



Department  
for Environment  
Food & Rural Affairs

# Conditions of Contracts

Provision of Services

## **Ecm\_63564 Evaluation of the Resources and Waste Strategy and Waste Prevention Programme for England**

9<sup>th</sup> February 2022



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# A GENERAL PROVISIONS

## A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“Affected Party” means the Party seeking to claim relief in respect of a Force Majeure Event.

“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” and “Approved” means the prior written consent of the Authority.

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

“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 the Contract; or

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

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services.

“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 the 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.

“BPSS” means the HMG Baseline Personnel Security Standard for Government employees.

“Bravo” has the means the e-Tendering system used by the Authority.

“CCN” means a change control notice in the form set out in Schedule 3.

“Commencement Date” means the 9<sup>th</sup> February 2022.

“Commercially Sensitive Information” means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor’s Intellectual Property Rights; and
- (c) the Contractor’s business and investment plans

which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

“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. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (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 the contract to be entered into by the Authority and the successful Tenderer.

“Contract Period” means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

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

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

“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 set out in Schedule 7.

“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.

“Controller” has the meaning given in the GDPR.

“Copyright” means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“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.

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

“Data Protection Officer” has the meaning given in the GDPR.

“Data Subject” has the meaning given in the GDPR.

“Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Database Rights” means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to

NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA 2018” means the Data Protection Act 2018.

“EIR” 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.

“End Date” means 31<sup>st</sup> March 2027. The Authority may terminate this Contract on 28<sup>th</sup> Day of February of each year of the contract, except for the first year, with 30 days written notice to the Contractor.

“Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.

“Extension” means at the discretion of the Authority the contract may continue for a further 12months until 31<sup>st</sup> March 2028.

“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.

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain.

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679).

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

“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.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“HMRC” means HM Revenue & Customs.

“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 End Date.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003.

“Key Personnel” mean those persons named in the Specification as 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 law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.

“LED” means Law Enforcement Directive (Directive (EU) 2016/680).

“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.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Personal Data” has the meaning given in the GDPR.

“Personal Data Breach” has the meaning given in the GDPR.

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

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract.

“Processor” has the meaning given in the GDPR.

“Prohibited Act” means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

i) induce that person to perform improperly a relevant function or activity; or

ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

(c) an offence:

i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

ii) under legislation or common law concerning fraudulent acts; or

iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 8.

“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 Schedule 1.

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

“Regulatory Body” means a government department 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.

“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.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services 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 EIR.

“Results” means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- a) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services.

“Returning Employees” means those persons agreed by the Parties to be 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.

“Security Policy Framework” means the HMG Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

“Services” means the services set out in Schedule 1 including any modified or alternative services.

“Specification” means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“SSCBA” means the Social Security Contributions and Benefits Act 1992.

“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.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and “Sub-Contractor” shall be construed accordingly.

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.

“Tender” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services.

“TFEU” means the Treaty on the Functioning of the European Union.

“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 to provide the Services including the software and which is specified as such in Schedule 7.

“Treaties” means the Treaty on European Union and the TFEU.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“TUPE Information” means the information set out in clause B17.1.

“Valid Invoice” means an invoice containing the information set out in clause C2.5.

“Variation” means a variation to the Specification, the Price or any of the terms or conditions of 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.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural 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 a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

## **A2 The Authority’s Obligations**

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.



## **A5 Mistakes in Information**

A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A6 Conflicts of Interest**

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **B. THE SERVICES**

### **B1 Specification**

B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.

### **B2 Provision and Removal of Equipment**

B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.

B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining 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 full and accurate 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 Equipment 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 Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

B2.8 Within 20 Working Days following the end of the Contract Period, 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 shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.

### **B3 Delivery**

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 the Service 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 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.

B3.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:

- (a) accept the installation; or
- (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.

B3.4 If the Authority rejects the installation pursuant to clause B10.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.

B3.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any

installation in accordance with clause B10.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

B3.6 During the Contract Period, the Contractor shall:

- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
- (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
- (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

## **B4 Key Personnel**

B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.

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 or other similar extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, 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 B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B4.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

## **B5 Contractor's Staff**

B5.1 The Authority may, by 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 Authority's reasonable opinion, 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 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 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.

B5.4 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

## **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 and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

## **B7 Licence to Occupy Premises**

B7.1 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 termination of the Contract.

B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for 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 Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay.

B7.4 The Contractor shall (and shall ensure that any Staff on 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 on the Authority's Premises as determined by the Authority.

B7.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and 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 the Premises owned or occupied by it in any manner it sees fit.

## **B8 Property**

B8.1 All Property is and shall 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 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 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, unless such loss or damage was caused by the Authority's negligence. 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 Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

## **B10 Employment Provisions**

B10.1 Not later than 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;
- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1 (a);
- (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;
- (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 determined by the Authority (which shall not be more frequent than once every 30 days) the Contractor shall give the Authority updated TUPE Information.

B10.3 Each time the Contractor supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Contractor.

B10.4 The Authority may use TUPE Information it receives from the Contractor 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 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Authority, the Crown and any Replacement Contractor 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 TUPE Information;

(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;

(c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 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;

(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 TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date TUPE Information.

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

B10.8 The Contractor undertakes to the Authority that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without 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**

### **C1 Price**

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

### **C2 Payment and VAT**

C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.

C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.

C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

C2.5 Valid Invoices shall include:

(a) the Contractor's full name, address and title of the Contract;

(b) the Purchase Order number

and, if requested by the Authority:

- (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
- (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
- (e) identification of which individuals are Contractor's staff and which are Sub-Contractors;
- (f) the address of the Premises and the date on which work was undertaken;
- (g) the time spent working on the Premises by the individuals concerned;
- (h) details of the type of work undertaken by the individuals concerned;
- (i) details of plant or materials operated and on standby;
- (j) separate identification of time spent travelling and/or meal or rest breaks; and
- (k) where appropriate, details of journeys made and distances travelled.

C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.

C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.

C2.8 Meal and rest breaks 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.

C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.

C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority 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.

C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.

C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.

C2.13 The Authority shall not pay a stand-by rate if 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 of the Premises on the Authority's instructions).

C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.

C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.

C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.

C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.

C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address: SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ.

C2.19 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

C2.20 The Contractor shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.

C2.21 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 C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

### **C3 Recovery of Sums Due**

C3.1 If 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 with the Authority or the Crown.

C3.2 Any overpayment by either Party, whether of the 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.

## **C4 Price during Extension**

C4.1 Subject to Schedule 2 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

## **D. STATUTORY OBLIGATIONS**

### **D1 Prevention of Fraud and Bribery**

D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

D1.2 The Contractor shall not during the Contract Period:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Contractor shall, during the Contract Period:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

(b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

(a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or

(b) immediately terminate the Contract.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

## **D2 Discrimination**

D2.1 The Contractor shall:

(a) perform its obligations under the Contract in accordance with:

i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);

ii) the Authority's equality and diversity policy as given to the Contractor from time to time;

iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

(b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

### **D3 Rights of Third Parties**

D3.1 The provisions of clauses B10.5 and E8.3 confer benefits on persons named in such provisions (together “Third Party Provisions”) other than the Parties (each person a “Third Party Beneficiary”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“CRTPA”).

D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.

D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

### **D4 Health and Safety**

D4.1 The Contractor shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Authority’s health and safety policy while at the Authority’s Premises.

D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority’s Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

### **D5 Environmental Requirements**

D5.1 The Contractor shall in the performance of the Contract have due regard to the Authority’s environmental, sustainable and ethical procurement policies (“Environmental Policies”) which require the Authority through its procurement and management of suppliers:

- (a) conserve energy, water, wood, paper and other resources and reduce waste;
- (b) phase out the use of ozone depleting substances;
- (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

- (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
- (e) reduce fuel emissions wherever possible;
- (f) maximise the use of recovered materials 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 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.

D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.

D5.6 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 the Services; and
- (b) if 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 the Services.

## **D6 Timber and Wood Derived Products**

D6.1 For the purposes of clauses D6.1 to D6.8 the following terms shall have the following meanings:

- (a) "Timber" 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, for example, paper. Timber and wood-derived products supplied or used in performance of the Services 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 Services 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 at [www.gov.uk/government/publications/timber-definition-of-legal-and-sustainable](http://www.gov.uk/government/publications/timber-definition-of-legal-and-sustainable) or CPET). 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;
- (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; and
- (g) "CPET" means the UK Government's Central Point of Expertise on Timber.

D6.2 All Timber supplied or used by the Contractor in providing the Services (including all Timber supplied or used by Sub-Contractors) shall comply with Schedule 1 and 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
- (the "Social Criteria").

D6.3 If requested by the Authority and not already provided in its Tender, the Contractor shall give the Authority evidence that the Timber supplied or used in providing the Services complies with the requirements of Schedule 1 and with the requirements of the Social Criteria.

D6.4 The Authority may at any time during the Contract Period and for 6 years after final delivery under the Contract require the Contractor to produce the evidence required for the Authority's inspection within 14 days of the Authority's written request.

D6.5 The Contractor shall maintain records of all Timber delivered to and accepted by the Authority for 6 years from final delivery under the Contract.

D6.6 The Authority shall 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 complies with Schedule 1 and complies with the requirements of the Social Criteria. If 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.

D6.7 In the 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.

D6.8 The Authority may reject Timber that does not comply with Schedule 1 or with the Social Criteria. If the Authority rejects any Timber the Contractor shall supply alternative Timber which does comply at no additional cost to the Authority and without causing delay to delivery of the Services.

# **E PROTECTION OF INFORMATION**

## **E1 Authority Data**

E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 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.

E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.

E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.

E1.5 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.

E1.6 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 Security Policy Framework.

E1.7 If 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.

E1.8 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**

E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 5. The only processing that the Contractor is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Contractor.

E2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

E2.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Contractor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Authority;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

E2.5 Subject to clause E2.6 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority;

(e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

E2.6 The Contractor's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in phases, as details become available.

E2.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause

E2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

E2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Authority determines that the processing is not occasional;
- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E2.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

E2.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

E2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

E2.12 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.

E2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

E2.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act**

E3.1 The Contractor shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

### **E4 Confidential Information**

E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E4.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

E4.3 If 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 in Schedule 6 and, if applicable, incorporating the requirements of clause E2.11. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

E4.4 If requested by the Authority, the Contractor shall give the Authority 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.

E4.5 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.

E4.6 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.

E4.7 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 EIR;
- (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 the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E4.8 Nothing in clause E4.1 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;
- (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;
- (c) to any Crown Body or any 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;
- (d) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E4.8 (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.

E4.9 Nothing in clauses E4.1 to E4.6 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.

E4.10 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.

E4.11 If the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on written notice to the Contractor.

E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E4.13 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 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. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

E4.14 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 E4.12.

## **E5 Freedom of Information**

E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:

- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

## **E6 Publicity, Media and Official Enquiries**

E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, 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 reasonable 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 give the Contractor upon request copies of its written security procedures.

E7.3 The Contractor shall, as an enduring obligation during the Contract Period, 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 clause 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 the 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 Authority Data (whilst the Authority Data was under the control of the Authority).

## **E8 Intellectual Property Rights**

E8.1 All Intellectual Property Rights in:

(a) the Results; or

(b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Contractor by or on behalf of the Authority (together with the Results, the "IP Materials")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Contractor shall not, and shall ensure that the Staff shall not,

use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.2 The Contractor hereby assigns:

(a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clauses E8.1(a) and (b). 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; and

(b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials prepared in accordance with clauses E8.1 (a) and (b),

and shall execute all documents and do all acts as are necessary to execute these assignments.

E8.3 The Contractor shall:

(a) 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;

(b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services 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-licence, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority (“Indemnified Persons”);

(c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and

(d) during and after the Contract Period, indemnify and keep indemnified the Authority and the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E8.3, except to the extent that any such claim results directly from:

i) items or materials based upon designs supplied by the Authority; or

ii) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E8.4 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.

E8.5 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, the Contractor or Indemnified Person) 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 Approval (not to be unreasonably withheld or delayed).

E8.6 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 E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3(d) i) and ii).

E8.7 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.8 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 any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.3(b) and G2.1(g)) 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 Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses E8.8(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

E8.9 The Contractor grants to the Authority and, if requested by the Authority, to a Replacement Contractor, 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 (or the Replacement Contractor) reasonably requires in order for the Authority 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 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.

## **E10 Tax Compliance**

E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Authority:
  - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
  - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICS, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising

from or made in connection with the provision of the Services by the Contractor or any Staff.

## **F. CONTROL OF THE CONTRACT**

### **F1 Failure to meet Requirements**

F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do 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 Monitoring of Contract Performance**

F2.1 The Contractor shall immediately inform the Authority if any of the Services are not being or are 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 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"). 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 delivery of the Services; the Contractor's contribution to innovation in 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 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 give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.

F2.6 The Contractor shall, within 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 for inadequate performance**

F3.1 If the Authority reasonably believes the Contractor has committed a Material Breach it 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 has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
- (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 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 the Contract in accordance with clause H2.

F3.2 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.

F3.3 If the Authority reasonably believes 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 notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Authority may:

- (a) direct the Contractor to 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.

F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:

- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
- (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

## **F4 Transfer and Sub-Contracting**

F4.1 Except where clauses F4.6 and F4.7 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 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. If it is 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 its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the 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 If the Authority has consented to the award of a Sub-Contract, the Contractor shall ensure that:

- (a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
- (b) the Sub-Contractor includes a provision having the same effect as set out in clause F4.4 (a) in any Sub-Contract which it awards; and
- (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.

F4.5 If the Authority believes there are:

- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
- (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

F4.6 Notwithstanding clause F4.1, the Contractor may assign to a third party (the "Assignee") the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 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 F4.7 and F4.8.

F4.7 If the Contractor assigns the right to receive the Price under clause F4.6, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F4.8 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.

F4.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

F4.10 Subject to clause F4.11, 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;
- (b) any other body established or authorised 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.

F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 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 and H2 shall be available to the Contractor in respect 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.

F4.13 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.

F4.14 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 A4 (Notices and Communications).

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 If, after the Commencement Date, the Authority’s requirements change, the Authority may request a Variation subject to the terms of this clause 6.

F6.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.

F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the 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 immediately 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. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.

F6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo. On the date it communicates acceptance of the CCN in this way the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.

F6.6 The provisions of clauses F6.4 and F6.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN 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 Remedies Cumulative**

F8.1 Except as expressly provided in 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.

## **F9 Entire Agreement**

F9.1 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 fraudulent misrepresentation.

## **F10 Counterparts**

F10.1 The 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 limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (c) any breach of clauses D1, E1, E2 and E4;
- (d) Schedule 8; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

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 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 by any act or omission of the Contractor.

G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed £2m (Public Liability Insurance £1m; Professional Indemnity Insurance £1m; Product Liability Insurance £1m; Employer's (Compulsory) Liability Insurance £5m).

G1.4 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.

G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs

associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;

- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

G1.7 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 6 years following the end of the Contract.

G1.8 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.

G1.9 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.

G1.10 If the Contractor does not 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.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

G1.12 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 on the Commencement Date and for the Contract Period that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform 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 an 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 3 years (or period of existence where the Contractor has not been in existence for 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 its obligations under the Contract; and

(k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

### **G3 Force Majeure**

G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.

G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

G3.6 If, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
  - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
  - ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.

G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice 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;
- (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);
- (c) 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 or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (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;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (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 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;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- (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;
- (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;
- (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 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (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 clauses H1.2(a) to (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 1124 of the Corporation Taxes Act 2010 ("Change of Control"). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 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 Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice 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;
  - (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;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

- (a) 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;
- (b) it is for any reason dissolved;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;  
or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

H1.6 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 with immediate effect by notice if the Contractor commits a Default and:

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

H2.2 If, 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 give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such 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) or to a Force Majeure Event.

## **H3 Termination on Notice**

H3.1 The Authority may terminate the Contract at any time by giving 30days' notice to the Contractor.

## **H4 Other Termination Grounds**

H4.1 The Authority may terminate the Contract on written notice to the Contractor if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;

(c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or

(d) the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H4.2 The Authority may terminate this Contract on 28<sup>th</sup> Day of February of each year of the contract, except for the first year, with 30 days written notice to the Contractor.

## **H5 Consequences of Expiry or Termination**

H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the 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.

H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments 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.

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments 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.

H5.4 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 Fraud and Bribery), E2 (Data Protection), 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), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## **H6 Disruption**

H6.1 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.

H6.2 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.

H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.

H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, 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.

## **H7 Recovery upon Termination**

H7.1 On 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 in good working order;
- (c) immediately vacate any Authority Premises occupied by the Contractor;
- (d) 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
- (e) 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.

H7.2 If the Contractor does not comply with clauses H7.1(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.

## **H8 Retendering and Handover**

H8.1 Within 21 days of being 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.

H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

H8.3 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.

H8.4 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 H8.1.

H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.

H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. 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.

H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include 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.

H8.8 Within 10 Working Days of being 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.

## **H9 Exit Management**

H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10.

## **H10 Exit Procedures**

H10.1 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.

H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:

- (a) 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 Price; or
- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price.

H10.3 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.

H10.4 Within one 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.

## **H11 Knowledge Retention**

H11.1 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 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 the Contract, including any matters arising out of or in connection with it, 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 limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not 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 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.

12.2 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.

12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 either Party may refer it to mediation pursuant to the procedure set out in clause 12.5.

12.4 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.

12.5 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 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 10 Working Days from the date of the proposal to appoint a Mediator or within 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 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 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; and

(f) if the Parties fail to reach agreement within 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 12.6.

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 notice on the Authority of its intentions and the Authority shall have 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 I2.7; and

(c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

I2.7 If any arbitration proceedings are commenced pursuant to clause I2.6,

(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a 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;

(b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(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;

(c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I2.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the arbitration proceedings shall take place in London and in the English language; and

(f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## SCHEDULE 1 - SPECIFICATION

### PART 1: BACKGROUND

#### The policy context

1.1 When we published our [Resources and Waste Strategy](#)<sup>1</sup> in December 2018, we made a commitment that “all significant policies, programmes and projects should be subject to comprehensive but proportionate evaluation” (p.143). In August 2020 we followed up on this commitment by publishing the Resources and Waste Strategy [Evaluation Plan](#) which set out our expectations about likely priorities for evaluation, namely:

- extended producer responsibility for packaging
- a deposit return scheme for drinks packaging
- consistent recycling collections for households and businesses
- interventions on waste crime

1.2 We also included a wider-ranging project to look at the impact of Defra policies intended to tackle plastics pollution, and a project to evaluate the impact of the strategy more generally.

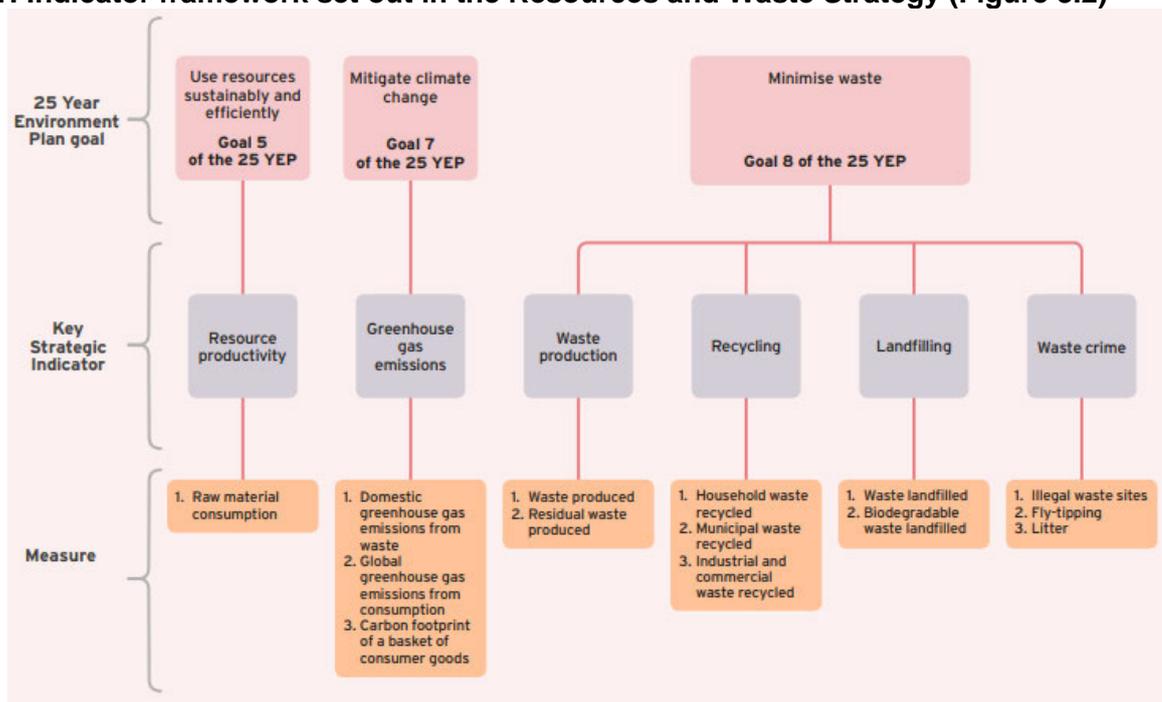
1.3 In the R&WS, we set out some headline indicators which we intended to monitor as a way of assessing progress. The headline indicators are shown in the figure below, which is taken from the R&WS. They are:

- Raw material consumption
- Domestic greenhouse gas emissions from waste
- Global greenhouse gas emissions from consumption
- Carbon footprint of a basket of consumer goods
- Total waste produced
- Residual waste produced
- Household waste recycled
- Municipal waste recycling
- Industrial and commercial waste recycled
- Total waste landfilled
- Biodegradable waste landfilled
- Number of illegal waste sites
- Amount/incidences of fly-tipping
- Litter

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<sup>1</sup> Evidence supporting the R&WS is presented as an Evidence Annex, available [here](#).

**Figure 1: Indicator framework set out in the Resources and Waste Strategy (Figure 8.2)**



- 1.4 In 2020, we published our first Monitoring Progress report, available [here](#). Appendix B (indicator metadata) of this report sets out in more detail the measures for each key strategic indicator and explains which indicators are still under development.
- 1.5 The Evaluation Plan is a “living document,” one that we expected to “evolve and develop over time” (p.9). Since the Plan was published, four relevant consultation processes have been initiated:
- Extended producer responsibility for packaging [here](#)
  - Deposit return scheme [here](#)
  - Consistency in household and business recycling [here](#)
  - Waste prevention programme [here](#)
- 1.6 Initial impact assessments have been published for each, available at the links above. The responses are currently being analysed. There will be further consultations on other commitments of the R&WS that we are currently taking forward.
- 1.7 Our work on waste crime has progressed, and the Joint Unit referred to in the R&WS is now up and running. The Environment Agency is progressing evaluation of its work to tackle waste crime.
- 1.8 The Waste Prevention Programme is required by law and has been running for a number of years. There have been previous evaluations of the Waste Prevention Programme which bidders may wish to refer to. Information is [here](#) on the programme of work under previous governments and [here](#) on the latest published review, which covers 2013-2019.

## Evaluation

- 1.8 We follow the principles and guidelines set out in the [Magenta Book 2020](#) and expect the contractor to do the same. Complexity is inherent in our policy context, so the [supplementary guide](#) on handling complexity is particularly pertinent. Economic evaluation will follow the principles and approaches set out in the [Green Book](#). Analysis will be carried out and quality assured in line with the official guidance set out in the [Aqua Book](#).
- 1.9 The evaluation of R&WS is a programme of work rather than a project, and we expect the successful bidder to manage it as such. We currently refer to the programme as RaWSEval.

## Stakeholder engagement

- 1.10 We have carried out some stakeholder engagement on needs and priorities for the evaluation amongst the resources and waste industry, including the public sector, and will be engaging with others while this procurement is live. So far, stakeholders understand and support the need for the evaluation and are interested in engaging with the process. However, when asked to think about the detail of what they will want to know in five years' time, their thoughts are understandably focused on the outcome of consultations on the policies that have yet to be finalised. This indicates that the evaluation programme will receive positive engagement in the future, but that it is too soon to discuss details.

## PART 2: PROJECT AIMS AND OBJECTIVES

- 2.1 The aim of the project is to help Defra understand what has and has not been successful about key objectives and commitments of the R&WS, why and for whom. We will use that knowledge to adapt design, implementation and/or regulation, or provide additional input into the operating context to make policies more effective. Understanding what has and has not worked, why and for whom, will help us design better resources and waste policy in the future.
- 2.2 The policies to be covered have been grouped under five high-level desired policy outcomes:
1. Producing less waste
  2. Increasing recycling of municipal packaging waste
  3. Increasing recycling of other municipal wastes, especially food waste
  4. Improving resource efficiency (production, management and fate) of plastics
  5. Reducing waste crime
- 2.3 We believe that systems thinking is useful for evaluating policy outcomes. Each of these policy objectives will be delivered by policies that affect numerous economic, social, political and natural systems, all of which interface and interact with one another. Within these systems we would hope to see at least some transformational<sup>2</sup> change.
- 2.4 Below we have listed the R&WS and WPP policies that we expect to contribute towards achieving each objective, along with long-standing policy interventions (e.g. the landfill tax, site permitting) and activities of other system actors (e.g. local authorities, community groups). Some policies are shown more than once; this is because they contribute to multiple policy outcomes.
- 2.5 For some policies, evaluations are already underway by the Environment Agency and WRAP. We expect that the results of these evaluations will be synthesised and not duplicated. They are indicated by (^).

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<sup>2</sup> For definition of 'transformational change' see Annex 17 of the Green Book [here](#)

### Policy outcome 1: Less waste being produced

*Bidders should refer to the consultation draft of the Waste Prevention Programme for detail on proposed interventions*

- action on textiles focusing on Textiles 2030 (^) and possibly including EPR if implemented within project timescales
- action on WEEE and batteries, focused on reform of EPR
- action on single use materials, including packaging and plastics
- action on food waste (^)
- eco-design
- product labelling
- carrier bag charging
- action on construction materials focusing on product requirements and product passports
- others that the contractor may identify as being pertinent

### Policy outcome 2: Increased recycling of municipal<sup>3</sup> packaging waste

*Bidders should refer to the relevant consultations for detail on proposed interventions.*

- extended producer responsibility for packaging
- a deposit return scheme for drinks packaging
- consistent recycling collections for households and businesses
- WRAP's work supporting local authorities in support this objective
- others that the contractor may identify as being pertinent

### Policy outcome 3: Increased recycling of municipal non-packaging waste, focusing on food waste, paper and cardboard

*Bidders should refer to the relevant consultations for detail on proposed interventions.*

- consistent recycling collections for households and businesses
- WRAP's work supporting local authorities in support this objective
- others that the contractor may identify as being pertinent

### Policy outcome 4: Improved resource efficiency (arising, management and fate) of plastic waste

This will draw on all the policies included elsewhere in this section that are intended to impact on plastics plus any others that the contractor may identify as being pertinent.

### Policy outcome 5: Reduction in waste crime

- reform of the carriers, brokers and dealers (CBD) regulations
- reform of exemptions to licensing/permitting
- waste tracking
- Environment Agency activities to tackle illegal waste sites
- Environment Agency activities aimed prevention and deterrence including (bringing across the EA's process evaluation and some limited impact evaluation work (^) due for publication summer 2022, and picking up from there)
- Joint Unit for Waste Crime (^)
- others that the contractor may identify as being pertinent

## **Objectives**

2.6 The specific objectives, which draw from p.31 of the Magenta Book, are:

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<sup>3</sup> 'Municipal waste' includes household waste and waste from other sources which is similar in nature and composition to household waste.

- a. Design and deliver a programme of process evaluation to run alongside policy implementation. This will provide rapid feedback on:
  - i. whether the policies are delivering as intended
  - ii. what is working well, or less well, for whom and why
  - iii. what could be improved
  - iv. what can be learned from the implementation methods used
  - v. how the context has influenced policy implementation
  
- b. Design and deliver a programme of impact evaluation to establish:
  - i. the extent to which the policies achieved their expected outcomes – for whom, how, and in what circumstances
  - ii. the extent to which the policies caused any observed difference in outcomes, what would have happened anyway, what external factors were involved, and the ways in which causal factors have worked in combination within complex adaptive systems to deliver outcomes
  - iii. the ways in which the context has influenced outcomes
  - iv. the nature and extent of any unintended outcomes or disbenefits
  - v. the extent to which the policy could be reproduced
  - vi. any generalisable lessons have we learned about impact
  - vii. what works, how, for whom and in what circumstances.

c. Design and deliver a programme of economic (value for money) evaluation, using a natural capital accounting framework,<sup>4</sup> to establish:

- i. cost-effectiveness of the policies
- ii. value-for-money of the policies
- iii. the extent to which the benefits outweigh the costs
- iv. whether the intervention is the best use of public funds, compared with other possible policy instruments

2.5 Where relevant, evaluation will form the basis for Defra officials to conduct Regulatory Post-Implementation Reviews (PIR),<sup>5</sup> so design should be mindful of this intended application.

2.6 One of the reasons we are procuring evaluation as a single programme rather than five separate evaluations, one for each policy outcome, is to facilitate learning across different streams of evaluation work, given the extent to which policies deliver against multiple policy objectives. We also expect contractors to identify and realise opportunities for primary research to deliver across policy streams, to minimise evaluation costs and the burdens placed, for example, on survey respondents.

2.7 Defra will convene:

- a. an internal **evaluation steering group** (ESG). The core ESG will consist of the Defra Project Manager, the resources and waste Principal Social Researcher and the Defra Senior Responsible Officer (SRO). The ESG will also include relevant Defra, other government departments and Environment Agency policy and analytical officials, with at least one senior policy official and a senior analyst for each policy (e.g. DRS) included. Its purpose will be to guide and assist the contractor's work, including providing information which cannot be made publicly available. The ESG will account to the Defra Resources and Waste Strategy Programme Board for the progress of RaWSEval. ESG members will be called upon to contribute to policy streams or specific activities as required, e.g. in meetings, to comment on a deliverable, or to facilitate access to an informant. Any steer or instruction provided by the ESG or its individual members should be fully taken on board by the contractor.
- b. a group of **occasional stakeholder advisers**; Defra and the consultant will be able to call on the advisers as required by the programme of work. They will provide an external perspective, for example to advise on current issues, to comment on questionnaire design and to help ensure the results of the evaluation can be used widely as widely as possible. Membership of the group will be on a voluntary basis. The group will consist of organisations with an interest in each of the policy outcomes. The contractor will have a duty to attend any meetings of the group (bidders should cost for two in the first and final years of the work and one in intermediate years) and take account of the group's views, where the contractor and Defra agree it makes sense to do so.
- c. A small number of **peer reviewers**. Up to three experts will be contracted by Defra to provide the Defra project manager and ESG with specialist technical review of the

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<sup>4</sup> See [ONS](#) for more information about natural capital accounting

<sup>5</sup> Guidance is available [here](#).

contractor's work. At least one will be an expert in the impact evaluation methodology chosen by the successful contractor. Draft deliverables will be sent to the reviewers for comment. The contractor will have a duty to take account of the peer reviewers' feedback or agree on a point by point basis with the Defra project manager that there is no need to do so. The reviewers may choose to remain anonymous; as a minimum, their area of expertise will be made known to the contractor once they are appointed.

## **PART 3: TASKS**

### **Management**

3.1 The contractor will structure and manage the programme of work using an approach of their choice, but it must be able to accommodate the dynamic nature of the project context and maximise opportunities to work efficiently across the different activities. It must also be able to accommodate the heavy workloads of Defra officials who may be needed to contribute to the evaluation, e.g. by allowing reasonable time for non-core ESG members to respond to queries. Bidders should outline their intended approach in their submission, explaining why that particular approach best meets the needs of the project.

3.3 For the purposes of this ITT, we have divided the work into five work packages – management, pre-implementation, process, impact and economic evaluation. Reporting tasks should be integrated in your bid into the five packages of work and not included as a separate task. By way of a guide only, the relative amounts of effort we would expect to be put into each of the five work packages is:

- Pre-policy implementation 25%
- Process evaluation 20%
- Impact evaluation 40%
- Economic evaluation 10%
- Management 5%

3.2 The programme will operate through annual programmes of work. This is necessary to accommodate Defra spending rounds. In the light of the progress that has been made on implementing policies, each February the contractor will consider the optimal requirement for the following financial year and propose a programme of work and associated costs, drawing from their financial proposal. A proposed spend profile and invoicing schedule will also be provided. The contractor's proposal on the nature and scale of the work required will be discussed with the ESG in the light of funding available for the financial year in question, and a final programme of work agreed.

3.3 Weekly email-based progress reporting will be required during active periods, reduced to fortnightly or monthly when fewer activities are being carried out. The Defra programme manager will determine, with the contractor, when periods are to be deemed active and less active.

### **Inception**

3.4 The successful contractor will attend a virtual inception meeting with the core ESG. The purpose of the meeting will be to discuss and agree the overall programme of work and resolve any issues outstanding from the procurement process. The proposed programme of work for years 1 (2021/22) and 2 (2022/23) will also be agreed in principle at this stage, prior to presenting them to the wider ESG members.

3.5 The contractor will attend a meeting of the full ESG at which they will present their approach to the evaluation, their provisionally agreed programme of work, and the expert

teams for each work stream.<sup>6</sup> The ESG will provide feedback, which the contractor will be required to consider. A record of all ESG feedback and suggestions should be maintained by the contractor, along with a decision log and a record of the contractor's action in response (e.g. "accepted in full and edits made") – this requirement applies to all feedback from the ESG and peer reviewers, for the full duration of the contract. This meeting will sign off the programmes of work. If the meeting requires substantive changes to be made to the overall programme of work or the 2021/22 or 2022/23 programmes of work, these should be discussed and agreed with the Defra Project Manager and the written programmes of work amended and resubmitted to Defra for approval.

- 3.6 The contractor will present their agreed programme of work to a meeting of stakeholders. The Defra programme manager will present about the RaWSEval programme more generally. The purpose of this meeting is to engage stakeholders in the evaluation and ensure the contractor has knowledge of and access to individuals who will be able to contribute to the programme as it progresses.

## Pre-policy implementation work

### Theory of change

- 3.6 The evaluation should be a theory-based one, due to the nature of the delivery environment which consists of complex adaptive systems.
- 3.7 We have prepared high level theories of change, which link activities, outputs and outcomes to our policy objectives (above) and higher level departmental objectives. We will be developing causal maps for each of the five policy outcomes, and more detailed theories of change for each of the policies to be evaluated. This will occur during the remainder of 2021/22. The contractor will be expected to take these causal maps and theories of change, review them, and create evaluable theories of change for each policy outcome. Since there is likely to be overlap between the maps, one approach may be to combine them into a systems map capable of informing evaluation questions. We welcome innovative solutions.
- 3.8 We expect that some work may be required to elaborate on change mechanisms<sup>7</sup>, including the application of behavioural change theory as applied to consumers and to businesses, in relation to specific policy instruments.
- 3.9 For the purposes of planning this work, we have used COM-B to understand the necessary pre-requisites for change and applied it both to individuals and businesses. There are other ways to think about mechanisms for generating change, and although we think this is a useful and easy-to-understand one, contractors are encouraged to propose an approach that best suits the needs of the project. An example of our approach to thinking about the way change is generated is shown in the table below.

**Table 1: Example of our thinking to date about theory of change**

Aspect	C – Capability	O – Opportunity	M – Motivation
Example barriers	Lack of knowledge and understanding about what they should be doing differently	Lack of physical infrastructure to do what government would like them to be doing	Lack of drive to do what government would like them to be doing

<sup>6</sup> 'Work stream' means the clustering of activities proposed by the bidder; this may be by policy outcome or may be a different clustering that better suits the bidder's proposed programme of work.

<sup>7</sup> Where we use the term 'mechanism' we are using it in a general sense and not the very specific way it is used in realist evaluation.

Aspect	C – Capability	O – Opportunity	M – Motivation
Policy example	Consumers don't use DRS return points because they don't know where they are	Consumers don't use DRS return points because none are accessible to them	Consumers don't use DRS because the loss of the deposit is not a sufficient incentive
	Drinks producers don't register with the scheme administrator because they didn't know they needed to	Drinks producers from overseas can't use the scheme administrator's IT systems because they are incompatible with their own systems	Drinks producers don't comply with the law because they judge the risk of being caught to be very low
Example interventions	Information campaigns Training schemes	Grant funding for building physical infrastructure Funding of local authority recycling schemes	Financial incentive Threat of imprisonment
Policy instruments that ...	Inform Upskill	Enable Fund	Compel Incentivise Persuade
Evaluation question	Does the intervention have a capability-building mechanism?	Does the intervention have an opportunity-creation mechanism?	Does the intervention have a motivation-creating mechanism?
	Is it working effectively to generate, in combination with the other mechanisms, the behaviour Government would like to see?	Is it working effectively to generate, in combination with the other mechanisms, the behaviour Government would like to see?	Is it working effectively to generate, in combination with the other mechanisms, the behaviour Government would like to see?

### Development of indicators of change for each policy

3.10 The contractor will devise a suite of indicators of change, relevant to each policy and based on the evaluable theory of change. The purpose of developing indicators is to structure and steer efforts to gather monitoring data, both within this project and more generally for the *Monitoring Progress* team which would like to include more lead (or proxy) indicators in future. The suite of measures will include indicators of:

- **Initial outcomes.** These are typically caused by a system actor (consumer or business) interacting with a policy/intervention output, e.g. changes in knowledge because of an information campaign. These are lead indicators, referred to as 'proxy indicators' in *Monitoring Progress*.
- **Further (or intermediate) outcomes.** These are typically caused by the changed system actor thinking or behaving differently, or changes within the system made by the policy/intervention affecting the way system actors think or behave, e.g. increased use of recycling facilities. These are also lead indicators, referred to as 'proxy indicators' in *Monitoring Progress*.
- **Impacts.** These are changes in the political, legal, social, economic, and/or natural systems because of the outcomes. They may be benefits or disbenefits, depending on a) the current socio-political consensus of what is 'good' and 'bad', and b) the position

of the perceiver in the system. The indicators reported in *Monitoring Progress* are generally impact indicators.

- **Consequential (secondary) impacts.** These reflect the policy-relevant consequences of impacts, e.g. reduced carbon emissions, reduced pollution of the natural world, or increased job opportunities. They are not the primary purpose of the intervention. They may be benefits or disbenefits, as above.

3.11 Indicators will need to be measurable, meaningful, and manageable in number and ambition. For each policy outcome, we would expect to see several lead indicators and some consequential indicators. Indicators should link to the 25 Year Environment Plan indicators, and any other relevant indicator sets.

### Monitoring data

3.12 Although Defra is collecting data on the key strategic indicators, including developing new ways of measuring those for which no reliable data exists, we expect there to be a need to collect additional data, particularly on outcomes. As many of the interventions are yet to be introduced, there is an opportunity to suggest ways of incorporating monitoring into policy design and implementation.

3.13 The contractor will review available data sources for each indicator, consider new approaches to gathering the necessary data, and devise a Monitoring Data Collection Plan. This will take full account of the likely governance, implementation and enforcement structures for each policy and will suggest which policy actor<sup>8</sup> is best placed to collect the data, how and at what frequency. It will also address how baselines should be devised. Where possible, data collection should be built into operations, but we do expect that some new data collection exercises will be necessary, including new surveys.

3.14 The approach to quantifying consequential impacts is likely to rely on modelling, by applying factors to measurements. An example is calculating CO<sub>2</sub> equivalent emissions, for which carbon factors are typically applied to quantities of each type of waste. The contractor will recommend sources for reliable factors, and ways to obtain them where no sources exist.

3.15 Following discussion of the Monitoring Data Collection Plan and the proposed approach to estimating consequential impacts, the contractor will devise a metadata table for each indicator, drawing on the approach used in *Monitoring Progress*. This will ensure that the indicators definitions are specific enough for anyone to gather data and report against the indicator, without having been involved in the development work.

### Gathering baseline data

3.16 We will agree who will collect baseline data for each of the indicators (the contractor or the *Monitoring Progress* team in Defra). Where new data needs to be collected for any of the identified indicators, the contractor will gather that data and make best estimates of a baseline for all relevant indicators. This will include taking data on impacts from *Monitoring Progress* or the raw data underlying it, which will be made available to the successful bidder (where any confidentiality assurances we may have made allow it).

3.17 We appreciate that there is uncertainty about how much effort (and therefore cost) will be incurred as it depends on the number and type of indicators we agree, which in turn depends on the causal maps and theories of change. We have built flexibility into the

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<sup>8</sup> By 'policy actor', we mean the organisations involved in designing and implementing the policy e.g. Defra, the Environment Agency, WRAP and other delivery bodies, the scheme administrator in the case of EPR and DRS, and local authorities.

programme through annual programmes of work which can be adjusted and refocused as the programme requires. For bidding purposes only, you should assume that 40 new indicators will be required, of which 30 will be outcomes indicators, obtained from four surveys – of consumers, local authorities, the waste and resources industry and other businesses, five will be new impact indicators and five will be consequential impacts based on applying conversion factors to impacts. You should assume that the contractor will take responsibility gathering the baseline data for all 40 new indicators.

3.18 As a guide to the types of expertise bidders may need on a team, the following data gathering/processing initiatives may be required:

- 1) Working with delivery partners e.g. Defra analysts, the EA and WRAP to obtain, analyse and manipulate information and data
- 2) Literature review to identify factors and other inputs to modelling
- 3) Discussions with experts to identify and obtain factors and other inputs to modelling
- 4) Gathering, formatting and analysing waste and market data
- 5) Surveys of consumer knowledge, understanding, awareness, self-reported behaviour
- 6) Surveys of businesses' policies, practices, and intentions – both large and small companies, and in a range of sectors
- 7) Information collection from local authorities e.g. on services, waste flows and quantities (where not in WasteDataFlow or, in future, Waste Tracking)
- 8) Collection of information and data from regulators e.g. in public registers, or on registrations
- 9) Information gathering from of the waste and reprocessing industries, both large and small companies

3.19 The contractor will produce a spreadsheet of baseline data for each indicator, with degrees of uncertainty stated where this is possible. The contractor will also review and update the metadata tables, based on experience of collecting the baseline data.

### **Process evaluation**

3.20 The contractor will design and implement process evaluation for each of the 12 interventions yet to be implemented namely:

1. extended producer responsibility for packaging (policy Outcomes 2, 3 and 4)
2. a deposit return scheme for drinks packaging (policy Outcome 2 and 4)
3. consistent recycling collections for households and businesses (Policy Outcomes 2, 3 and 4)
4. reform of the carriers, brokers and dealers regulations (Policy outcome 5)
5. reform of exemptions to licensing/permitting (policy outcome 5)
6. waste tracking (policy outcome 5)
7. eco-design (policy outcome 1, 2, 3 and 4)
8. product labelling (policy outcome 1, 2, 3 and 4)
9. bans on certain single use plastic items – phase 2 (policy outcomes 1 and 4)
10. reforms to WEEE extended producer responsibility (policy outcomes 1 and 3)
11. reforms to batteries extended producer responsibility (policy outcomes 1 and 3)
12. introduction of extended producer responsibility for textiles (policy outcomes 1 and 3)

3.21 It may be possible to group policies/interventions together for process evaluation, where the target audience, timescales and implementation mechanisms are sufficiently similar. Bidders should set out where they think this may be the case. For costing purposes, you should assume that there will be 12 separate studies.

3.22 The table below shows anticipated timelines, which are subject to change. We are unable to release this information for some of the policy interventions, but it will be shared in confidence with the successful bidder.

**Table 2: Expected timetable for consultations and implementation ( will change – subject to confidential briefing)**

Policy intervention	Actual/intended consultation period <sup>9</sup>	Intended implementation date
Reforms to extended producer responsibility for packaging	Present – early 2022	April 2024
Deposit return scheme for drinks packaging	Present – late 2021	Late 2024
Consistent collections for households and businesses	Present – early 2022	From 2023/24
Reform of the carriers, brokers and dealers regulations	Present	TBC
Reform of exemptions to licensing/permitting	TBC	TBC
Waste tracking	Present	TBC
Eco-design	TBC	TBC
Product labelling	TBC	TBC
Bans on certain single use plastic items	TBC	TBC
Reforms to WEEE EPR	2022/23	2025/26
Reforms to batteries EPR	2022/23	TBC
Introduction of EPR for textiles	TBC	TBC

3.23 The process evaluation is expected to be qualitative in nature and will focus on obtaining rapid feedback on aspects of the policy that can be changed or adjusted, alongside recommendations for doing so. Defra may wish to ask the contractor to provide objective evidence on specific aspects of a policy where anecdotal information suggests there are problems. For each of the policies above, the process evaluation will answer the questions:

1. How has implementation gone?
  - a. In what respects have policy actors implemented the policy as intended?
  - b. In what respects, and why, has implementation diverged from intentions?
  - c. In what respects has any divergence produced positive or negative outcomes, for whom and in what circumstances?
  - d. In what ways might implementation be improved?
  
2. What is early performance looking like?
  - a. In what respects is the policy performing as expected, so far?
  - b. In what respects, and why, is performance diverging from expected performance? What implications does this have for longer term performance? Which links in the theory of change are not delivering as expected, and why?

<sup>9</sup> This includes the time for Defra to analyse the responses and publish a response

How and to what extent are the assumptions implicit in the theory of change being borne out during implementation?

- c. How might early performance be improved? How might longer term performance be improved?

3. What do we expect longer term performance to look like?

- a. After the transition period and once the policy has settled in, how do we expect the policy to be performing? Is there anything else that needs to happen for the policy to perform as expected in the medium to long term?

4. What does this tell us about impact evaluability?

- a. Does the theory of change need amending/elaborating?
- b. To what extent and to what level of quality is the required monitoring data, information and insights being collected?
- c. How could evaluability be enhanced? Is additional data collection needed, for example? Has the possibility of new indicators emerged?

3.24 Bidders should include details of their proposed approach, highlighting any differences in approach that may be required for each different policy and outcome being evaluated.

3.25 A short report of each process evaluation will be required. They should be written for the policy lead for each policy. They should contain actionable insights and focused on what is working, what is not working, and recommendations for changes to design (short-term and longer-term) and implementation. Anonymised quotations or real examples should be included. Each report should be no more than 20 pages, with a maximum two-page summary. A summary of the method should be written and included in each report as a technical annex along with copies of any research tools used.

### **Impact evaluation**

3.26 We are seeking a theory-based impact evaluation which answers the question: what has worked, how, for whom and in what circumstances, to take England closer towards achieving the five desired policy outcomes? While we have framed the question in realist terms, this should not be taken to imply we require a realist evaluation. We are open to all robust approaches that can deliver our objectives. Bidders should set out in their proposals how they intend to ensure rigour.

3.27 The specific evaluation questions, which apply only to England even though some of the policies contributing towards the policy outcomes will operate UK-wide, are:

1. To what extent (estimate and levels of certainty) have we seen changes in:
  - a. The amounts and types of waste produced, i.e. regardless of whether recycled or disposed of?
  - b. The amount, types and quality of municipal packaging waste collected and made available for recycling?
  - c. The amount, types and quality of municipal non-packaging waste collected and made available for recycling?
  - d. The scale (incidence and seriousness) of waste crime?<sup>10</sup>

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<sup>10</sup> The Environment Agency has been working on meaningful ways of measuring and reporting waste crime which will be made available to the successful contractor

- e. The amounts and types of single use plastic waste arising, including plastic packaging?
  2. To what extent have the implemented policies set out in the Resources and Waste Strategy (and listed above) contributed to these changes (the attribution question)? See para 3.30 which explains why we need this quantified and not just a qualitative expression of extent.
  3. What benefits or disbenefits – direct and consequential – have arisen from these changes? How, for whom, and in what circumstances? How are benefits and disbenefits distributed, socio-demographically and geographically?
  4. How is change working in practice? How does the theory of change need to be elaborated, changed or discarded?
  5. What can we conclude about the impact of the policies contained in the Resources and Waste Strategy? For example:
    - a. To what extent could any changes be characterised as ‘transformational’? What are the risks of reversion, and how might they be avoided?
    - b. Are some policies/interventions redundant? Do some play a more critical role in achieving outcomes than others? Do some work together while others work alone?
    - c. To what extent are the interventions jointly delivering the theoretical requirements for change e.g. capability, opportunity and motivation from the COM-B meta-theory?
    - d. What additional levers of change might be required?
    - e. What unintended, positive or negative environmental, climate, social or economic consequences are we seeing? Are particular groups, areas or systems disproportionately affected? Are groups with protected characteristics disproportionately affected?
- 3.28 We anticipate that some form of ‘evidence table’ will help structure the investigation. By ‘evidence table’, we mean a way of setting out, in advance of data collection, the aspects of the theory on which evidence will be sought, the types and sources of evidence likely to be found, and the likely strength of the evidence in supporting or refuting the particular aspect of the theory. Bidders should specify how they will seek to maximise the strength of causal claims, for example by triangulating sources. Bidders should also explain how they intend to present the strength of each causal claim and the evidence that supports it, and how the various sources of evidence work, in combination, to support conclusions about a particular aspect of theory, including causal claims. Bidders should highlight the ways in which they will design the investigation to avoid confirmation bias.
- 3.29 We require qualitative data, like quantitative data, to be processed and analysed in a systematic, structured and unbiased way. You should set out in your bid how you will achieve this, especially if you are proposing to use several individuals to carry out analysis and interpretation.
- 3.30 It is essential that the extent to which each policy has contributed to the policy outcomes is quantified as part of the work. We fully accept that this contradicts our recognition that policies interact in complex ways and impact should not be conceptualised in a linear way. We also accept that a methodology which is theory-based and is designed to take account of the complex adaptive nature of the context will not be capable of quantifying attribution in the way a trial-based methodology would. Nevertheless, Defra must make best estimates of

the impact of each policy. We therefore encourage bidders to propose innovative approaches that can generate estimates of attribution to an acceptable level of rigour, for example using systems analysis methods or Delphi expert elicitation techniques and help us set them in a context of complexity and non-linearity.

3.31 A report will be required for each of the five impact evaluations; see 'Outputs' below.

### **Economic evaluation**

3.32 A cost-benefit analysis will be carried out for each of the 12 new policies, using the quantified attribution of impact and data to be collected by the contractor on costs of taking action. Impacts will be monetised in accordance with best practice and will draw on official Government guidance, published impact assessments and the knowledge of Defra's team of resources and waste economists. It will involve making estimates of cost and monetising direct and consequential benefits. The analysis will produce estimates of uncertainty, using sensitivity analysis and qualitative ratings where quantitative measures are unavailable.

3.33 Results will be reported as cost benefit ratios which demonstrate the scale of return (or otherwise) on public investment.

3.34 A single report will be prepared which sets out the results for all the policies included, along with an estimate of the cost/benefit ratio of making the progress to date towards achieving to the five headline outcomes (reduced waste – overall (1) and plastics in particular (2), increased recycling of packaging (3) and non-packaging (4), and reduced waste crime (5)). The report will describe the methods in detail, including any assumptions and general factors used in the modelling.

### **PART 4: OUTPUTS**

4.1 Bidders should assume that all reports will be published, except where we explicitly state otherwise below. Any report aimed at policy makers should be no more than 25 pages long, with a 1-2 page summary that contains all the essential 'take-away' messages. Supplementary information should be included in annexes for those who wish to delve deeper, e.g. Defra analysts.

4.2 Contractors should allow for three rounds of edits for all reports that are to be published, and allow time and cost for completing paperwork associated with the government publication process. Contractors will also need to allow adequate time for Defra review; three weeks should be allowed for reviewing a first draft, and two weeks for subsequent drafts.

4.2 Defra requires published outputs to be of a high standard, in plain English and without grammar or spelling errors. We reserve the right to require the contractor to appoint, at their own expense, a proof reader and/or copy editor if we can demonstrate that the standard falls well below similar previously published reports.

4.2 Where reports are to be published, contractors are expected to meet government requirements for accessible reports (guidance available at [www.gov.uk/guidance/guidance-and-tools-for-digital-accessibility](http://www.gov.uk/guidance/guidance-and-tools-for-digital-accessibility)). This includes, but is not limited to, consideration of:

- font (size, style and justification)
- headings and sub-headings to structure reports
- text describing the content of images, charts or graphs in addition to the visuals
- table captions and summaries in all tables
- colours that are suitable for those with colour-blindness

- 4.3 You should outline in your bid how you will meet accessibility requirements and what processes you have in place to assure this. Defra can provide a Word template where contractors do not already have an in-house accessible report template.
- 4.4 The following table lists the expected deliverables (you should assume that all meetings are held remotely).

**Table 3: Expected deliverables**

Deliverable		Format	Published?
1	Overall programme of work	MS Word, Powerpoint and/or Excel	Yes, no financials
2a	Programme of work 2021/22	“ “	Yes, no financials
2b	Programme of work 2022/23	“ “	Yes, no financials
2c	Programme of work 2023/24	“ “	Yes, no financials
2d	Programme of work 2024/25	“ “	Yes, no financials
2e	Programme of work 2025/26	“ “	Yes, no financials
2f	Programme of work 2026/27	“ “	Yes, no financials
3a-e	Evaluable theories of change for each policy outcome	Contractor choice	No – final versions to be published in impact evaluation reports
4	List of indicators for each policy, combined in such a way to show indicators of each of the five policy outcome	Contractor choice	No – to be included in the Monitoring Data Collection Plan
5	Monitoring Data Collection Plan	MS Word	Yes
6	Metadata table for each additional outcome, impact and consequential indicator	MS Word	Yes, in <i>Monitoring Progress</i> not as standalone publications
7	Spreadsheet of baseline data	MS Excel	No – data will be extracted for publication in <i>Monitoring Progress</i>
8a-l	A report on each of the process evaluations (x12)	MS Word	Yes – although Defra may choose to combine them, depending on content (outside the scope of this ITT)
9a-e	A report on each of the impact evaluations (x5)	MS Word	Yes
10	A single report on the economic evaluation work	MS Word	Yes
11	A synthesis report that brings together the results of the process, impact and economic evaluation to draw conclusions about the success of the Resources & Waste Strategy and make recommendations for future policy-making	MS Word	Yes
12a-e	For each policy outcome, an evidence table which anonymously lists the items of evidence used to support or refute each aspect of theory	Contractor choice	No – this is expected to contain information that could be disclosive, even when anonymised

13	<p>All presentations should be considered deliverables. They will be required, as a minimum, for:</p> <ul style="list-style-type: none"> <li>• the inception meeting</li> <li>• the full ESG inception meeting</li> <li>• an initial meeting of the stakeholders</li> <li>• each annual progress meeting</li> <li>• findings of each process evaluation (x12)</li> <li>• findings of each impact evaluation (x5)</li> <li>• findings of the economic evaluation</li> </ul>	Contractor choice	No – we expect the important contents to be incorporated into published documents
14	<p>Remote attendance at:</p> <ul style="list-style-type: none"> <li>• inception project management meeting (December 2021/January 2022)</li> <li>• inception full ESG meeting (January 2022)</li> <li>• stakeholder engagement meeting/webinar (February 2022)</li> <li>• annual formal progress, performance and contract management meeting</li> <li>• short weekly/fortnightly/monthly progress/contract management meetings</li> <li>• presentations to relevant policy and evidence teams on the results of each process and impact evaluation, and the economic evaluation</li> <li>• liaison meetings with the project manager to discuss, agree and sign off methods, research tools, report structures and draft reports, frequency driven by the needs of the project</li> </ul>	MS Teams or a platform of the contractor's choice, provided Defra can access it securely	No
15	Notes of all meetings; these can be bullet point style action notes rather than full meeting minutes	Contractor choice	No

4.5 In addition to the specific deliverables stated above, the contractor will also provide:

- a) All required programme management documentation, including risk assessment, quality assurance plan, overall data protection plan, weekly/fortnightly/monthly progress report, and so on.
- b) Any primary research design documents needed for sign off e.g. Defra survey control forms and completed Government Social Research ethics checklists
- c) An item-by-item (or comment-by-comment) record of ESG and independent peer reviewer feedback, together with a summary of the action the contractor has taken in response. This record could take the form of an annotated version of a report or presentation, or a separate tracking spreadsheet, for example.
- d) Final versions of all research tools in editable format (i.e. not PDF) including but not limited to questionnaires, sampling frameworks, topic guides and search criteria

- e) Raw datasets from any quantitative surveys that may be carried out, anonymised where needed, and with an accompanying meta-data file. We do not require transcripts of qualitative research, although the contractor should arrange to securely retain them, along with any coded datafiles, for a suitable period, and not less than five years, to enable us to answer questions about the quality of the evaluation, should it come under scrutiny.

## **PART 5: PROGRAMME MANAGEMENT, PROJECT MANAGEMENT AND TIMETABLE**

### **Programme management**

- 5.1 The successful contractor will be responsible for managing the programme of work as well as the individual streams of work within it. Bidders should explain in some detail how they intend to do so. Bidders should also explain how cross-stream learning will be facilitated. We accept that given the five-year timescale the availability of specific members of staff cannot be guaranteed; bidders should explain their approach to team retention, how they would approach replacing the expertise of any staff member that leaves the team or becomes unavailable, and contingency plans in the event of planned and unplanned staff absence.
- 5.2 The contractor will be responsible for producing action notes of all meetings. The contractor will be responsible driving the programme of work forward, for example by chasing agreed actions, whether those lie with the contractor, with Defra or with other stakeholders.

### **Annual review**

- 5.3 There will be a formal programme review meeting each January (or other suitable date, to be agreed) to discuss progress, contractor performance, Defra performance, and the programme of work for the forthcoming year.
- 5.4 The budget for the following year will be agreed annually, based on a proposed programme of work submitted by the contractor. We aim for this to be concluded and signed off prior to 28 February each year; this is the annual date on which we may terminate the contract should, for example, Defra budgets be cut in future spending reviews.

### **Risk identification, mitigation and management**

- 5.5 Bidders should identify in their proposal up to 10 key risks to delivering a successful programme of work, along with risk mitigation measures and their approach to managing any residual risks. This must assess likelihood and impact of risk. It should set out mitigation measures you intend to put into place, and how you will manage any residual risks. A full risk register must be developed as part of the inception phase, building on the 10 key risks submitted in your bid. The status of risks must be reviewed regularly with the Defra project manager, and as a minimum at each annual formal review meeting. Bidders should explain in their bids how they will approach risk identification and management during the programme's live phase.

### **Timetable**

- 5.6 The pre-policy implementation work will start immediately as there is budget allocated to the 2021/22 financial year. We recognise that the uncertainty around the timing of policy interventions will cause bidders difficulty.
- 5.8 Sufficient time should be allowed in the schedule for Defra to review and sign off research tools and deliverables. It is likely that more than one draft will be required dependent on the nature of the comments made. Allowance should be made for this in the proposed timetable and costs. working week should be allowed for research tools, three weeks for

first drafts of reports and two weeks for subsequent drafts, allowing for three iterations in total. Contractor flexibility on timelines may be needed in practise to ensure appropriate Defra involvement.

## **PART 6: IPR AND DATA SHARING**

- 6.1 The programme of work will require that information is provided by Defra to the contractor. All information provided to the contractor shall be kept securely, confidentially and disposed of within 12 months of contract completion. It must not be used elsewhere without prior consent. The supplier will be required to follow DEFRA's data protection policy, including completing any necessary declaration forms, and only act on information provided under our instruction. Bidders should explain in their proposal how this will be assured.
- 6.2 The project will require collection of primary data, including personal data and 'special' data such as ethnicity and health status. The contractor must store, manage, transfer and process such data in accordance with the law and in line with good practice. Bidders should explain in their proposal how this will be assured.
- 6.2 All data resulting from this project, project documents, Intellectual Property Rights and other materials will be the property of DEFRA. The one exception to this will be items of evaluation evidence that have been provided to the contractor on the proviso that they will not be shared with Defra. The successful contractor will be required to build appropriate assurances into research tools to ensure as much data as possible (excepting personal data) can be shared with Defra. Raw data files should be provided in partially aggregated and/or anonymous form. Bidders should set out in their proposals how this will be assured.
- 6.3 Please provide details of the technical facilities and measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects. Your response should include, but should not be limited to facilities and measures:
- to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services
  - to comply with the rights of data subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data
  - to ensure that any consent based processing meets standards of active, informed consent, and that such consents are recorded and audiable
  - to ensure legal safeguards are in place to legitimise transfers of personal data outside the EU (if such transfers will take place)
  - to maintain records of personal data processing activities
  - to regularly test, assess and evaluate the effectiveness of the above measures.

## **PART 7: BUDGET**

- 7.1 As a guide, the budget envelope for this work is expected to be £1.5m - £2m, subject to future spending priorities and the needs of the work programme.

## **PART 8: CREATING SOCIAL VALUE**

- 8.1 It is Government policy to use procurement to deliver against social value objectives, including as a matter of procurement policy setting social value criteria as at least 10% of the score. Information about creating social value through procurement can be found [here](#).

- 8.2 The Social Value model has five themes, each of which is aligned to one or more Sustainable Development Goal (SDG). Three themes are a compulsory focus of social value creation for this contract:
1. Theme 2: Tackling economic inequality – increasing supply chain resilience
  2. Theme 3: Fighting climate change, plus improving stewardship of materials and the environment
  3. Theme 4: Equal opportunity
- 8.3 Contributions to other themes are of course welcome but will not be scored as part of the assessment.
- 8.4 Expected contributions should be quantified, a plan developed for achieving them, and a measurement plan put in place for capturing and reporting on progress.

### **Theme 2: Tackling economic inequality – Increasing supply chain resilience**

- 8.5 You should explain how you will use the contract to deliver any or all of the following:
- Create a diverse supply chain to deliver the contract including new businesses and entrepreneurs, start-ups, SMEs, VCSEs and mutuals
  - Support innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services
  - Support the development of scalable and future-proofed new methods to modernise delivery and increase productivity
  - Demonstrate collaboration throughout the supply chain, and a fair and responsible approach to working with supply chain partners in delivery of the contract
  - Demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain

### **Theme 3: Fighting climate change**

- 8.6 Working towards net zero greenhouse gas emissions is a priority for Government and particularly for Defra. In putting together your proposal, you should consider how you can deliver additional climate benefits, including through more effective environmental stewardship. You should include in your social value method statement effective measures to work towards net zero greenhouse gas emissions in your own operations. You should also include measures to influence and support staff, suppliers, customers and communities through the delivery of the contract to work towards net zero.

### **Materials and environmental stewardship**

- 8.7 Protection and improvement of the natural world and the environment is a Defra priority. You should explain how you will use this contract to protect and enhance the natural world, including through influencing and supporting staff, suppliers, customers and communities.
- 8.8 Sustainable use of material resources, including consideration of the ways in which waste prevention contribute to climate change mitigation, should be a key consideration in this contract.

### **Theme 4: Creating equal opportunity**

- 8.9 You should explain how you will use the contract to deliver any or all of the following:
- Demonstrate action to increase the representation of disabled people in the contract workforce.

- Support disabled people in developing new skills relevant to the contract, including through training schemes that result in recognised qualifications.
- Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce
- Support in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the contract





[REDACTED]	[REDACTED]					
[REDACTED]						
[REDACTED]						
[REDACTED]						
[REDACTED]						
[REDACTED]						
[REDACTED]						
[REDACTED]						
[REDACTED]						
[REDACTED]						

**Assumptions**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

**Table 2: Fixed Price Breakdown exclusive of VAT for FY 21/22 and FY 22/23**

No	Program me of work	Element	Staff (£)					Consumables (£)	Travel and subsistence (£)	Other costs (£)	Total price (£)
			Very senior	Senior	Mid-range	Junior	Very junior				
1	2021/22	Management	██████	██████		██████					██████
		Inception	██████	██████	██████	██████					██████
		Theory of change	██████	██████	██████	██████	██████			██████	██████
		Indicators									
		Monitoring data									
		Baseline data									
		Process evaluation									
		Impact evaluation									
		Economic evaluation									
		Other (specify)									
2	2022/23	Management	██████	██████		██████					██████
		Inception									
		Theory of change	██████	██████	██████				██████	██████	██████
		Indicators	██████	██████	██████	██████					██████
		Monitoring data	██████	██████	██████	██████					██████
		Baseline data	██████	██████	██████	██████	██████			██████	██████
		Process evaluation	██████	██████	██████	██████	██████			██████	██████
		Other (specify)	██████	██████	██████	██████	██████				██████
3	TOTAL 2021/22	Management	██████	██████		██████					██████
		Inception	██████	██████	██████	██████					██████

No	Program me of work	Element	Staff (£)					Consumables (£)	Travel and subsistence (£)	Other costs (£)	Total price (£)
			Very senior	Senior	Mid-range	Junior	Very junior				
	and 2022/23 (1+2)	Theory of change	████████	████████	████████	████████	████████		████████	████████	████████
		Indicators	████████	████████	████████	████████					████████
		Monitoring data	████████	████████	████████	████████					████████
		Baseline data	████████	████████	████████	████████	████████			████████	████████
		Process evaluation	████████	████████	████████	████████	████████			████████	████████
		Other (specify)	████████	████████	████████	████████	████████				████████

The total fixed price for FY 2021/22 and FY 2022/23 is **£397,801.15**

**Table 3: Rated for FY 23/24 onwards**

For the years 2023/24 onwards, the rates below should be used when charging for each individual grade.

<b>TABLE 3: RATES BY GRADE</b>						
<b>Weighting</b>	<b>5%</b>	<b>20%</b>	<b>40%</b>	<b>30%</b>	<b>5%</b>	<b>Total Rate Weighted By Grade</b>
<b>Grade</b>	<b>Evaluation Programme Director</b>	<b>Evaluation Programme Manager</b>	<b>Senior Researcher</b>	<b>Researcher</b>	<b>Junior Researcher</b>	
2021/22 and 2022/23	█ ██████	█ ██████	█ ██████	█ ██████	█ ██████	
2023/24	█ ██████	█ ██████	█ ██████	█ ██████	█ ██████	
2024/25	£ █ ██████	█ ██████	█ ██████	█ ██████	█ ██████	
2025/26	█ ██████	█ ██████	█ ██████	█ ██████	█ ██████	
2026/27	£ █ ██████	█ ██████	█ ██████	█ ██████	█ ██████	
Average annual rate	█ ██████	█ ██████	█ ██████	█ ██████	█ ██████	
Rates weighted by Grade	█ ██████	█ ██████	█ ██████	█ ██████	█ ██████	█ ██████

The fixed price for each financial year will be agreed between the parties at the beginning of the financial year, along with the specification for that year.

## SCHEDULE 3 - CHANGE CONTROL

Contract Change Note	
CCN Number	
Contract Reference Number and Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a 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. The Original Contract shall be amended as set out in this Change Control Notice:

Contract Change Details		
Change Requestor/Originator	[x]	
Summary of Change	[x]	
Reason for Change	[x]	
Revised Contract Value	Original contract value	[£x]
	Previous contract change values	[£x]
	Contract Change Note [x] value	[£x]
	New revised contract value	[£x]
Revised Payment Schedule	[x]	
Revised Specification	[x]	
Revised Contract Period	[x]	
Change in Contract Manager	[x]	
Other Changes	[x]	

2. Save as amended all other terms of the Original Contract shall remain effective.
3. This CCN takes effect from the date on which both Parties communicate acceptance of its terms via Bravo.

## SCHEDULE 4 - COMMERCIALY SENSITIVE INFORMATION

[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 FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

Commercially Sensitive Information		
CONTRACTOR'S COMMERCIALY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY
<p><b>Day Rates</b></p> <p>We would ask that all day rates (Ipsos, Technopolis and Ricardo) are not disclosed under Section 43 of the FOIA and also the EIR as this information is commercially sensitive.</p> <p>We request that this information be redacted prior to any publication of the tender or prior to publishing the Contract on any 'Contracts Finder' website although we are happy for the full value to be disclosed.</p>	10/03/22	3 years from completion of Contract
<p><b>Staff and company information</b></p> <p>We would ask that all Ipsos, Technopolis and Ricardo CVs, golden paragraphs of key staff, project experience, security plans and Contractor's internal procedure and policy documents quoted in the Contractor's tender submission, including any associated proposal supporting documents are not disclosed under Section 43 of the FOIA and also the EIR as this information is commercially sensitive.</p>	10/03/22	Unlimited

<p>We request that this information be redacted prior to any publication of the tender or prior to publishing the Contract on any 'Contracts Finder' website.</p>		
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## SCHEDULE 5 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.

2. The contact details of the Authority Data Protection Officer are:

[REDACTED]

3. The contact details of the Contractor Data Protection Officer are:

[REDACTED]

4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.

5. Any such further instructions shall be incorporated into this Schedule.

Data Processing Descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1.
Subject matter of the processing	<p>Evaluation of the Waste Strategy and Waste Prevention Programme for England</p> <p>The processing is needed in order to ensure that the Processor can effectively deliver the Contract.</p>
Duration of the processing	The processing will be for the duration of the contract – contract number ecm_63654
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc</p>

Type of Personal Data	name, address, date of birth, NI number, telephone number, pay, images, biometric data etc
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Provider will store relevant personal data in an electronic file, specific to the programme, in its central document management system which is stored, backed up and supported within the UK. Some hard copy documentation may also be stored in a physical matter file in the UK. Relevant personal data will be retained in accordance with the Provider's Physical Records Retention Policy, which specifies a standard retention period for 6 years after termination or expiry of the Contract.

## SCHEDULE 6 - NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [insert day] day of [insert date] (the "Commencement Date"

BETWEEN:

Ipsos (market research) Ltd (registered in England and Wales under number 948470) whose registered office is situated at 3 Thomas More Square, London, E1W 1YW (the "Contractor");

and

██████████

(each a "Party" and together the "Parties").

WHEREAS:

- (a) The Contractor has contracted with the Secretary of State for Environment, Food and Rural Affairs (the "Authority") to provide services to the Authority in an agreement dated 10 March 2022 (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an employee of the Contractor engaged in the provision of services to the Authority in support of or in connection with the services to be provided by the Contractor under the Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.
- (d) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

- a) "Confidential Information" means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in

respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679), whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) "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 of which the Contractor is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.

4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.

5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

## **CONFIDENTIALITY**

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor's delivery of the services under the Contract without the prior written permission of the Authority.

7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.

8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.

9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.

10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall institute

and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.

11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.

12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.

13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.

14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:

14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;

14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;

14.3 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;

14.4 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

15. The Disclosee shall: notify the Contractor and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.

16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).

17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable

use of the Confidential Information for the purpose for which the Confidential Information was released.

18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.

19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.

20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

## **GENERAL**

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.

22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.

23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.

24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.

25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.

26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:



SIGNED by the Disclosee:



## SCHEDULE 7 - CONTRACTOR AND THIRD PARTY SOFTWARE

### CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, "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. The Contractor Software comprises the following items:

### THIRD PARTY SOFTWARE

For the purposes of this Schedule 7, "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 specified in this Schedule 7. The Third Party Software shall consist of the following items:

Third Party Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

# **SCHEDULE 8 - SECURITY REQUIREMENTS, POLICY AND PLAN**

## **INTERPRETATION AND DEFINITION**

For the purposes of this Schedule 8, unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract.

“Contractor Equipment” means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Services;

“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 7.

“ICT” means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

“Protectively Marked” shall have the meaning as set out in the Security Policy Framework.

“Security Plan” means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 8.

“Software” means Specially Written Software, Contractor Software and Third Party Software.

“Specially Written Software” means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.

“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 7.

## **1. INTRODUCTION**

This Schedule 8 covers:

- 1.1 principles of security for the Contractor System, derived from the Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 wider aspects of security relating to the Services;
- 1.3 the creation of the Security Plan;
- 1.4 audit and testing of the Security Plan; and

1.5 breaches of security.

## **2. PRINCIPLES OF SECURITY**

2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.

2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:

2.2.1 is in accordance with Good Industry Practice and Law;

2.2.2 complies with Security Policy Framework; and

2.2.3 meets any specific security threats to the Contractor System.

2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):

2.3.1 loss of integrity of Authority Data;

2.3.2 loss of confidentiality of Authority Data;

2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;

2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;

2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and

2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.

## **3. SECURITY PLAN**

3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 8.

3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.

3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.

3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavors to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause I2 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.

3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

3.5.1 the provisions of this Schedule 8;

3.5.2 the provisions of Schedule 1 relating to security;

3.5.3 the Information Assurance Standards;

3.5.4 the data protection compliance guidance produced by the Authority;

3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;

3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and

3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.

3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.

3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.

3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 8.

#### **4. AMENDMENT AND REVISION**

4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:

4.1.1 emerging changes in Good Industry Practice;

4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;

4.1.3 any new perceived or changed threats to the Contractor System;

4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or

4.1.5 a reasonable request by the Authority.

4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

#### **5. AUDIT AND TESTING**

5.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.

5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.

5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or,

otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

## **6. BREACH OF SECURITY**

6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:

6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and

6.2.2 prevent an equivalent breach in the future.

6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 3.

6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

## **APPENDIX 1- OUTLINE SECURITY PLAN**

## **APPENDIX 2 - SECURITY POLICY: SECURITY POLICY FRAMEWORK**

A copy of the Security Policy Framework may be found at:

<https://www.gov.uk/government/publications/security-policy-framework>