work comprised in a Valid Invoice are not received along with a Valid Invoice then the Authority shall have no obligation to pay invoices to which those timesheets relate.

C2.5 Any Contractor time spent on meal or rest breaks shall not be chargeable to or payable by the Authority. Contractor supervisors must ensure that all workers take

adequate meal or rest breaks. Where operational plant is not in use during a meal or rest break then it shall also not incur any charges to the Authority. A meal or rest break will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break. It is an assumption in the calculation of all timesheets and Valid Invoices that a minimum of thirty (30) minutes break will be taken within a shift of eight (8) hours, a minimum of forty-five (45) minutes break will be taken within a shift of between eight (8) and twelve (12) hours and a minimum of one (1) hour break will be taken within a shift in excess of twelve (12) hours and the Contractor's rates and Contract Price must include such breaks.

- C2.6 No overhead costs of the Contractor shall be chargeable to or payable by the Authority unless specifically agreed in writing by the Authorised Authority Representative and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.7 If the payment provisions as agreed by the Authority and set out in the Pricing Schedule expressly provide that the Authority may be charged for plant which is on standby then in circumstances where such plant was waiting to be transferred between Premises or where the Authorised Authority Representative had instructed that the plant be retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods as supported by timesheets. Only the time spent by the Contractor's staff in actually working on the Premises shall be chargeable to or payable by the Authority, it is the Contractor's responsibility to incorporate any necessary travelling time and costs into the overall Contract Price when submitting a tender document. Where plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing off the Premises on the instructions of the Authorised Authority Representative) then no standby rate shall be chargeable to or payable by the Authority nor will any such charge be made if not expressly agreed by the Authority in writing.
- C2.8 No payment will be chargeable to or payable by the Authority in respect of any plant or equipment which is stood down during any notice period pursuant to Condition H1 (Termination on Insolvency and Change of Control), H2 (Termination on Default) and/or H3 (Termination on Notice) and the Contractor shall be under a duty to mitigate such costs as far as is reasonably possible e.g. by reutilising staff, plant, materials and services on other current or forthcoming applications or projects.
- C2.9 In submitting any Valid Invoice for payment, the Contractor, if registered for VAT, shall produce valid VAT invoices and the Authority shall have no obligation to pay any claimed sums which are not supported by a VAT invoice from the Contractor. Only the Contractor's Valid Invoices may be submitted for payment, no invoices from any other party will be payable by the Authority. Where different rates of VAT apply to the Services then the Contractor shall submit a separate invoice in respect of each of the Services which attract different VAT rates.
- C2.10 Expenses may only be claimed by the Contractor where these are clearly identified, supported by original receipts and agreed in advance by the Authorised Authority Representative in writing.

- C2.11 Where the Authority, at its sole discretion, makes any payment to the Contractor prior to the submission of a Valid Invoice (whether an interim payment or any other payment whatsoever) then this payment shall be on account of and deductible from the next payment to be made. If any overpayment has been made or the payment or any part is not supported by a Valid Invoice or timesheet in accordance with the requirements of this Contract then the Authority shall be entitled to recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to a Contractor shall be on an interim basis pending final resolution of an account with a Contractor in accordance with the terms of this clause C2.
- C2.12 The Authority shall pay all sums due to the Contractor within thirty (30) days of Receipt of a Valid Invoice, to be submitted in arrears. Valid Invoices should be submitted for payment to the following address ssd.apdefra@defra.gsi.gov.uk or Accounts Payable Team, Shared Services Directorate (SSD), Room 109, Lion House, Willowburn Trading Estate, Alnwick, Northumberland, NE66 2PF.
- C2.13 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of three (3) % above the base rate from time to time of Barclays Bank plc.
- C2.14 Where the Contractor enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice.
- C2.15 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.15 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.16 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money.
- C3 Recovery of Sums Due**
- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement or contract with the Authority or the Crown.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

- (f) maximise the use of recovered materials in its provision of the Services under this Contract and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
- (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

- (a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances, and/or
- (b) HFCs and other gaseous and non – gaseous substances with a high global warming potential,

unless given written permission by the Authority to do so.

D5.3 In accordance with the Authority's commitments under SDIG, the Contractor shall where relevant to its delivery of the Services under this Contract assist the Authority in achieving its departmental sustainable operations targets by: conserving energy and water; reducing carbon emissions and other greenhouse gases; minimising the use of substances damaging or hazardous to health and the environment; reducing waste by, for example, using resources more efficiently and reusing, recycling and composting; and respecting biodiversity.

D5.4 The Authority is required to report to Ministers, the Office of Government Commerce and others on the progress that it is making in delivering Government policies through procurement and in meeting targets for SDIG and sustainable procurement. Where required by the Authority in writing, the Contractor shall provide the Authority with the information requested in order to enable the Authority to comply with those reporting requirements within ten (10) Working Days of such request being made.

D5.5 The Contractor shall ensure that its Staff assigned to the Contract are aware of the Authority's sustainability objectives and how this Contract will facilitate the achievement of those objectives.

D5.6 The Contractor shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under this Contract.

D5.7 In relation to climate change adaptation, the Contractor shall:

- (a) Identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of Services to the Authority under this Contract; and
- (b) Where such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support

systems in place in order to minimise any disruption to the supply of Services under this Contract.

D6 Timber and Wood Derived Products

D6.1 For the purposes of this clause D6, the following terms shall have the following meanings:

- (a) **"Timber and wood-derived products"** means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element (e.g. paper). Timber and wood-derived products supplied or used in performance of the Contract that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Contract that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry.
- (b) **"Legal and Sustainable"** means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled *"UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement"* (available from the Authority on request and from the CPET website). The edition current on the day the Contract is awarded shall apply.
- (c) **"FLEGT"** means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber.
- (d) **"FLEGT-licensed"** means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by a bilateral Voluntary Partnership Agreement (VPA) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government. This may also include any timber that has been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been signed but the FLEGT licensing system is not fully operational. Evidence from a country that has not signed up to a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met will also be acceptable. CPET will produce further guidance on FLEGT-licensed or equivalent timber in due course.
- (e) **"Recycled"** means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials,

but will focus on the use to which the timber was previously put rather than the forest source.

- (f) **"Short-rotation coppice"** means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy.
- (g) **"CPET"** means the UK Government's Central Point of Expertise on Timber.

D6.2 All Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by Sub-Contractors) shall comply with Schedule 1 (Specification Schedule).

D6.3 In addition to the requirements of D6.2 above, all Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by Sub-Contractors) shall originate from a forest source where management of the forest has full regard for:

- (a) Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- (b) Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- (c) Safeguarding the basic labour rights and health and safety of forest workers.

D6.4 If requested by the Authority, and not already provided at the tender evaluation stage, the Contractor shall provide to the Authority evidence that the Timber and wood-derived products supplied or used in the performance of the Contract complies with the requirements of Schedule 1 (Specification Schedule). If requested by the Authority, the Contractor shall provide to the Authority evidence that the Timber and wood-derived products supplied or used in the performance of the Contract complies with the requirements of the social criteria defined in D6.3 above.

D6.5 The Authority reserves the right at any time during the execution of the Contract and for a period of six (6) years from final delivery under the Contract to require the Contractor to produce the evidence required for the Authority's inspection within fourteen (14) days of the Authority's written request.

D6.6 The Contractor shall maintain records of all Timber and wood derived products delivered to and accepted by the Authority. Such information shall be made available to the Authority if requested, for a period of six (6) years from final delivery under the Contract.

D6.7 The Authority reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber and wood-derived product complies with Schedule 1 (Specification Schedule). The Authority reserves the right to decide whether the evidence submitted to it is adequate to satisfy the Authority that the Timber and wood-derived products complies with the requirements of the social criteria defined in D6.3 above. In the event that the Authority is not satisfied, the

Contractor shall commission and meet the costs of an "independent verification" and resulting report that will (a) verify the forest source of the timber or wood and (b) assess whether the source meets the relevant criteria.

D6.8 In this Contract, **"Independent Verification"** means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to *ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time)* or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to *ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time)* or equivalent.

D6.9 The Authority reserves the right to reject any Timber and wood-derived products that do not comply with Schedule 1 (Specification Schedule). The Authority reserves the right to reject any Timber and wood-derived products that do not comply with the requirements of the social criteria defined in D6.3 above. Where the Authority exercises its right to reject any Timber and wood-derived products, the Contractor shall supply alternative Timber and wood-derived products, which do so comply, at no additional cost to the Authority and without causing delay to the Contract completion period.

D7 Health and Safety

D7.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of its obligations under the Contract.

D7.2 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.

D7.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D7.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's Premises in the performance of its obligations under the Contract.

D7.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

E PROTECTION OF INFORMATION

E1 Authority Data

E1.1 For the purposes of clauses E1 and 2, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the DPA.

E1.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

- E1.3 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.4 To the extent that Authority Data is held and/or Processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.5 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.6 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.7 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the HMG Security Policy Framework.
- E1.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.9 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- E2 Data Protection Act Compliance**
- E2.1 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- E2.2 Notwithstanding the general obligation in clause E2.1, where the Contractor is Processing Personal Data as a Data Processor for the Authority the Contractor shall:
- (a) Process the Personnel Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Authority;
 - (b) comply with all applicable Laws;
 - (c) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Law or any Regulatory Body;
 - (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (e) take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;
- (f) not transfer the Personal Data to any Sub-Contractor and/or Affiliates for the provision of the Services without prior Approval;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without prior Approval;
- (h) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E2;
- (i) ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- (j) not disclose Personnel Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon the Authority;
- (k) notify the Authority (within five (5) Working Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the DPA;
- (l) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority;
- (m) permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- (n) provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and

- (o) not Process Personal Data outside the European Economic Area without prior Approval and, where the Authority consents to a transfer, to comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) any reasonable instructions notified to it by the Authority.
- E2.3 The Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.
- E2.4 The provision of this clause E2 shall apply during the Contract Period and indefinitely after its expiry.
- E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

 - (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- E3.2 In the event that the Contractor or its Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.
- E4 Confidential Information**

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

 - (a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and
 - (b) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party's obligations under the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- E4.2 Where required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached at Schedule 5 hereto. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.2. Where requested by the Authority, the Contractor shall provide the Authority with a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- E4.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the

information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E4.5 Clause E4.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E4.6 Nothing in clauses E4.1 and E4.2 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

- (a) for the purpose of the examination and certification of the Authority's accounts; or
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (c) to any government department or any other Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- (d) to any consultant, contractor or other person engaged by the Authority,

provided that in disclosing information under sub-paragraphs (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E4.7 Nothing in clauses E4.1 to E4.3 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

E4.8 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom

the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.

E4.9 In the event that the Contractor fails to comply with clauses E4.1 to E4.3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.

E4.10 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E4.11 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clauses E4.1 to E4.3. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E4.12 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.10.

E5 Freedom of Information

E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

E5.2 The Contractor shall and shall procure that any Sub-Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:

- (a) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.

E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.

E5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E5.5 The Contractor acknowledges that (notwithstanding the provisions of clause E4 (Confidential Information)) the Authority may be obliged under the FOIA or the

Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken its views into account;

provided always that where clause E5.5(a) applies the Authority shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E5.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E5.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause E5.

E5.8 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations.

E6 Publicity, Media and Official Enquiries

E6.1 Without prejudice to the Authority's obligations under the FOIA, the Environmental Information Regulations or any obligations under the Public Contracts Regulations 2006 (as amended), or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E6.2 The Contractor shall use its best endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

E7 Security

E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

E7.2 The Authority shall provide to the Contractor upon request copies of its written security procedures.

E7.3 The Contractor shall, as an enduring obligation throughout the Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E7.4 Notwithstanding Condition E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:

- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
- (b) by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

E8
E8.1

Intellectual Property Rights

All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- (a) furnished to or made available to the Contractor by or on behalf of the Authority;
- (b) prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract; or
- (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with (a) and (b) above, the "**IP Materials**"),

shall vest in the Authority and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without prior Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.2

The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

E8.3

The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.

E8.4

The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.

E8.5

The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:

- (a) items or materials based upon designs supplied by the Authority; or

- (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- E8.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.
- E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("**Third Party IP Claim**"), provided that the Contractor shall at all times:
- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without prior Approval (not to be unreasonably withheld or delayed).
- E8.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause E8.5(a) or (b).
- E8.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E8.10 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.4 and G2.1(g) (Warranties and Representations)) use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Right(s) and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority,
- and in the event that the Contractor is unable to comply with clauses E8.10(a) or (b) within twenty (20) Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.
- E8.11 The Contractor grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which

the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E9 Audit

E9.1

The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E9.2

The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E9.3

The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E9.4

The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

F.

CONTROL OF THE CONTRACT

F1

F1.1

Failure to meet Requirements

If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

F2

F2.1

Monitoring of Contract Performance

The Contractor shall immediately inform the Authority if any aspect of the Contract is not being or is unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.2

At or around six (6) Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Authority shall carry out a review of the performance of the Contractor ("**Checkpoint Review**") in respect of this Contract. Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's performance in respect of the Services supplied under the Contract; the Contractor's contribution to innovation within the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Authority may (at its absolute discretion) produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.
- F2.5 The Authority shall provide the Contractor with a copy of the Checkpoint Review Report (if applicable) for any comments the Contractor may have. The Authority shall consider such comments and at its absolute discretion produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within ten (10) Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.
- F3 Remedies in the event of inadequate performance or failure to perform**
- F3.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.
- F3.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - (c) withhold or reduce payments to the Contractor, in such amount as the Authority reasonably deems appropriate in each particular case; and/or
 - (d) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

- F3.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.
- F3.4 Where in the opinion of the Authority the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor written notice specifying the way in which its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.
- F3.5 Where the Contractor has been notified of a failure in accordance with Clause F3.4 the Authority may:
- (a) direct the Contractor, to investigate, identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
 - (b) withhold or reduce payments to the Contractor, in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F3.6 Where the Contractor has been notified of a failure in accordance with Clause F3.4, the Contractor shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure(s) to the Authority and to prevent such failure(s) from recurring; and
 - (b) shall immediately provide the Authority with such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause and the progress of those measures until resolved to the satisfaction of the Authority.
- F3.7 If, having been notified of any failure, the Contractor fails to remedy it in accordance with Clause F3.6 within the time specified by the Authority, the Authority may treat the continuing failure as a material breach of the Contract and may terminate the Contract with immediate effect by notice in writing.
- F4** **Transfer and Sub-Contracting**
- F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. Where appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that all its Sub-Contractors and suppliers retain each record, item of data and document relating to the Services for a period of not less than six (6) years from the date of its creation, and shall make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). Should

any Sub-Contractor or supplier refuse to permit the Authority to access the required records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.

- F4.4 Where the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.
- F4.5 Notwithstanding clause F4.1, the Contractor may assign to a third party (**"the Assignee"**) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F4.6 and F4.7.
- F4.6 In the event that the Contractor assigns the right to receive the Contract Price under clause F4.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F4.7 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- F4.8 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F4.9 Subject to clause F4.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F4.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.11, affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):

- (a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F4.12 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F4.13 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.
- F5 Waiver**

F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5.2 (Notices).

F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
- F6 Variation**

F6.1 Subject to the provisions of this clause F6, the Authority may request a Variation to the Specification provided that such Variation to the Specification does not amount to a material change to the Specification.

F6.2 The Authority may request a Variation to the Specification under clause F6.1 by notifying the Contractor in writing of the Variation to the Specification and giving the Contractor sufficient information to assess the extent of the Variation to the Specification and consider whether any change to the Contract Price is required in order to implement the Variation to the Specification. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation to the Specification. Such time limit shall be reasonable having regard to the nature of the Variation to the Specification. If the Contractor accepts the Variation to the Specification it shall confirm the same in writing.

F6.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:

 - (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or

- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 Any Variation to the Contract will not take effect unless recorded in a Change Control Notice and approved by the Authority.

F6.5 The provisions of clause F6.4 may be varied in an emergency situation where it is not practicable to obtain the approval of the Authorised Authority Representative within the time necessary to make the Variation in order to address the emergency. In such a situation, Variations may be approved by a different representative of the Authority. However, the Authorised Authority Representative shall have the right to review such a Variation and require a Change Control Notice to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F8 Extension of Initial Contract Period

F8.1 The Authority may, by giving written notice to the Contractor, extend the Contract for a further period up to the date set out in the Form of Contract. The provisions of the Contract will apply throughout any such extended period.

F9 Remedies Cumulative

F9.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F10 Entire Agreement

F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F11 Counterparts

F11.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or

- (b) Fraud; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any obligations implied by Part II of the Supply of Goods and Services Act 1982.
- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill;
 - (b) loss of savings (whether anticipated or otherwise); and/or
 - (c) indirect or consequential loss or damage.
- G1.6 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- G1.7 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1.8 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

G1.11 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Contractor warrants and represents for the duration of the Contract that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the three (3) years (or period of existence where the Contractor has not been in existence for three (3) years) prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under the Contract; and
- (k) it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of the Services and that all Staff employed or engaged by Contractor at the Commencement Date were either vetted by the Authority in accordance with the Staff Vetting Procedures or vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and this was accepted by the Authority.

H

DEFAULT, DISRUPTION AND TERMINATION

H1

H1.1

Termination on Insolvency and Change of Control

The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2

The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in H1.2(a)-(g) occurs under the law of any other jurisdiction.

H1.3

The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor within six (6) Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

H1.4

The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or

- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
 - (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets; or
 - (g) any event similar to those listed in H1.4(a)-(f) occurs under the law of any other jurisdiction
- H1.5 (a) The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is a limited liability partnership and:
- (i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (ii) it is for any reason dissolved; or
 - (iii) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
 - (iv) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
 - (v) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
 - (vi) a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - (vii) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (viii) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - (ix) any event similar to those listed in H1.5(a)(i)-(viii) occurs under the law of any other jurisdiction.
- (b) References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

H2.1

The Authority may terminate the Contract by written notice in accordance with clause A5.2 (Notices) to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within twenty-five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of the Contract.

H2.2

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

H2.3

If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due).

H3

Termination on Notice

H3.1

The Authority shall have the right to terminate the Contract at any time by giving thirty (30) days written notice to the Contractor.

H4

Consequences of Expiry or Termination

H4.1

Where the Authority terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H4.2

Where the Authority terminates the Contract under clause H3 (Termination on Notice), no further payments shall be payable by the Authority to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H4.3 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

H6.1 On the termination of the Contract for any reason, the Contractor shall at its cost:

- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and

- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- H6.2 If the Contractor fails to comply with clause H6.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.
- H7 Retendering and Handover**
- H7.1 Within twenty-one (21) days of being so requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H7.2 The Authority shall take all necessary precautions to ensure that the information referred to in H7.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H7.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H7.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H7.1.
- H7.5 The Contractor shall allow access to the Premises, in the presence of the Authorised Authority Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.
- H7.6 For the purpose of access to the Premises in accordance with clause H7.5, where the Premises is on the Contractor's premises, the Authority shall give the Contractor seven (7) days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H7.7 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the period of the new Contractor setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H7.8 Within ten (10) Working Days of being so requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H8 Exit Management

H8.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor of the Services in accordance with the following procedure set out in clause H9 (Exit Procedures).

H9 Exit Procedures

H9.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

H9.2 The following commercial approach shall apply to the transfer of the Services:

- (a) Where the Contractor does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Contract Price.
- (b) Where the Contractor reasonably incurs additional costs, the Parties shall agree a Variation to the Contract Price based on the Contractor's rates either set out in the Pricing Schedule or forming the basis for the Contract Price.

H9.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

H9.4 Within one (1) Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

H10 Knowledge Retention

H10.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than fifteen (15) Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 (Dispute Resolution), the Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - (f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (b) If the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (c) The Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Authority shall give a written notice of arbitration to the Contractor (the "**Arbitration Notice**") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 12.7(b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1

SPECIFICATION SCHEDULE

Please see the attached document; - "Rhydymwyn Valley Nature Reserve Management Plan.pdf"

SCHEDULE 2
PRICING SCHEDULE

The total contract price is; - **£727,548.84 (exclusive of VAT)**

The maximum payment **(exclusive of VAT)** by the Authority for each Contract Year until 31 March 2016 shall be as follows;-

Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8	
Year 9	
Year 10	

The Authority shall pay the Contractor the Services Costs for the Contract Year in nine equal monthly instalments at the end of each month commencing from April of the Contract Year and not exceeding the maximum payment for that year.

The Authority shall only make payments to the Contractor providing the Contractor has:

- by 31 January in each Contract Year (and by this date following the final Contract Year, provided to the Authority the audited accounts of the Contractor, a Services Report and any other information reasonably required by the Authority for the Services and Company Initiatives undertaken by the Company during that Contract Year up to 31 December; and
- by 15 February in each Contract Year submitted to the Authority for its agreement, or otherwise, an Annual Business Plan for the next Contract Year; and
- this plan has been agreed in writing by 15 March in each Contract Year.

Where the cost of any Services to be carried out by the Contractor will exceed the relevant Services Costs the Contractor shall obtain the prior agreement of the Authority to incur those additional costs and either deduct them from any savings made or anticipated during that Contract Year or, by prior agreement, be reimbursed by the Authority.

From 1 April 2016 the Authority shall not have any obligation to make any payment to the Contractor for its provision of the Services.

Invoices should be forwarded for approval to Defra Estates, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX, in the first instance, whence they will then be forwarded for payment as per Section C2.12.

SCHEDULE 3

CHANGE CONTROL SCHEDULE

CHANGE CONTROL NOTE

CCN number:
Contract title and reference:
Variation title:
Number of pages attached:

WHEREAS the Contractor and the Authority entered into an Contract for the supply of [project name] dated [dd/mm/yyyy] (the "**Original Contract**") and now wish to amend the Original Contract

IT IS AGREED as follows

1. With effect from [date] the Original Contract shall be amended as set out in this Change Control Note:

Change requestor/originator:
Summary and reason for change:
Revised Contract Price
Revised payment schedule:
Revised Specification:
Revised Contract Period:
Revised programme of work:
Change in Contract Manager(s):
Other change:

2. Save as herein amended all other terms and Conditions of the Original Contract shall remain in full force and effect.

Signed for and on behalf of the Contractor:

By:
Name:
Title:
Date:

Signed for and on behalf of the Authority:

By:
Name:
Title
(Authorised
Authority
Representative):
Date:

SCHEDULE 4

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]

- 1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the Freedom of Information Act 2000 and the Environmental Information Regulations, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the Freedom of Information Act 2000 to the Information listed below.

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY