



Department  
for Environment  
Food & Rural Affairs

# Conditions of Contract

Provision of Goods and Services

## Vacant and Derelict Land Consultancy

**ECM\_62070**



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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 meaning given in paragraph 1.2 of the Form of Contract.

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

**“Commencement Date”** means 13<sup>th</sup> of August 2021 (13/08/2021).

**“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 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”** has the meaning given in paragraph 1.1 of the Form of Contract.

**“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> of March 2022 (31/03/2022).

**“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”** has the meaning given in paragraph 1.4 of the Form of Contract.

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

**“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.

**"Form of Contract"** means Section 1 of the Contract.

**"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.

**"Goods"** means any goods supplied by the Contractor (or by a Sub-Contractor) under the Contract as specified in Schedule 1 including any modified or alternative goods.

**"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 goods and/or 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 TFEU and the Treaty on European Union.

**“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.

## **A3 Contractor’s Status**

A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

## **A4 Notices and Communications**

A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.

A4.2 If it is not returned as undelivered a notice served:

- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

- (a) For the Authority:

Contact Name: [REDACTED]

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Email: [REDACTED]

- (b) For the Contractor:

Contact Name: [REDACTED];

Address: [REDACTED]  
[REDACTED]

Email: [REDACTED]

## **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 and the Goods the Contractor shall be paid the Price.

### **B2 Samples**

B2.1 If requested by the Authority, the Contractor shall provide the Authority with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.

B2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

B2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contractor's obligations under the Contract.

### **B3 Delivery**

B3.1 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. If the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.

B3.2 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.

B3.3 Any access to the Premises and any labour and equipment that may be provided by the Authority in connection with delivery shall be provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.

B3.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and its Sub-Contractors shall at all times comply with the security requirements of the Authority.

B3.5 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

B3.6 The Authority is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall

give notice to the Contractor to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.

B3.7 Unless expressly agreed to the contrary, the Authority shall not accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.

B3.8 The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice. The Contractor shall provide free of charge all such facilities as the Authority may reasonably require for such inspection and examination. In this clause B3, Services include planning or preliminary work in connection with the supply of the Services.

B3.9 If reasonably requested to do so by the Authority, the Contractor shall co-ordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.

B3.10 Timely supply of the Goods and Services is of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date. If the Contractor fails to deliver the Goods or Services within the time promised or specified in the Specification, the Authority is released from any obligation to accept and pay for the Goods or Services, as applicable, and may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

## **B4 Risk and Ownership**

B4.1 Subject to clauses B3.5 and B3.6, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Failure to meet Requirements)), pass to the Authority at the time of delivery.

B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority at the time of delivery (or payment, if earlier).

## **B5 Non-Delivery**

B5.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

B5.2 If the Authority has been informed in writing of the despatch of the Goods and, having been placed in transit, the Goods are not delivered to the Authority on the due date for delivery, the Authority shall, within 10 Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor to deliver substitute Goods free of charge within the timescales specified by the Authority or terminate the Contract in accordance with clause B3.10.

## **B6 Labelling and Packaging**

B6.1 The Contractor shall ensure that the Goods are labelled and packaged in accordance with the Contract.

B6.2 The Contractor shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003. The container in which the Goods are held shall be labelled with the Contractor's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

B6.3 The Contractor is responsible for the removal and disposal of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.

B6.4 If no period for collection and disposal is specified by the Authority, the Contractor shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Authority shall be entitled to dispose of any packaging materials which have not been collected by the Contractor within those 10 Working Days or such other period specified by the Authority for collection. The Contractor shall be responsible for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.

B6.5 The Contractor shall:

- (a) use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
- (b) reuse the packaging and, where reuse is not practicable, recycle the materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications;
- (c) make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
- (d) if using wooden pallets or timber derived products for the packaging and supply of Goods, comply with the UK timber procurement policy and the provisions in clause D5;
- (e) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
- (f) if requested to do so, provide the Authority with a description of the product packaging and evidence to satisfy the Authority that it is reusing, recycling and reviewing its use of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

## **B7 Training**

B7.1 If included in the Specification, the Price includes the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

## **B8 Provision and Removal of Equipment**

B8.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.

B8.2 The Contractor shall not deliver any Equipment to or begin any work on the Premises without obtaining Approval.

B8.3 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.

B8.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B8.5 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.

B8.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.

B8.7 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.

B8.8 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.

## **B9 Goods Delivery**

B9.1 The Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in compliance with all applicable Laws.

B9.2 The Contractor shall ensure the Goods:

- (a) conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;
- (b) operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification;
- (c) conform in all respects with all applicable Laws; and
- (d) are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

## **B10 Service Delivery**



- B10.1 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.
- B10.2 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.
- B10.3 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.
- B10.4 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.
- B10.5 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.
- B10.6 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.

## **B11 Key Personnel**

- B11.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.
- B11.2 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.
- B11.3 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.

B11.4 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.

B11.5 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.

## **B12 Contractor's Staff**

B12.1 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.

B12.2 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.

B12.3 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 B12.2 shall be final.

B12.4 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.

## **B13 Inspection of Premises**

B13.1 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.

## **B14 Licence to Occupy Premises**

B14.1 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.

B14.2 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.

B14.3 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.

B14.4 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.

B14.5 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.

## **B15 Property**

B15.1 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.

B15.2 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.

B15.3 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.

B15.4 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.

B15.5 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.

## **B16 Offers of Employment**

B16.1 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.

## **B17 Employment Provisions**

B17.1 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 B17.1 (a);

- (c) the terms and conditions of employment/engagement of the Staff referred to in clause B17.1 (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.

B17.2 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.

B17.3 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.

B17.4 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.

B17.5 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.

B17.6 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.

B17.7 This clause B17 applies during the Contract Period and indefinitely thereafter.

- B17.8 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) (if Goods are included in the Specification) the name and quantity of the Goods delivered including batch numbers;
  - (c) the Purchase Order number

**and, if requested by the Authority:**

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

Apinvoices-def-u@gov.sscl.com (the Authority's preferred option); or 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 (Variation), 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 B17.5 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 to:

- (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 comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under the Contract.
- D5.7 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.

## **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 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 and shall:

- (a) give the Authority a copy of all Information 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; and
- (c) not respond 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-license, 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 or Indemnified Person 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 maybe 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.

F1.2 The Authority may by notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:

- (a) have such Goods promptly, free of charge and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.

F1.3 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause F1.2.

- F1.4 The issue by the Authority of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.
- F1.5 The Contractor hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 18 months from the date of delivery. If the Authority shall within such period or within 25 Working Days thereafter give notice to the Contractor of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.
- F1.6 Any Goods rejected or returned by the Authority as described in clause F1.2 shall be returned to the Contractor at the Contractor's risk and expense.

## **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
- (a) 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 shall be 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 and, on the date it communicates its acceptance of the CCN in this way, the Contractor shall be 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 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (c) any breach of clauses D1, E1, E2 or E4;
- (d) any breach of 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 125% of the total value of this Contract.
- 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 30 day 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.

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

H5.1 If the Authority terminates the Contract under clause H2 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 clause H2 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 clauses H3 or H4 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 Goods and 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 indemnifies 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**

- 11.1 Subject to the provisions of clause 12 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**

- 12.1 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 I2.6.

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 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 I2.7;
- (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

This Schedule 1 is comprised of two parts:

- Part 1 The Authority's Specification; and
- Part 2 The Contractor's Tender.

In the event of conflict between Part 1 and Part 2 of this Schedule 1, Part 1 shall take precedence over Part 2.



# Schedule 1 Part 1 The Authority's Specification

## PURPOSE

The Authority is seeking to engage with a specialist consultant to provide consultancy and advisory services to support tree planting and woodland restoration on vacant and derelict land, which is planned under the Nature for Climate Fund.

## BACKGROUND TO THE AUTHORITY'S REQUIREMENT

The NCF budget settlement secured a significant sum of grant monies for woodland creation including planting and woodland restoration on Vacant and Derelict Land (VDL), to be overseen by the England Tree Planting Programme across the years 2020 > 2025.

VDL is a significant workstream of the NCF's Woodland Creation Partnership Project, enabling woodland creation on at least an estimated 5,500 ha of ecologically and economically degraded land by 2025. That cumulative target being based upon an accelerated growth with 500ha being targeted in 21/22, 1,000ha in 22/23 and then at least 1,500ha being achieved in each of the years 23/24 and 24/25.

### Why the work is needed:

The premise of the Nature for Climate Fund (NCF) and the Trees Programme is that the Authority needs to develop new models and approaches to fund woodland creation, while delivering a programme legacy that enables historically high levels of woodland creation for less government funding in the future. The VDL land workstream explicitly aims to innovate in such a way.

The England Tree Strategy workstream identified knowledge gaps in VDL restoration to woodlands across England, the Authority needs to develop its methods and spatial maps to best address this cohort of land, as it is currently doing for example with peatlands. There is a need to: join up existing data and best practice on VDL reclamation; engage non-forestry stakeholders; assess potential costs of remediation, restoration and woodland creation on different site types; and consider which restoration activities the VDL fund could be expected to cover. These will be key areas of inquiry in our consultancy work.

The NCF's programme total target of tree planting and woodland creation is a total of at least 7,500 ha per year of new woodland by 2025, the VDL projects sits within that ambitious programme.

### Description of work:

The challenge is: what land, what methods, what costs and how difficult it will be to secure 5,500 hectares of planting on VDL categories by 2025.

- What Land: The Authority is seeking to explore, identify, map, and deeply investigate and analyse VDL categories and cohorts by geography and ownership. The Authority's VDL team seeks to be aware of the marketplace of VDL categories (involving a taxonomy of land types), including access to landowners, operators and controllers and a spatial mapping report.
- What Method: the Authority needs to be aware of the full mix of options and processes that may need to be used, or can be used to create woodland on VDL sites - remediation, restoration etc.
- What Cost and funding model: The Authority need to be aware of the full cost of site investigation, remediation, and restoration of land to woodland across the cohorts of

VDL categories, also introducing blended finance to include private sector investment, through a blended finance approach.

- **How Difficult:** The Authority needs to be aware of the barriers and incentives to creating and maintaining woodland on VDL. They are looking for commentary on risks and challenges to engaging this project, including any market distortion or impact across other programmes, and to environmental, construction, and community policies.

The Authority seeks consultancy services to provide the outputs including:

- Spatial analysis and mapping of VDL types by category that may be suitable for woodland creation in England;
- Robust and informed knowledge of technologies and costs or market rates for site investigation, remediation, restoration to woodland and ongoing woodland maintenance on different categories of VDL;
- Funding model – including blended finance to include private sector investment - insight including options and experience of what has worked or failed elsewhere, to support the Authority to design the optimal scheme.
- Rapid market engagement to inform and shape a grant scheme and to support a market communication exercise with vacant and derelict landowners, controllers and their land agents, for example private landowners, minerals authorities etc;
- Advisory services together with reports on regulatory requirements for restoring VDL ; on negotiating and securing partnerships; and on rights to woodland creation on VDL (when ownership of land is unclear or when land is orphaned);
- Producing a report, with evidence and recommendations for approaches to build a pipeline of 'shovel ready' projects across vacant and derelict land.
- Knowledge of phytoremediation technologies.

## DEFINITIONS AND ACRONYMS

Expression or Acronym	Meaning
ALB	Arm's Length Body
ETPP	The England Tree Planting Programme
Defra group	The main department and all the Arm's Length Bodies
FCDO	Foreign, Commonwealth and Development Office
HMG	Her Majesty's Government
VDL	Vacant and Derelict Land

## THE SCOPE OF REQUIREMENTS

**Description of the nature and purpose of requirement:**

This consultancy work will inform the development of a VDL grant scheme and the creation of the VDL workstream within the Woodland Creation project business case.

The Authority seeks to better understand the breadth of VDL types. It is crucial to define and understand these categories, where they exist, and what are the key Authority stakeholder motivations for restoration of this type of land to woodland in order to target the sites where the Authority has the best chances of success.

Due to the nature of VDL sites – the regulatory obligations that may apply to owners and operators to restore their land, such as mineral works and landfill sites and sites' potential for biodiversity net gain and carbon credit revenue – the Authority believes that VDL presents a good opportunity to develop innovative 3rd party investment.

This consultancy work will inform the development of a VDL grant scheme and the creation of the VDL workstream within the Woodland Creation project business case.

- i. The Authority seeks to appoint a single supplier to provide consultancy/advisory services to the **(England Tree Planting Programme/Nature for Climate Fund)** programme. The services required comprise **four** overlapping and related activities.
- ii. The successful Tenderer will be expected to work extensively with the Authority **Vacant Derelict Land Team**. Currently this collaborative working is planned to be carried out remotely/online due to Covid-19.
- iii. The duration of the contract is **16 weeks or less**, with interim updates and deliverables as may be logical and set out by the Tenderer in their proposal, with at least a weekly call and status report. (This duration does not form part of the evaluation; it is stated because until the workplan can be finalised with the Authority it is unknown how the availability of key stakeholders may impact the plan).
- iv. The Authority's maximum budget is £115,000. However, evaluation for Value for Money forms part of the evaluation and Tenderers are asked to **submit their best price which will form part of the evaluation**.
- v. **The four services required are:**
  - A. **Conduct spatial analysis and mapping of VDL types that may be suitable for woodland creation in England.**
    - Quantify and qualify works:
      - Opportunity identification/categorisation of England VDL (taxonomy of land types) including access to landowners/operators/controllers (segmented between 5 and 12 categorisations – where is the land, who owns it, what type of VDL) – including producing a spatial mapping report in terms of VDL categories and cohorts by geography and ownership.
    - *Outputs required to be delivered under this tender:*
      - Provide a report accompanied by spatial analysis/mapping to define VDL opportunities across England, that report to including mapping information and expert technical/scientific/commercial analysis.
      - Provide this to the Authority methodology and best industry practice for the definition and identification of VDL and its controllers/owners.
      - Deliver spatial analysis and mapping against the taxonomy of VDL land types that may be suitable for woodland creation in England.

**B. Supply advisory services on regulatory requirements for restoring VDL, on negotiation/securing partnerships, and on rights to woodland creation onVDL.**

- Quantify and qualify works
  - The Authority is seeking to establish barriers, options, innovations and 'red lines' (including industrial/environmental/legislative/planning etc.) to restoring VDL, particularly, but not exclusively, through tree planting and woodland creation. The Authority also seeks to understand, to a level of detail such that it can successfully develop and design VDL restoration with the correct context of planning, rights of access and public responsibility. The appointed Tenderer is required to provide, through presentations and materials, a brief to the Authority on these subjects.
- *Outputs required to be delivered under this tender:*
  - Identify barriers to planting on VDL – including (de)motivations/(dis)incentives.
  - Provide subject expert knowledge of mix options: remediation, restoration, rewilding, renovation.
  - Provide at least 8 teach-in sessions across the scope of works as may be proposed (this may mean weekly or some may be fortnightly) and will include Q&A sessions with the Authority's team with the responses to the questions being supplied by the appointed provider.
  - Provide not less than 20 days of senior subject matter experts on VDL to be provided both at planned notice and at short (2 to 3 day notice) over the assignment. The Tenderer is to also provide exemplar short profiles (1/5 page) for up to 3 grades of staff relating to those nominated number of days.

**C. Provide robust and informed knowledge of costs/market rates for site investigation, remediation, restoration to woodland and woodland maintenance**

- *Quantify and qualify works*
  - Provide cost of investigation, remediation, restoration and renovation of land to woodland across the cohorts of VDL categories defined in A. Provide cost information, against the structure defined in A and relating and cross referencing to C and D. The Authority is expecting the appointed provider will bring to these works cost data relating and applicable to VDL – both in terms of valuation and also restoration works. That information may be its own data and/or industry benchmarks from robust and reliable sources. The Authority will require this input whilst working with the appointed provider to produce costed estimates for pilots, projects and programmes.
- *Outputs required to be delivered under this tender:*
  - Provide a tabulated set of financial benchmarks, which shall include bands with commentary, for both the (i) acquisition of VDL land cohorts as defined in A, and (ii) preparation activities as may be required for those cohorts such that tree planting and woodland creation can occur. The purpose of this data will be to inform the Authority's design and costing of grant schemes and initiatives.

**D. Achieve rapid (starting within one month of contract) market engagement/dialogue to inform and shape a possible project/support a market communication exercise with VDL owners and their land agents.**

- *Quantify and qualify works*

- Design and provide a plan for market engagement with VDL owners, controllers and stakeholders.
- Run market engagement, involving (at least 5) identified separate cohorts.
- Provide commentary on risks and challenges to engaging this project, including any market distortion or impact across other programmes and both environmental and construction/community policies.

- *Outputs*

- During the project, advance several (at least 5) identified separate cohorts, through market engagement into dialogue, linked to VDL taxonomy categories – for example private landowners, mining authorities.
- Organise 4 to 6 forums landowners/site operators/stakeholders in order to allow the Authority to understand through participation the challenges and opportunities of VDL so as to best inform its programme for grant design and support to this area of land type for tree planting and woodland creation.
- Dialogue to involve at least 30 to 50 landowners/site operators/stakeholders in order to provide a robust and comprehensive sample, capable of forming the basis of policy decisions.
- Deliver recommendations on approaches to building a pipeline and market engagement strategy.
- Arrange and run engagement with selected cohorts including virtual workshops and a (one) survey which should be designed with input from the Authority.
- Across all market engagement provide and present a feedback report with conclusions not less than 2 weeks before the end of the project and workshop this with the Authority.
- Provide and arrange engagement with trade bodies and professional associations (likely to be a dozen covering the identified cohorts).

## **Progress Reporting**

It is envisaged that there would be regular progress updates for senior staff to take them through findings at key points. It is anticipated the progress meetings will be once every one or two weeks.

## **KEY MILESTONES**

The Potential Provider should set out the key milestones they propose as part of their submission – the Excel sheet plan.

## **AUTHORITY'S RESPONSIBILITIES**

The Authority will provide, any related material as agreed to the successful contractor including but not limited to; strategy documents, investment criteria, country prioritisation analysis, business cases etc.

## **REPORTING**

It is envisaged that where possible, progress meetings will be held every one to two weeks via video conferencing.

## **CONTINUOUS IMPROVEMENT**

The primary contribution to continuous improvement from this project is in identifying ways that we can improve our effectiveness in the delivery of this competitive fund. The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration ensuring efficiency, reducing duplication and taking advantage of cost saving initiatives through virtual meetings where possible etc.

Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

## **SKILLS AND EXPERTISE**

It is the expectation that the consultancy will have demonstrable experience in the following

- Links with sectors relevant to this VDL workstream. e.g. Mineral works, Landfill operators, brownfield land owners;
- Knowledge of regulatory frameworks and requirements for land remediation and/or restoration across all VDL categories;
- Knowledge and engagement with land use and green infrastructure planning processes;
- Commercial knowledge relating to VDL land, its acquisition, restoration and sustainment;
- Insight and experience of funding models to support the Authority to design the optimal scheme - blended finance to include private sector investment.
- Spatial mapping and analysis skills;
- Skills in arranging and facilitating stakeholder engagement workshops and developing engagement strategies;
- Forestry project expertise, in particular in relation to woodland creation or tree planting on former VDL types;
- Knowledge and experience with green finance projects, including skilled assessment of Natural Capital and ecosystem services, and.
- Knowledge of phytoremediation technologies.

## **SECURITY REQUIREMENTS**

Not applicable as contract will be remote working. It should be noted that GDPR compliance is required for the services.

## **PAYMENT**

Payment will be monthly or against key milestones as may be mutually agreed with the successful Tenderer.

A schedule of payment periods will be agreed in advance prior to the commencement of work and in accordance to the finalised project plan.

Payments will be made upon receipt of an invoices sent to SSCL, further details will be provided at contract award stage to the preferred bidder

Invoices submitted must include an official purchase order number that will be issued after contract completion

Payment can only be made following satisfactory delivery of pre-agreed certified deliverables.

Invoices must include a detailed elemental breakdown of work completed and the associated costs.

### **BASE LOCATION**

It is the expectation that this contract will be performed remotely and there is no expectation for the Authority to designate office space.

### **PERFORMANCE**

Performance will be measured against set deliverables and key milestones.

**Schedule 1 Part 2 The Contractor’s Tender**



## **Tender for Provision of Consultancy for the Vacant and Derelict Land Project**

**Tender Reference: 33244**

### **2.1.2 – Q1: Summary of proposal, method and rationale**

The Lockhart Garratt (LGL) team (including Argentum Fox and VHE Construction) can provide the Defra VDL team with the opportunity to build on the extensive and closely aligned work undertaken for The Woodland Trust (WT) since 2018. The first project looked specifically at ***The Opportunity for Biocover Formation and Woodland Creation on Landfill in the UK***. It encompassed spatial analysis on the scale of the UK opportunity and the development of a working group. The second project developed a full cost-benefit model for two VDL site specific cases studies. The WT have confirmed that all the above project outputs can be used and developed in support of this Defra project. LGL will be able to share all the above information immediately and will be advancing the proposed workstreams from a well-developed baseline position.

The LGL team's unique understanding and experience can help the Defra VDL team meet the challenge of delivering 5,500ha of woodland creation by 2025. In particular, the team have individual and collective experience and practical understanding around the critical elements of: a) Technical and regulatory challenges; b) Operational and delivery challenges; c) Land ownership and habitat management; d) Cost modelling including income and revenue opportunities and blended finance and investment motivations and opportunities. Modelling of Net Present Value costs and benefits is currently included in the WT model. This experience will be used to deliver the four specific service requirements of the ITT as follows:

#### **A: Conduct spatial analysis and mapping of VDL types that may be suitable for woodland.**

Spatial mapping will be an important step in quantifying the extent of VDL in England. The LGL team would use existing shape file map datasets for analysis within ArcGIS. LGL would liaise with the Defra team to explore these and all further options for existing data, to include broader land use and regional / local level VDL mapping.

LGL would liaise with the Defra team to examine existing definitions of VDL (FC Paper 29 (2000)) and how these apply to ex-development, contaminated, unrestored and restored land. LGL's cartographers would overlay this information with a view to assigning land type cohorts. At present we believe there may be six cohorts and the organisations we would contact are discussed in our proposal for Q3D: Landfill industry, infrastructure companies (National Grid and Scotia Gas Networks are keen to be involved), mineral working companies and coal mining organisations, brownfield landowners, private landowners, and local authorities. Maps would be produced for each of the 8 No. English regions at 1:250,000 scale at A0, using OS base data at a 'road map' resolution. Outputs would be presented as digital maps with a short report.

#### **B: Supply advisory services on regulatory requirements for restoring VDL, on negotiation/securing partnerships, and on rights to woodland creation on VDL.**

The LGL team has already provided this service to the Woodland Trust (WT) for the landfill cohort. The experience gained since 2018 producing scoping studies for creation of woodland biocovers on old landfill sites will be immediately available. This work involved close communication with the Environment Agency, Defra, The Forestry Commission on regulation and engineering options, and discussions with all the major landfill operators took place.

The LGL team would also use their +30-year experience of brownfield remediation, restoration and woodland creation to identify barriers, options and the level of detail required to bring VDL in the other cohorts successfully into woodland use. A summary table of 12-20 sites would be developed with the VDL team for easy reference with the possible headings: Site - Location - Setting - Size - Previous Use - Barriers - Disincentives - Restoration Approach - Results.

## **Tender for Provision of Consultancy for the Vacant and Derelict Land Project**

### **Tender Reference: 33244**

Six to eight case studies relevant to the land cohorts would be developed to inform and educate Defra personnel as part of the teaching / workshop sessions. These would be chosen to cover a mix of barriers (land use, industrial, environmental, contamination, legislative, planning, economic, resources) and options (acquisition options, remediation, phytoremediation, amelioration, restoration, rewilding, renovation).

The output would comprise eight Teaching Sessions structured as follows: 1) Introduction to Land Restoration; 2) Presentation and Discussion of Case Studies; 3) Test & Discussion. We would aim to hold at least two of the case study focussed sessions on-site to bring some of the issues to life. Where appropriate and subject to Defra approval, key third party stakeholders would be invited to attend to provide additional insight and technical experience.

### **C: Provide robust and informed knowledge of costs/market rates for site investigation, remediation, restoration to woodland and woodland maintenance**

This requirement will be delivered by refining the existing cost models developed through the Woodland Trust Project and refining these for the additional cohorts identified in item A. In terms of the cost of acquiring VDL for woodland, this is likely to be achieved through a suite of options, from land being planted direct by landowners through to outright sale. The study would review a range of land tenure models, including long leaseholds (including possible pie- crust leaseholds on sensitive sites) share forestry agreements and shared ownership models. The basic structure of the cost models would be:

1. Cost of acquisition of vacant and derelict land- banded into three categories for each cohort. For each cohort we would explore and provide guidance on cost modelling based on a range of land acquisition models.
2. Cost of site-specific appraisal – to encompass soil contamination, permitry, groundwater sensitivity, likely gas generation rate, neighbours, soil cover thickness and access etc.
3. Cost of planning/permitting process.
4. Cost of Remediation or site preparation – for a range of site types and complexities.
5. Cost of woodland creation and associated habitat development.

The output of this modelling would be an Excel© spreadsheet of financial benchmarks, with the above-mentioned banding, which can be used to inform Defra's design and costing of grant schemes and initiatives.

### **D: Achieve rapid (starting within one month of contract) market engagement/dialogue to inform and shape a possible project/support a market communication exercise with VDL owners and their land agents.**

Through the 2020 Woodland Trust Woodland Biocover Scoping Studies and ongoing discussions with landfill operators the LGL team has gained applicable experience on the types of engagement required. There will be two types of market communication exercise:

1. Dialogue with 30 to 50 landowners/site operators/stakeholders. To ensure consistency of dialogue and output, a questionnaire will be collated, and with Defra input, will be used to shape stakeholder group forums (see below). A record of these conversations will be written up.
2. Six stakeholder forums. The initial cohorts we have identified are: a) Landfill industry; b) Infrastructure Companies; c) Mineral working companies and Coal Mining Organisations; d) Brownfield landowners; e) Private landowners; and, f) Local Authorities.

Meeting minutes from these forums would be written up. We would ensure regular and focussed communication with the Defra VDL team. The feedback report will be the subject of a final workshop with Defra that would shape future work.

## **Tender for Provision of Consultancy for the Vacant and Derelict Land Project**

**Tender Reference: 33244**

### **Case Studies**

#### ***Woodland Trust (2018 onwards) – The Opportunity for Biocover Formation and Woodland Creation on Landfill in the UK***

This project, commissioned by the Woodland Trust, had the aim of identifying the scale, opportunities, and barriers to woodland creation on landfills. The barriers and opportunities were summarised in a cost-benefit model that included the formation of an organic rich biocover layer on landfill sites to oxidise the methane emissions that have a large global warming potential. The biocover media provides an ideal growth media for subsequent woodland creation and the trees provide additional phytoremediation potential for methane. The cost-benefit models included costs and potential revenues to the operator and to the wider environment including soil carbon sequestration benefits. Other non-monetised benefits considered included natural capital, air quality, recreation and physical health. The project has relevance to the work outlined in this ITT in that a significant element of the work focussed on investigating scale and opportunities for woodland creation across England and Wales. In particular, it used the Environment Agency research to identify the scale of the opportunity across England and Wales at 140Kha or 0.8% of the total land area.

The scope of the project was as follows:

- Identifying which of three landfill site types (1 – non-Permitted, 2 – Old Permitted and 3 – New Permitted) will produce a favourable return on investment for the site operators over the long-term and will be of interest to site operators and woodland investors;
- Confirming the potential scale of the woodland creation opportunity in the UK in terms of landfill site numbers and hectares and provide insight to the emerging woodland investment market and government/NGO priorities for woodland creation; and
- Presenting woodland creation plans for three example sites to show how new planting would fit within each of the three landfill types.
- Following meeting and discussions with Defra Waste, Defra Forestry and the Environment Agency, Stage 2 of the project included a detailed evaluation of two live sites; Viridor; Beddingham Landfill and Forterra Stairfoot Landfill. These cases studies included detailed site-specific cost modelling. These cases studies will be shared as part of the project input.

#### ***The National Forest Company (January 2018) – Woodland Creation Research***

LGL managed the Woodland Creation Research project over the period from December 2017 to April 2018 to assess the needs and demands for a new woodland creation grant in the National Forest, post-Brexit. [REDACTED] led an LGL team in phone and workshop consultation with landowners, land agents, public bodies and industry representatives. Research was undertaken into land values and previous TS/CLS models to design a budget model for three different sizes of new woodland creation scheme. LGL worked with Fisher German and other partners as required to deliver land valuation and agricultural income foregone elements of the project.

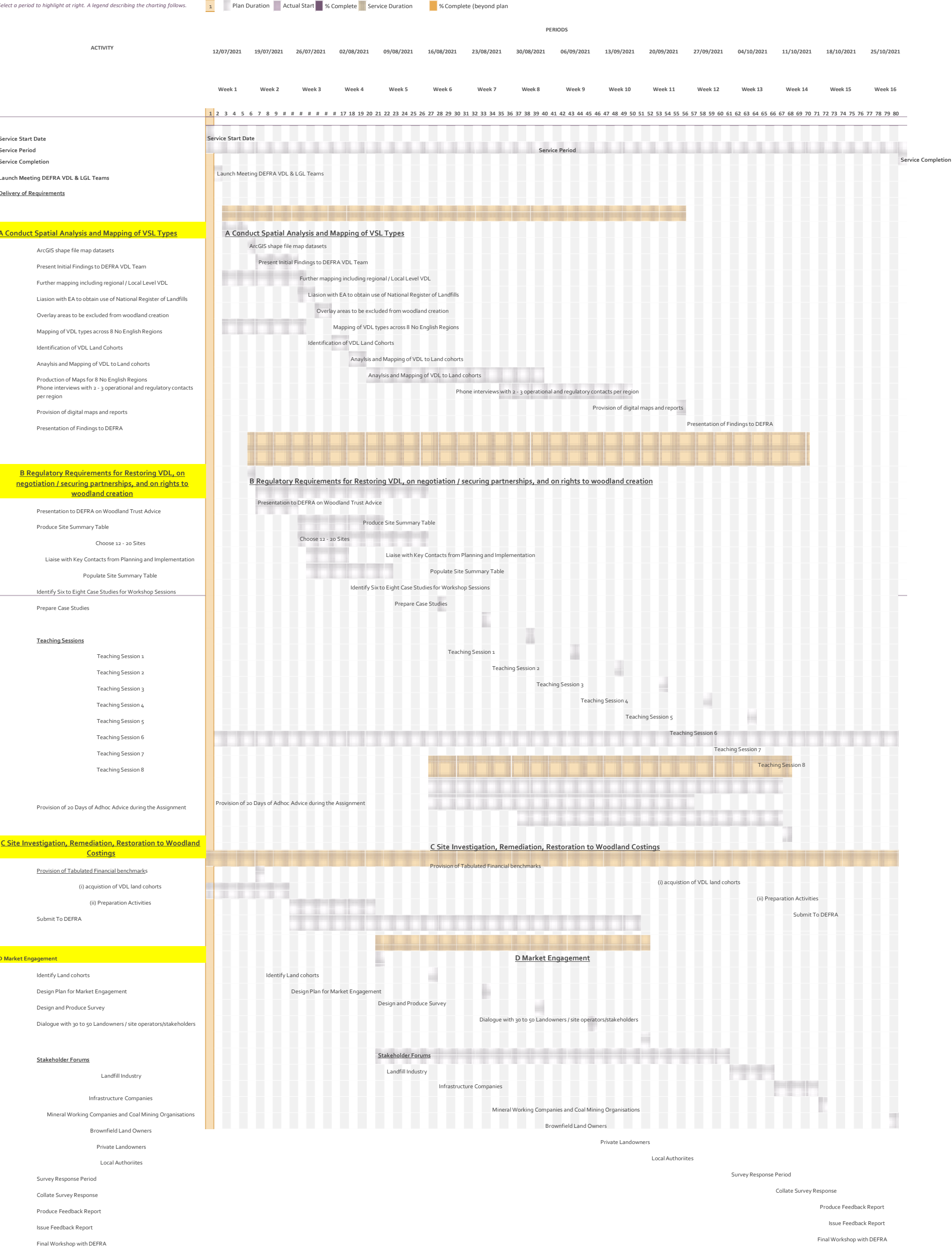
Reporting to the National Forest Director of Operations and Head of Forestry, LGL identified how to remove barriers and incentivise landowners to plant towards the aim of 33% woodland cover in the National Forest. The work undertaken also included assessing the possible payment rates required to help secure uptake of woodland creation.

LGL's report confirmed the elements of a new scheme in terms of payment timing, administration, and revitalising engagement with woodland creation.

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## 2.1.3 - Q2 Overall Workplan

Select a period to highlight at right. A legend describing the charting follows.





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**2.1.4 – Q3A: Delivery of Requirement A**

The spatial mapping will be an important step in quantifying the extent of VDL and where in England this is focussed. The LGL team would utilise existing map datasets as shape files for analysis within ArcGIS. We have seen the databases noted on the e-portal response '210618 Consultancy ITT Questions V2.doc' and would include these. A selection of other sites that may be available as downloads under licence would also be included:

- Soilscales Type 24 'Restored Soils mostly from Quarries and Open Cast Spoil':  
<https://data.gov.uk/dataset/26d61739-e05b-420d-8fd0-d11edffa8b27/soilscales>
- <http://www.landis.org.uk/soilscales/>

LGL would liaise with the DEFRA team to explore these and all further options for existing data, to include broader land use and regional / local level VDL mapping. Some data may be available from the Forestry Commission and other national government agencies and LGL would hold an early meeting with the VDL team to identify options.

LGL would also liaise with the Environment Agency to identify whether their national register of landfills, which was utilised as part of the Woodland Trust work undertaken by LGL, is available and if so, would source and incorporate that data.

**Mapping**

The detail which can be assigned to each category of VDL will depend on the attributes within the shape file data provided, for example, whether the site is:

- landfill, quarry, coal mine or ex-industrial site
- active, mothballed or closed
- permitted or free of on ongoing regulatory requirements
- owned privately or publicly
- holding a live or expired planning permission

LGL would liaise with the Defra team to examine existing definitions of VDL (Forestry Commission Technical Paper 29 (2000)) and how these apply to ex-development, contaminated, unrestored and restored land.

LGL's cartographers would overlay this information and the LGL project team will look for trends with a view to assigning 5-10 land type cohorts. At present we believe there may be six cohorts and the organisations we would contact are discussed in our proposal for Q3D:

1. Landfill industry
2. Infrastructure Companies
3. Mineral working companies and Coal Mining Organisations
4. Brownfield landowners
5. Private landowners
6. Local Authorities

To further focus the datasets, LGL would overlay existing designations from magic.gov datasets, including SSSI, NNR, SAC, SPA and SAM to confirm areas that would be excluded from woodland creation on the basis of existing habitat or historic sensitivity.

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In terms of mapping the suitability of land for woodland creation, the exercise would not include additional research into the make-up of individual sites. The resolution of the mapping will be determined by level of detail available within the published / licenced datasets.

Maps would be produced for each of the 8 No. English regions at 1:250,000 scale at A0, using OS colour raster base data at a 'road map' resolution ie showing towns, villages, roads, railways, rivers and major water bodies. As well as presenting all categories on each regional map, LGL would also be able to produce further targeted or smaller scale maps (4-5No). These may include specific categories of land or specific local areas with clusters of potential sites, if required, to illustrate trends and opportunities.

### **Communication**

LGL would then liaise with 2-3 operational and regulatory contacts working in each region, by way of 20–30-minute phone interviews for insight to the make-up and challenges associated with the restored and semi-restored land, highlighting major owners and patterns of use. A list of standard questions would be formed by LGL and approved with the VDL team to guide the conversations. The industry bodies and regulatory contacts would potentially include: the Environment Agency, Forestry Commission, Mineral Products Association, Environmental Services Association, Chartered Institute of Waste Management. The operator contacts would be a mix of landfill and quarry operators known to LGL. The contacts would be chosen to link with dominant VDL types for each region. The aim would not be to source further mapping data but to provide useful qualitative feedback on barriers to restoration, planting, contractor availability and ameliorant types alongside the economics of the region.

### **Mapping Report**

A six-to-eight-page briefing note will be produced to summarise the maps and geographical trends. A one-page file note of conversations would form appendices to provide context notes along with the regional maps. All mapping datasets would be provided digitally in shapefile format.

### **Experience**

LGL has undertaken spatial mapping for the National Forest Company as part of the Woodland Economy study in 2013 which was led by [REDACTED]. This study used existing National Forest datasets to map the age class distribution and broad crop type across the 200 square mile National Forest area. To assess the hectares of woodland approaching first thinning age and inform a subsequent grant for woodland improvement and management the study then overlaid Forestry Commission data on live management grants and licences.

[REDACTED] is LGL's Cartography Consultant. He is a GIS Engineer with experience in Civil Engineering, Surveying and Spatial Data analysis. Relevant experience includes using ArcGIS and QGIS in 2015 to analyse existing and growing crops on fields and farms, utilising satellite images and reporting back to the European Union. He digitised woodland areas and forests around low-, medium-, and high-voltage electricity cables for the South Hungarian Electricity Provider, assisting in the required removal of intruding trees.

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### **2.1.5 – Q3B: Delivery of Requirement B**

The LGL team has already provided this service to the Woodland Trust (WT) for the landfill cohort. The experience gained since 2018 producing scoping studies for creation of woodland biocovers on old landfill sites will be immediately available. This work involved close communication with the Environment Agency, Defra, The Forestry Commission on regulation / engineering options and discussions took place with all the major landfill operators.

The LGL team would also use their +30-year experience of remediation, restoration and woodland creation to identify barriers, options and the level of detail required to bring VDL in the other cohorts successfully into woodland use. A summary table of 12-20 sites would be developed with the VDL team for easy reference with the possible headings: Site - Location – Setting - Size - Previous Use - Barriers – Disincentives - Restoration Approach – Results.

The summary table would draw on a range of site and soil types from around England, picking out exemplar work in terms of significant barriers, (de)motivations/(dis)incentives, innovations and partnership working. Key sites with which LGL have been involved or have visited through the British Land Reclamation Society group are: Chesterfield – Open Cast Coal & Coking Plant, Stoke – Clay quarry restoration and woodland planting on skeletal heavy soils; Corby – Restoration of open cast ironstone workings to commercial mixed woodland; Donisthorpe – Capping and restoration of former washing lagoons to woodland on open cast coal site; Coalville – Open cast coal restoration to golf course with 8ha of funded woodland planting; Waterford – Landfill restoration after gravel extraction; Thames Chase – Gravel quarry restoration to community and coppice woodland; Beddingham – Landfilled chalk quarry and prospective woodland restoration. Other examples from key mining areas of England would also be researched, such as St Austell, Cornwall – China Clay restoration.

Key contacts who were involved in the planning and implementation of each site would be contacted to gain further insight on the challenges and solutions from their personal experience, confirming the lessons learnt and benefits seen.

Six to eight case studies relevant to the land cohorts identified in Task 3A would be developed to inform and educate Defra personnel as part of the teaching / workshop sessions. The sites would be chosen to cover a mix of barriers (land use, industrial, environmental, contamination, legislative, planning, economic, resources) and options (acquisition, remediation, amelioration, restoration, rewilding, renovation). The case studies would use knowledge amalgamated from multiple sites to ensure all relevant experience is captured.

**Output:** Eight Teaching Sessions conducted via MS Teams. Case study summary documents. Copies of presentation slides with weblinks to references. Recordings of video calls. The sessions would be structured as follows:

1 – Introduction to Land Restoration – UK geology, site types, UK planning system for minerals and waste, introduction to potential contaminants and physical issues, restoration innovations, background to woodland creation and management in land restoration.

2 – Presentation and Discussion of six to eight Case Studies – Geography and setting, products and site history, planning history, barriers to restoration, options presented, decision making, site investigation, planning, negotiation, partnerships formed, funding won, physical work (reprofiling, drainage, amelioration, decompaction, species choice, planting), snagging and issues, public access, monitoring, lessons learnt.

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3 – Test & Discussion - Providing questions as a course summary test ahead of the session, on the technical challenges, restoration techniques and planning lessons learnt. Using the session to talk through the answers as a group and confirm the key barriers, pitfalls, opportunities and successes.

It is initially proposed that the sessions would be delivered virtually. However, if circumstances permitted, we would aim to hold at least two of the case study focussed sessions on-site to bring some of the issues to life. Where appropriate and subject to Defra approval, key third party stakeholders would be invited to attend to provide additional insight and technical experience.

The aim would be to strengthen the VDL teams practical and strategic knowledge to allow them to design their approach to planning, access and public responsibility.

Exemplar short profiles for the 'senior subject matter expert 20 days provision on VDL' are:

██████████ is a Chartered Surveyor with 36 years of professional experience, having dealt with restoration and reforestation of ex- ironstone sites through to leading the recent project work on old landfills with the Woodland Trust. He has extensive connections with the RICS having chaired the Rural Board between 2013 and 2016. He currently sits on their Woodland Valuation working group. ██████████ has experience with green finance projects, including skilled assessment of Natural Capital and ecosystem services. He works extensively in the planning and development sector and has facilitated offsetting projects and large-scale woodland creation associated with strategic development projects such as Tresham Garden Village. He has strong working relationships with key parties in the sector and currently sits as Non-Executive Director on the Forest Service's Board for England. Throughout his experience he has arranged and facilitated stakeholder engagement workshops and developed engagement strategies.

██████████ is a Chartered Forester and Professional Soil Scientist who specialises in woodland creation / management, land restoration agriculture / habitat and soil resource survey to inform these projects. ██████████ has developed cost models for restoration, aftercare and long-term management of landfill sites across eight habitat / land use types and applied this model to the budgeting of woodland biocover formation alongside ██████████ in a recent Woodland Trust study. ██████████ has engaged with land use and green infrastructure planning processes throughout his career.

██████████ ██████████ has worked as a Brownfield consultant for over 25 years. Working with National Grid and Scotia Gas Networks, ██████████ has developed and marked site specific and framework procurement tenders for site investigation and remediation activities. ██████████ is a Specialist in Land Condition and Suitably Qualified Person (both relevant to Brownfield sites) as well as a Chartered Geologist. ██████████ has also worked in the landfill industry, authoring two codes of practice as well as developing Technical Guidance Notes for the Environment Agency, and sitting on the Closed Landfill Group collaboration between the Environment Agency and landfill operators.

██████████ of VHE has 20 years in the Brownfield sector designing and implementing site investigation and remediation on sites such as Harworth Colliery for Harworth Estates. ██████████ is responsible for maintaining and deploying VHE's Mobile Treatment License, preparing and agreeing working plans with the Environment Agency and obtaining planning sign-off. ██████████ also provides technical overviews on Waste classification and on geotechnical and environmental issues on current tenders as well as budgetary advice.



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### **2.1.6 – Q3C: Delivery of Requirement C**

Having already developed a robust model of costs/market rates for site investigation, remediation, restoration to woodland and maintenance for landfills on behalf of the Woodland Trust, the LGL team is well placed to deliver this item. We propose to deliver this requirement by refining our existing cost model for landfills and developing it for the additional cohorts identified in item A. The sources of robust and reliable data used in the models will come from: **LOCKHART GARRATT**. [REDACTED] is a Chartered Surveyor with 36 years of professional experience in the sector. In terms of the cost of acquiring VDL for woodland, this is likely to be achieved through a suite of options, from land being planted direct by landowners through to outright sale. In addition, we envisage it could be secured through a range of land tenure models including long leaseholds, possible pie-crust leaseholds on sensitive sites, share forestry agreements and shared ownership models.

LGL would draw on extensive experience in the forestry land market. Where specialist land valuation advice is required, in particular in relation to Vacant and Derelict Land, the project team would secure specialist sub-contract support as required through Royal Institution of Chartered Surveyors contacts in agreement with the DEFRA team. LGL has close working relationships with both Carter Jonas and Fisher German, who both have broad and highly experienced teams in this area.

[REDACTED] specialises in woodland creation / management, land restoration agriculture / habitat and soil resource survey costs to inform his many projects. [REDACTED] has developed cost models for restoration, aftercare and long-term management of landfill sites across eight habitat / land use types and applied this model to the budgeting of woodland biocover formation alongside [REDACTED]. [REDACTED] also led a project with the National Forest Company to undertake cost modelling to guide future funding support.

[REDACTED] [REDACTED] [REDACTED] [REDACTED] Working with National Grid and Scotia Gas Networks, [REDACTED] has developed and marked site specific and framework procurement tenders for site investigation and remediation activities. [REDACTED] is a Specialist in Land Condition and Suitably Qualified Person (both relevant to Brownfield sites) as well as a Chartered Geologist. [REDACTED] has also worked in the landfill industry, authoring codes of practice as well as developing Technical Guidance Notes. He wrote the cost-benefit analysis for implementing Landfill Directive regulation. [REDACTED] attends the Closed Landfill Group collaboration between the Environment Agency and landfill operators. He supported LGL with the Woodland Trust studies.

[REDACTED] - VHE is a specialist landfill restoration and brownfield remediation contractor with expert knowledge of site investigation, colliery restoration and brownfield remediation costs and processes. VHE has tendered for and implemented a wide variety of brownfield investigation remediation schemes and hold the mobile treatment licences often required to treat on-site soils.

#### **Scope of Cost Modelling:**

For site investigation, activities costed will include, but not be limited to determining the current risk profile of the site in relation to human health, groundwater, and phytotoxicity. For site preparation, potential planning requirements for a change of use, potential permit requirements for remediation and the cost of remediating the site including removing subsurface obstructions will be costed by [REDACTED]. While site specific risk assessment will always be required, the change of use to woodland should, in general, reduce the financial risk profile of remediation because the contamination and geotechnical risks with woodland end-use (similar to Public Open Space end-use) are lower risk than either

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residential or commercial end-use. Tree planting and maintenance costings will then be added to this costing by LGL to provide an indication of total cost per hectare.

The basic structure of the cost models would be:

1. **Cost of acquisition of vacant and derelict land.** This will be banded into three categories for each cohort: a) Low value/high risk sites that may be easy to purchase but come with expensive abnormalities (typically Brownfield sites and landfills); b) medium value/manageable risk sites that may have some value to the vendor with few abnormalities (eg mineral working sites) and c) high value/low risk sites that have some asset value, but would be easy to convert to woodland (surplus estate of infrastructure companies such as National Grid and farmland). For each cohort we would explore and provide guidance on cost modelling based on the range of land acquisition models as detailed above.
2. **Cost of site-specific appraisal.** This will vary from cohort to cohort. We understand the requirements for the landfill cohort site appraisal – permittry, groundwater sensitivity, likely gas generation rate, neighbours, soil cover thickness and access etc. There will be differences with each cohort. For example, a desk-based study on previous industrial uses and potential environmental sensitive receptors will be needed for Brownfield sites. Other cohorts such as coal mine spoil heaps, open cast mine workings and historically restored land may be simpler.
3. **Cost of planning/permitting process.** Again, this would be different for each cohort, and ultimately will be site specific. However, budget costs for a simple planning application, an Environmental Impact Assessment, or a permit variation will be included for cohorts that potentially require them. Costs for Regulatory liaison would be included for each activity (the Environment Agency or Local Authority).
4. **Cost of Remediation or site preparation.** There are likely to be three types of vacant land that could be used for woodland creation: a) Complex sites such as landfills – these have gas and leachate emission concerns; b) Brownfield sites – these are likely to have contaminant migration concerns that will need to be addressed before and during woodland creation; c) Simple sites where woodland has not been created because either the soil is poor quality or the landowner has not previously had sufficient incentive to put the land to woodland end-use.
5. **Cost of woodland creation.** Lockhart Garratt has extensive experience in this aspect, and we propose to use the cost models already developed for the Woodland Trust and National Forest.
6. **Potential Support and Revenue Streams:** Lockhart Garratt would be able to expand and develop existing grant funding and potential revenue streams, in particular Forestry Commission and third-party grant support, carbon finance, biodiversity offsetting and wider ecosystem services. Argentum Fox would be able to evaluate possible benefits through reduced environmental impacts in relation to reduction of climate change gas emissions from landfill or brownfield sites and leachate infiltration. VHE would be able to provide advice and support in relation to possible revenue streams through site remodelling and opportunities for placement of infill materials to support tree planting.

**Output:** The output of this modelling would be an Excel© spreadsheet of financial benchmarks, with the above-mentioned banding, which can be used to inform Defra's design and costing of grant schemes and initiatives. Costs and benefits would be presented as Net Present Value using a discount rate. This would be taken from the HM Government's Green Book suggestion for setting discount rates unless otherwise instructed.

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**2.1.7 – Q3D: Delivery of Requirement D**

Through our 2020 Woodland Trust Woodland Biocover Scoping Studies at Stairfoot and Beddingham landfills and ongoing discussions with landfill operators the LGL team has gained applicable experience on the types of engagement required. We propose to utilise the extensive range of contacts established through this work and also use this experience to shape a market communication exercise with VDL owners and their land agents.

In particular and to ensure that we can move forward with the project immediately on instruction, we would seek to reconvene the existing landfill group as one key cohort, including Defra VDL team, Forestry Commission, Environment Agency, Defra Waste, Northern Forest and Woodland Trust. This engagement would seek to build on work to date and to assist in the development of a comprehensive contact list to support the proposed communication strategy as set out below. There will be two types of market communication exercise:

1. Dialogue with 30 to 50 landowners/site operators/stakeholders. This will involve phone call/Zoom/Teams meeting with LGL/Argentum Fox/VHE/Woodland Trust contacts. While too onerous to list everyone in the context of the space limit, at the top of list are the following organisations: **Infrastructure:** National Grid, Scotia Gas Networks, Network Rail; **Landfill:** Suez, FCC Environment, Veolia, Grundons, Biffa, Tata Steel; **Mineral and Landfill:** Tarmac, Cemex, Viridor, Forterra, Hanson; **Coal Mining:** UK Coal, Harworth Estates; **Brownfield portfolio owners:** National Grid, Network Rail, MH, SAGTA members (see 2d); **Local Authorities:** MHCLG, North Northant's Council, Norfolk County Council; **NGA's and Sector Organisations:** Northern Forest, Quarry Products Association, Environmental Services Association, Community Forests, RICS, National Forest, Forestry England. To ensure consistency of dialogue and output, a questionnaire will be collated, and with Defra input, will be used to shape stakeholder group forums (see below). A record of these conversations will be written up.
2. Six stakeholder forums. The initial cohorts we have identified are:
  - a) Landfill industry. A forum would be convened based on the Closed Landfill Group membership that includes many landfill operators, The Environmental Services Association (ESA) that covers the waste industry, and the Environment Agency. The issues identified in our recent woodland biocover scoping study would be explored to determine which can be overcome and which are barriers to woodland creation.
  - b) Infrastructure Companies. A meeting with clients that we have already contacted such as National Grid, Scotia Gas Networks and Network Rail would be convened to discuss the possibility of using parts of their surplus portfolio for woodland creation. These companies own strategic landholdings that are currently unused, but can never be sold, such as large fields surrounding gas or electricity infrastructure. These companies are interested in the carbon credits that may be available and tackling climate change. National Grid are sponsors of COP26 and have already communicated that they would be interested in participating in this study.
  - c) Mineral working companies and Coal Mining Organisations. Building on personal contacts and follow up contacts from our Woodland Trust studies, in particular Hanson Aggregates, Forterra, Tarmac and Cemex. In many cases these companies own or have long term interests in sites that are either restored or in the process of being restored. Their critical requirement is to find a long-term economic use for these non-operational sites. Current options around renewables, biodiversity net gain and carbon are being explored and certainly they would be interested in being part of this study.

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- d) Brownfield landowners. To reach the widest audience, it is suggested that a meeting with the Soil and Groundwater Technology Association (SAGTA) is requested. This organisation has a wide membership of Brownfield landowners ranging from the Nuclear Industry to Petroleum Companies. In many cases contamination issues and associated costs will preclude the use of these sites. However, it could be possible to open pathways for research into the use of trees and woodland to secure and potentially “clean” these sites. This could expand to the use of phytoremediation technologies.
- e) Private landowners. LGL would use current extensive contacts with landowning and land management groups in particular Country Land & Business Association (CLA), National Farmers Union (NFU), Royal Institution of Chartered Surveyors (RICS), Central Association of Agricultural Valuers (CAAV) and the Agricultural Law Association (ALA) to explore key opportunities and drivers that could help to identify opportunities for V&DL, in particular within the Rural Sector. This cohort may also include land within Corby/Rockingham Forest where LGL have worked for both landowners, local authorities and Tata Steel, and where substantial areas of land have been restored to low grade agriculture, post open cast ironstone working, without topsoil.
- f) Local Authorities. Initially we would explore with MHCLG, Defra, RICS and other professional organisations as noted above, as to how best this cohort could be brought together. LGL are currently supporting local authorities to identify areas on land suitable for tree planting or biodiversity use within their portfolios.

For each cohort forum a representative from the relevant industry regulator would be invited to participate. Ideally these forums would be undertaken face-to-face to encourage participation, but if Covid-19 restrictions preclude this, we would undertake them online. We believe the key to success of these forums will be to have the invitation from Defra, with a guaranteed presence at the meetings to outline potential opportunities. For example, our research to-date has highlighted that landfill operators are keen and interested in the potential of woodland biocovers but have no method of funding them on legacy closed sites. A pre-forum survey would be designed with Defra to identify issues and opportunities. Based on the survey results an agenda for these forums would be developed (with Defra) to focus on the opportunities and barriers to woodland creation. Such opportunities and barriers will focus on the items identified in Q3C, namely, ownership/acquisition, site preparation, woodland creation, and ongoing management.

Many of the opportunities and barriers that need to be resolved are within the ownership/management arrangements of future woodland. However, issues such as brownfield liability, permitry (landfills), land devaluation, ongoing management, leasehold/freehold and pie-crust lease arrangements, carbon rights, timber income, woodland market distortion need to be resolved first and foremost. These would form the basis of the survey questions and likely agenda. Meeting minutes from these forums would be written up.

Every two weeks during the project, a short summary of progress will be provided and a telecon will be held with senior Defra staff. These may be held weekly during the forum delivery phase such that any lessons learned from forums can quickly be incorporated into future events. Ultimately, the forum meeting minutes, and survey results would be incorporated in a feedback report to inform and shape approaches to building a pipeline and market engagement strategy. It is also possible that sites may be put forward for pilot projects as a result of the forums and these will be noted for future workstreams. This feedback report will be provided not less than two weeks before the end of the project. The feedback report will be the subject of a final workshop with Defra that would shape future work.

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### 2.1.8 – Q4: Delivery of Assignment

<b>Personnel and Experience</b>
<b>Q3A Conduct spatial analysis and mapping of vacant and derelict land types that may be suitable for woodland creation in England</b>
<b>Output:</b> Mapping Report. Advisory services. Identification of potential land cohorts.
██████████. ██████████ led the spatial mapping for the National Forest Company as part of the Woodland Economy study in 2013, which used existing National Forest datasets to map the age class distribution and broad crop type across the 200 square mile National Forest area.
<b>Output:</b> Datasets as shape files for analysis within an ARCGIS. Maps for each of the 8 No. English regions at 1:250,000 scale at A0.
██████████ is LGL's Cartography Consultant. He is a GIS Engineer with experience in Civil Engineering, Surveying and Spatial Data analysis. He used ArcGIS and QGIS in 2015 to analyse existing and growing crops on fields and farms, utilising satellite images and reporting back to the European Union. He digitised woodland areas and forests around low-, medium-, and high-voltage electricity cables for the South Hungarian Electricity Provider, assisting in the required removal of intruding trees.
<b>Q3B Supply advisory services on regulatory requirements for restoring VDL, on negotiation/securing partnerships, and on rights to woodland creation on VDL.</b>
<b>Output:</b> Identify barriers to planting on VDL – including (de)motivations/(dis)incentives.
Lockhart Garratt has +30 years' experience in this area and has had direct involvement with numerous woodland creation projects on a variety of projects. Lessons learned from this process would be distilled by ██████████. ██████████ will also liaise with land agents that know how to manipulate blended finance models to include private sector investment. This knowledge will be collated and tested against the potential land cohorts. The LGL team's extensive contacts within the land management and VDL sector, including with the Woodland Trust, will enable them to bring together key players across the whole suite of relevant parties and crystallise out the critical issues. The work already undertaken by the project team as part of the Woodland Trust study, which has included high level contacts across the landfill cohort, can be shared immediately with the Defra VDL team to assist in shaping the ongoing project actions.
<b>Output:</b> Provide subject expert knowledge of mix options: remediation, restoration, rewilding, renovation.
VHE (██████████) has been involved with numerous and varied remediation projects with a diverse range of contaminants and geotechnical issues in a wide range of sensitive environments. VHE has a mobile treatment licence for remediation and has restored permitted landfills as well as former colliery sites. ██████████ has been working in both the Contaminated Land and Landfill regulatory frameworks for the past 25 years. ██████████ worked with the Atomic Weapons Establishment on the potential for Phytoremediation to address shallow groundwater contaminants. He is also aware of the academic research on Phytoremediation of methane, with methane being oxidised in forest soils and as it is taken up by the tree roots.
<b>Output:</b> Provide at least eight teach-in sessions.
██████████ and ██████████ would provide the training sessions. ██████████ regularly provides training on landfill gas to Natural Resources Wales and Brownfield seminars to National Grid. ██████████ has led training seminars to Viridor on landfill restoration. Within the last five years ██████████ has led LGL workshops and specialist training events across the range of environmental disciplines.



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**Output:** Provide not less than 20 days of senior subject matter experts on VDL to be provided both at planned notice and at short (2-to-3-day notice) over the assignment. The Tenderer is to also provide exemplar short profiles (1/5 page) for up to three grades of staff relating to those nominated number of days.

For experience, please refer to Q3B for the 1/5-page staff summaries.

### ***Q3C Provide robust and informed knowledge of costs/market rates for site investigation, remediation, restoration to woodland and woodland maintenance***

**Output:** Provide a tabulated set of financial benchmarks for (i) acquisition of VDL land cohorts as defined in A.

██████████ will use his experience on the RICS Woodland Valuation working group and his links with land agents to develop the benchmarks for acquisition models. He has strong working relationships with key parties in the sector and currently sits as Non-Executive Director on the Forest Service's Board for England. ██████████ will use his experience developing cost models for restoration, aftercare and long-term management of landfill sites across eight land use types.

**Output:** Provide a tabulated set of financial benchmarks for (ii) preparation activities as may be required for those cohorts such that tree planting and woodland creation can occur.

██████████ and VHE (██████████) will use their expert knowledge of site investigation, colliery restoration and brownfield remediation costs and processes. VHE has tendered for and implemented a wide variety of brownfield investigation remediation schemes and hold the mobile treatment licences often required to treat on-site soils. ██████████ often marks site specific and framework tenders for National Grid / SGN brownfield remediation projects.

### ***A3D Achieve rapid market engagement / dialogue to inform and shape a possible project/support a market communication exercise with VDL owners and their land agents.***

**Output:** Dialogue with 30 to 50 landowners and meeting notes.

The whole project team have extensive contacts across the sector. In many cases dialogue has already been opened. Relationships developed with landfill operators as part of the Woodland Trust project will be revisited - these contacts and outputs could be shared immediately. ██████████ would be able to open contact routes through RICS, CLA and NFU and through his position on the FS Board. ██████████ and ██████████ would be able to draw on key contacts within Defra Waste, the Environment Agency, the Brownfield, mineral and landfill sectors as noted above.

**Output:** Six Stakeholder Forums.

As noted above, ██████████ has extensive chairmanship experience, including Defra working groups and most recently the Ash Dieback Road Closures Group, and will be able to ensure that engagement forums are focussed and effective. He would be supported as required by members of the LGL team.

**Output:** Biweekly updates.

██████████ has extensive experience of effective concise and focussed project reporting, most recently in dealing with complex ancient woodland translocation projects for HS2.

**Output:** Feedback report to inform and shape approaches to building a pipeline and market engagement strategy.

██████████ with input from all the team. As noted above, ██████████ has coordinated and reported on strategic projects for both the Woodland Trust and National Forest. ██████████ works extensively for large scale infrastructure providers such as National Grid with complex reporting requirements up to Board level.

# SCHEDULE 2 - PRICING

## CONTRACT VALUE

- The Customer will pay to the Contractor no more than the fixed sum of £95,285

## MILESTONES

- Payment will be made in accordance with the successful completion of each milestone in accordance with the below amounts:

Milestone	Description	Delivery date	Payment due
1	Delivery of initial analysis for the Authority's Spending Review purposes: <ul style="list-style-type: none"><li>Initial figures for cost benefit analysis</li><li>Initial site categorisations, numbers and geography of sites</li></ul>	03/09/2021	£31,761
2	Progression of market engagement, including: <ul style="list-style-type: none"><li>Market engagement plan produced and signed off by the Authority</li><li>Dialogue with 30 to 50 stakeholders</li><li>6 stakeholder forums held</li><li>Stakeholder survey devised and sent out (to close 11<sup>th</sup> Dec)</li></ul>	01/11/21	£31,761
3	Completion of project including final workshop with the Authority and final report sent to the Authority.	10/12/2021	£31,763
Total			£95,285

## Pricing Schedule:



[Redacted Content]	
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# SCHEDULE 3 - CHANGE CONTROL

## Contract Change Note ("CCN")

<b>CCN:</b>	
<b>Contract Reference Number &amp; Title</b>	
<b>Variation Title</b>	
<b>Number of Pages</b>	

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 CCN:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annexe [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

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

# SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

- 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.

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY
Information gained from rapid market engagement. E.g. costs of different types of interventions, a company may provide their costings for a past project. Case studies of past projects may also include names of individuals and organisations involved which may be sensitive information.		From when the responses from market engagement are received until when the sensitive data is destroyed.

# 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:  
[DGC.GDPR@defra.gov.uk](mailto:DGC.GDPR@defra.gov.uk)
3. The contact details of the Contractor Data Protection Officer are:
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	This consultancy work will inform the development of a VDL grant scheme and the creation of the VDL workstream within the Woodland Creation project business case.
Duration of the processing	Where applicable, throughout the contract term and any extensions.
Nature and purposes of the processing	N/A, there is no processing of personal data associated with the services in this contract.
Type of Personal Data	N/A, there is no processing of personal data associated with the services in this contract.
Categories of Data Subject	N/A, there is no processing of personal data associated with the services in this contract.
Plan for return and destruction of the data once the processing is complete	N/A, there is no processing of personal data associated with the services in this contract.

UNLESS requirement under union or member state law to preserve that type of data	
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# SCHEDULE 6 - NON DISCLOSURE AGREEMENT

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

BETWEEN:

[Insert full name of contractor] of [insert full address but if registered company please insert the following] - (registered in England and Wales under number [insert company number]) whose registered office is situated at [ ] (the "Contractor");

and

[Insert name and address of the Staff member, professional advisor or consultant of the Contractor] (the "Disclosee").

(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 goods and/or services to the Authority in an agreement dated [insert date] (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an [insert employee, professional advisor or consultant] of the Contractor engaged in the provision of certain goods and/or services to the Authority in support of or in connection with the goods and/or 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 goods and/or 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:

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SIGNED by the Disclosee:

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# 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:

Software	Supplier (if Affiliate of the Contractor)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

## 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 Goods and/or 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 Goods and/or 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 Goods and/or 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 12 (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>