

Defra Group Management Consultancy Framework: Project Engagement Letter

Financial analysis to support the Scheme Administrator function for packaging EPR

Completed forms and any queries should be directed to Defra Group Commercial at consultancy2@defra.gov.uk






Engagement details			
Engagement ref #	DPEL_61548_002		
Extension?	No	DPEL Ref.	Not applicable
Business Area	Resources and Waste		
Programme / Project	Collection and Packaging Reforms – packaging Extended Producer Responsibility		
Senior Responsible Officer	[REDACTED]		
Supplier	KPMG		
Title	Financial analysis in relation to the SA function		
Short description	Financial Analysis		
Engagement start / end date	Proposed start date 10/1/2022		Proposed end date 30/03/2022
Funding source	Budget allocation in Resources and Waste		
Expected costs 21/22	60,000		
Expected costs 22/23	0		
Expected costs 23/24	0		
Dept. PO reference	TBC		
Lot #	Lot 2		
Version #	0.1		




Approval of Project Engagement Letter

The parties agree that this Project Engagement Letter is governed by: (i) the terms of MCF2 Call Off Terms RM6008; and (ii) the Call Off Order Form for Provision of Defra Group Management Consultancy Support Arrangements - Lot 2 Transformation & Programme Delivery (Contract Reference 28595) entered into by the Customer and the Supplier dated 25 June 2021 for the provision of Defra Group Management Consultancy Support Arrangements; and (iii) the terms set out in this Project Engagement Letter.

By signing and returning this cover note, Resources and Waste accepts the contents of this Project Engagement Letter as being the services required and agrees for KPMG to provide the services in accordance with the agreed Supplier Proposal under the overarching contract (Lot 2 - Ref 28595), with Defra Group and confirms the availability of funding to support recharge for the services.

Signatures		
Supplier	Business Area	Defra Group Commercial
By:  _____ <i>Signature</i>	<i>Please refer to the embedded email confirming approval</i> 	By: _____ <i>Signature</i>
For and on behalf of KPMG  Director	For and on behalf of Resources and Waste  Deputy Head, Resources and Waste	Defra Group Commercial  Category Officer for Professional Services (Consultancy)
4 January 2022	22 December 2021	22 December 2021
Supplier engages with Business Area to complete. Once agreed, Supplier signs front page and sends to Business Area	Business Area signs front page and sends to DgC	On approval, DgC signs and returns copy to Business Area and Supplier

Supplier contact: 

Business Area contact: 

1. Background

In December 2018, the UK Government published the Resources and Waste Strategy, setting out how we will preserve our stock of material resources by minimising waste, promoting resource efficiency, and moving towards a more circular economy. In the Strategy, the UK Government committed to several actions, including the Collection and Packaging Reforms. The Collection and Packaging Reforms comprise three interlinked projects:

- A UK-wide Extended Producer Responsibility Scheme for Packaging (“EPR”).
- A Deposit Return Scheme for drinks containers in England, Wales, and Northern Ireland (“DRS”).
- Consistency in Household and Business Recycling Collections across England (“Consistency”).

The powers to implement the above reforms are provided by the Environment Act 2021.

This procurement relates to the procurement of a financial specialists to assist in the delivery of EPR only.

EPR will place new requirements on producers including to pay waste management costs for the packaging that they place on the market. Producers will also have to meet packaging waste recycling obligations (as under the current system) and in due course obligations in relation to the use of re-usable and refillable packaging.

There is a requirement to engage a financial specialist to assist in the planning and preparation of documentation to support the EPR project. The Project will be split initially into two phases.

2. Statement of services

Objectives and outcomes to be achieved

In delivering the services the Supplier will:

- Support the team in reviewing the financial flows critical to the establishment and operation of the Scheme Administrator
- Support the team in reviewing the assumptions underlying the financial flows and highlighting where further information is needed.

Scope

Scope and deliverables (Phase 1 only)

Phase 1 is to review the financial flows which underpin the functioning of Packaging EPR. This will include working with the team within Defra to:

- a) Highlight the areas where there are the greatest financial risks and where additional data / research is needed. These may be risks to government, to consumers, producers or the market in general if the operation of the scheme results in unintended commercial consequences.
- b) Consider the interaction of the Deposit Return Scheme (DRS) and EPR, particularly in relation to implementation timescales, and highlight key risks and where further information is needed.
- c) Define the additional data required and consider how this will be obtained.



- d) Prepare a summary report setting out, in diagrammatic form, the financial flows, a risk register of the financial aspects with suggested mitigation measures, and a table of further data needed.
- e) Comment on the proposed payments to LAs – do the dates proposed match with current LA payments / arrangements. Are we making any significant changes to the timing of their income stream we need to highlight?
- f) Prepare a strategy for the delivery of the financial / audit support associated with Packaging EPR (the delivery of which will form Phase 2). This will include:
 - A high level overview of the key areas of financial work required from the end of Phase 1 to the appointment of the suppliers who will deliver the functions on behalf of the scheme administrator. These need to be listed in sufficient detail to assist Defra in preparing a brief for Phase 2.
 - A summary of the key principles / points of control that need to be considered in the delivery of Phase 2.

Assumptions and dependencies

This commission is to be delivered on the assumption that:

- the Deposit Return Scheme (DRS) will be delivered in similar timescales

The Supplier's work will be limited to the deliverables set out below and accordingly will not include any confirmation or assessment of the commercial merits, technical feasibility or compliance with any applicable legislation or regulation of the Project or the factual accuracy of the input data and the suitability, validity or completeness of the underlying assumptions or the way in which the Project documentation has been interpreted in arriving at assumptions and input data.

The Supplier will not, pursuant to the agreement formed by this letter, perform any management functions or make any judgements or decisions for you. Additionally, your Defra management (being anyone with executive or governance responsibilities) is responsible for designating a management-level individual or individuals possessing suitable skill, knowledge and experience to be responsible at all times for overseeing the services provided, evaluating the adequacy of the services performed and any findings or recommendations, establishing and maintaining internal controls, and monitoring ongoing activities. The preceding sentence shall not detract from the Supplier's obligation to carry out the services with reasonable care and, the fact that the delivery of the services is overseen by Defra, shall not remove the Supplier's responsibility for any errors in the technical operation of the spreadsheets (such as incorrect formula being inserted).

Deliverables

The deliverables will be a report:

- Highlighting the areas where there are the greatest financial risks and where additional data / research is needed.
- Commenting on the interaction of the Deposit Return Scheme (DRS) and EPR,
- Listing additional data required
- Setting out, in diagrammatic form, the financial flows, together with a risk register of the financial aspects with suggested mitigation measures,
- Commenting on the proposed payments to LAs
- Containing a high level strategy for the delivery of the financial / audit support associated with Packaging EPR (the delivery of which will form Phase 2). This will include:
 - A high-level overview of the key areas of financial work required from the end of Phase 1 to the appointment of the suppliers who will deliver the functions on behalf



- of the scheme administer. These need to be listed in sufficient detail to assist Defra in preparing a brief for Phase 2.
- A summary of the key principles / points of control that need to be considered in the delivery of Phase 2.

Handover

Following completion of the development of the report referred to above, we will hand over the report to you

Deliverable	Success Criteria	Milestone / Date	Owner (who in the delivery team?)
Project Stage A			
Handover of the Report referred to above	Comprehensive Report which assists the team in Defra to understand the financial risks and further data required.	March 2022	WK
Project Stage B			
Internal Capability Development Outcomes			
None identified			
Social Value Outcomes			
None identified			

Limitations on scope and change control

Unless instructions to the Supplier are later amended in writing, the work undertaken will be restricted to that set out above. In providing the services detailed above, the Supplier will be acting in reliance on information provided by the Business Area.

The Project Engagement Letter is the agreed contract of work between the Defra Group Business Area and the Supplier and can be varied under the change control process. Any changes to timescales, scope and costs will require approval by DgC.

3. Delivery team

Provide details of the agreed team members including their roles and responsibilities during the project.

Name	Role (link to stage/s resource will work on)	Grade	Daily rate	# of days	Cost
■■■	Engagement Lead	Director / Partner	■	■	■
■■■	Modelling Senior Manager	Associate Director Modelling	■	■	■



Name	Role (link to stage/s resource will work on)	Grade	Daily rate	# of days	Cost
Total (Rounded)				27.0	£60,000

Total resource $\frac{\text{Total days*}}{\text{Engagement Length**}}$ <p>*Total days worked across all resources **Total working days in engagement</p>	0.45
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Business Area's team

Name	Role	Contact details
■	Commercial manager	■
x ■	Deputy Head, Resources and Waste	■
■	Technical manager	■

4. Fees

Defra Group will reimburse the Supplier for approved work done according to the table below. The total fees for the scope of work detailed in this Engagement Letter will be £60,000 inclusive of expenses and excluding VAT.

Provide costs for any particular stages to the engagement.

Stage	Cost	Due (link to milestone dates)
A		DD/MM/YY
Spreadsheets, reports and analysis relating to mobilisation costs and operational costs	£60,000	TBC
B (additional stages can be added)		
Expenses		
none	£	
Grand total	£	

Business Area considerations:

- Are the costs and fees appropriate (costs linked to deliverables, rates and drive value for money)?

Expenses statement



Defra Group overarching contract rates include expenses for any travel to/from any UK location defined by the Business Area as the base office for the work. Only expenses for travel at the Business Area's request from this base can be charged. If appropriate, define permissible expenses to be charged.

Payment

The Supplier should invoice fees monthly in arrears. Defra Group will reimburse fees monthly on confirmation of approval of work delivered by the Business Area. The Supplier will keep an accurate record of time spent by staff in providing the services and provide this information and supporting narrative, if requested.

5. Governance and reporting

As part of the Call-Off Contract, the Supplier and Business Area agree to provide reporting on the following:

- Completion of the time tracker on a monthly basis, to track days worked by our consultants;
- The Supplier to notify the EPR team if any of conflict of interest emerges and explain how this will be managed

Key Performance Indicators

No additional KPIs required.

Feedback and satisfaction

Defra Group reserves the right to hold review meetings during the assignment, discussing what went well, opportunities for improvement on future assignments and similar. This will incorporate any 'Show and Tell' documentation or transferable products that have been produced.

A post-engagement quality review of the engagement will be arranged where the Business Area rates the services provided.

Non-disclosure agreements

No additional NDAs required.

Exit management

The agreed actions and deliverables by the Supplier for when the contract ends are as follows:

None other than the provision of the deliverables listed above
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Notice period

The nature of these engagements require that Defra Group have the ability to terminate an engagement with notice. Defra Group's termination rights for this engagement are marked below.

The minimum notice period for termination is 5 working days regardless of engagement duration.

6. Legal terms and variations

The parties agree to these additional terms and variations to apply for the purpose of this Project Engagement Letter.

6.1. Intellectual Property Rights

Additional definitions

- The following definitions shall apply to Clause 34 (Intellectual Property Rights):

“Cluster” means Ministry of Justice; and Department for Work and Pensions; and Home Office.

- A new clause 34.1.5 shall be added as follows:

34.1.5 Although the Customer may use and exploit the Project Specific IPRs (and any of Supplier Background IPRs) in accordance with the terms of the Call-Off Contract and this Project Engagement Letter, the Supplier will have prepared the Project Specific IPR with the intent that they are used and relied upon by the Customer only and only for the purposes of the Services or as otherwise stated in this Project Engagement Letter. Accordingly, we do not accept a duty of care to others who may see or use any Project Specific IPRs outside of the scope of this Project Engagement Letter and the Services (and the Customer shall not inform or infer to any third party that the Supplier does so).

- Clause 34.2.3 of MCF2 Call Off Terms RM6008 is not applicable to the Services and shall not apply to this Project Engagement Letter.
- Clause 34.3 (Licences granted by the Supplier: Supplier Background IPR) of MCF2 Call Off Terms RM6008 shall not apply to this Project Engagement Letter and the following new clause shall apply:

34.3 Licences granted by the Supplier: Supplier Background IPR

34.3.1 Subject to the payment of the Call Off Contract Charges the Supplier grants to the Customer:

- (i) the rights to use the Supplier Background IPR as set out in clause 34;*
- (ii) with effect from the date of delivery (or otherwise making available) of the Deliverables, a non-exclusive, non-transferrable, perpetual, royalty-free licence to use those Deliverables (including any of the Supplier Background IPR embedded in those Deliverables) for the Customer ordinary business activities; and*
- (iii) the rights to use during the Engagement Term (on a non-exclusive non-transferable basis), any of the other Supplier Background IPR which the Supplier provides or makes available to the Customer in providing the Services, solely to the extent you need to use the same to receive the benefit of the Services during the Engagement Term and no longer than for the duration of the relevant phase of the Services.*

The licences granted in clause 34 and paragraph 34.2(ii) and 34.2(iii) shall be revoked if Call Off Contract Charges are not paid in accordance with the terms of this Project Engagement Letter.

34.3.2 *For the purpose of the Call-Off Contract, Supplier Background IPRs include any IPRs licensed to the Supplier before the Start Date of this Project Engagement Letter and any IPRs that*

are a development of or an enhancement and/or modification to any IPRs owned by or licensed to the Supplier before the Start Date of this Project Engagement Letter (howsoever arising, including as a consequence of the Services), and the definition of Supplier Background IPRs shall be interpreted accordingly.

- Clause 34.4 (Customer's right to sub-license) of MCF2 Call Off Terms RM6008 shall not apply to this Project Engagement Letter and the following new clause shall apply:

34.4 Customer's right to sub-license

34.4.1 *The Customer may only sub-license or transfer the rights granted under clause 34.3.1(ii):*

- (i) to a supplier or contractor, solely to the extent necessary and for so long as is necessary for the supply of their services to you, and provided that such supplier or contractor may only use the Supplier Background IPR for the purposes of those services and may not disclose the Supplier Background IPR to any other third party and may not exploit it commercially in any way; and*
- (ii) to any member of: (i) the Customer's department, agency, commission or other government or public sector body or contracting authority; or (ii) the Cluster, for as long as they remain a member of: (i) the Customer's department, agency, commission or other government or public sector body or contracting authority; or (ii) the Cluster,*

in each case, only in relation to your ordinary business activities.

- Clause 34.5 (Customer's right to assign/novate licences) of MCF2 Call Off Terms RM6008 shall not apply to this Project Engagement Letter.
- Clause 34.6 (Third Party IPR) of MCF2 Call Off Terms RM6008 shall not apply to this Project Engagement Letter.
- Clauses 34.8.1 and 34.8.2 (Termination of licences) of MCF2 Call Off Terms RM6008 shall not apply to this Project Engagement Letter.
- Clause 34.10 (Open Source Publication) of MCF2 Call Off Terms RM6008 shall not apply to this Project Engagement Letter. We do not believe that it is appropriate for the deliverables to be shared on an open source basis. Both parties agree that the Project Specific IPR, Deliverables and all materials provided by the Supplier are excluded from Open Source publication (excluded items).
- A new clause 34.11 shall be added as follows:

34.11 General

34.11.1 *Each party shall notify the other if it becomes aware of an infringement of Intellectual Property Rights licensed to it under this Agreement.*

34.11.2 *Neither party shall delete trademark or copyright notices appearing on the other's proprietary documentation or material.*

34.11.3 *Each party shall be responsible for the acts and omissions of all sub-licensees in respect of the other party's Intellectual Property Rights made available to that party in connection with this Agreement, in each case as if they were the acts and omissions of that party.*

34.11.3 *Where the Customer sub-licenses KPMG IPR or discloses KPMG's Confidential Information to any Contractor in accordance with this Agreement it shall inform them that, to the fullest extent permitted by law, KPMG accepts no responsibility or liability to them in connection with the Confidential Information, those Intellectual Property Rights or the Services.*

- A new clause 34.12 shall be added as follows:

34.12 Independence

34.12.1 *To ensure that the Supplier is able to comply with applicable auditor independence requirements and applicable Law (including to ensure that the Supplier is not auditing its own work or the output of its own work during a specified period), during the Independence Period the Supplier requires that the Customer notifies the Supplier as soon as possible if:*

- (i) the Customer or any entity of the Cluster cease to be a public agency, commission or other government or public sector body or contracting authority;*
- (ii) the Customer or any entity of the Cluster merge with another agency, commission or other government or public sector body or contracting authority; or*
- (iii) a new government agency, commission or other government or public sector body or contracting authority is merged with the Customer or any entity of the Cluster so that they will also benefit from or otherwise use the Services or any Deliverables.*

34.12.2 *In relation to paragraph 34.12.1, the following defined terms shall apply:*

- (i) "**Independence Period**" means the earlier to end of:*
 - (a) the period from the date of the Call-Off Contract to the first Confirmation of Clean Audit thereafter; or*
 - (b) such shorter period as we may notify to you if we determine (acting reasonably) that such shorter period allows the independence requirements imposed upon us in under applicable Laws to be met.*
- (ii) "**Confirmation of Clean Audit**" means confirmation by your external auditor of a full financial year's Clean Audit for a financial year commencing after completion of the Services.*
- (iii) "**Clean Audit**" means, in relation to your external audit report, that there are no qualifications or matters of emphasis in that report:*
 - (a) that are related to the implementation Deliverables that have been placed in live use; and*
 - (b) which cite subsisting functional or operational issues in those Deliverables referred to in (a) which have resulted in your ability to generate accurate financial statements being compromised.*

6.2 Liability

Subject to Clause 37.1 (Unlimited Liability) of MCF2 Call Off Terms RM6008, the Supplier's total aggregate liability, in respect of all other Losses incurred by the Customer under or in connection with this Project Engagement Letter as a result of Defaults by the Supplier shall in no event exceed a sum equal to one hundred and twenty-five per cent of the Call Off Contract Charges payable in connection with this Project Engagement Letter.

6.3 Termination Rights

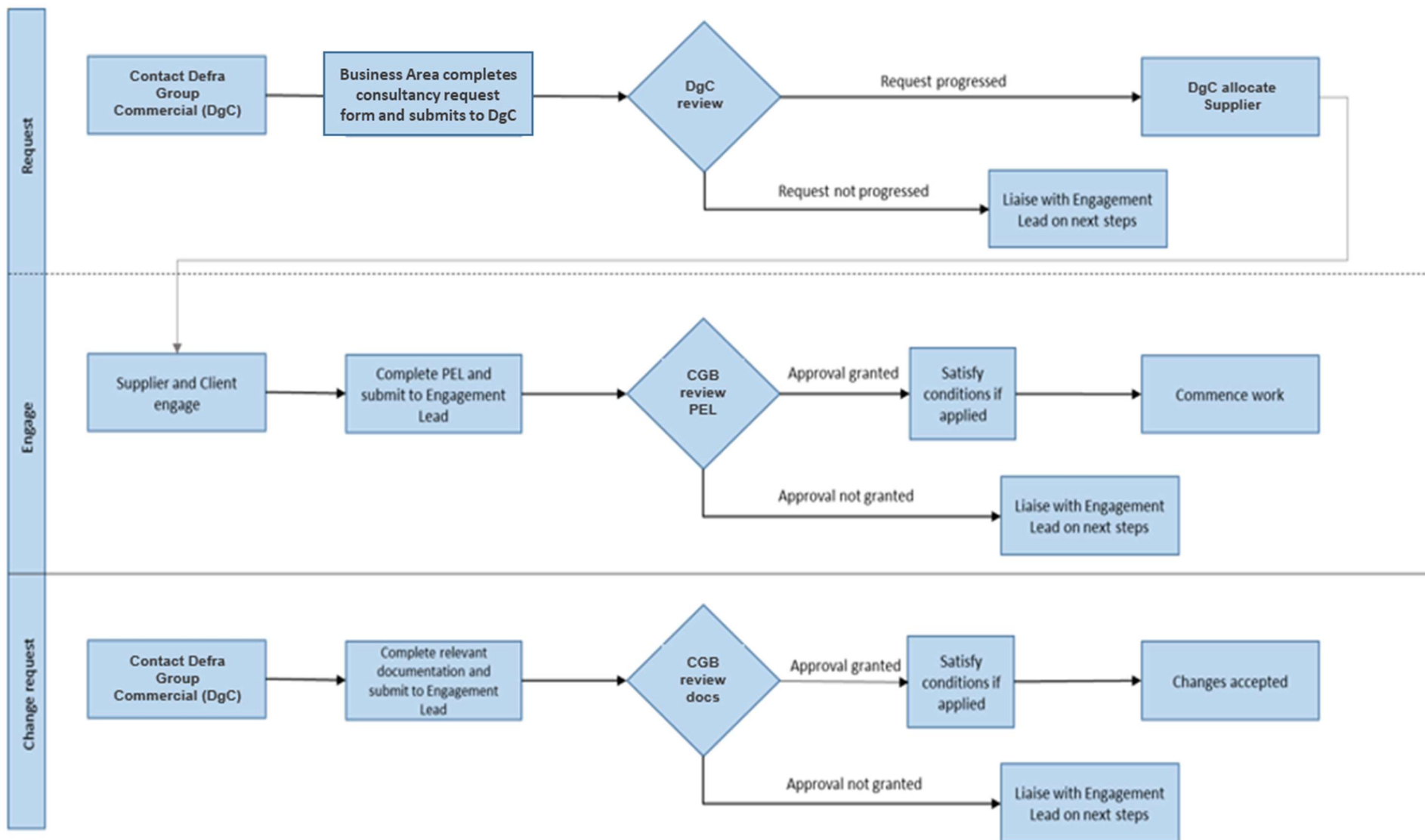
A new clause 43.2 shall be added as follows:

43.2 The Supplier may terminate this Project Engagement Letter upon such period of written notice as is reasonable in the circumstances if there is a change of law, rule, regulation or professional standard or circumstances arise that would prejudice the Supplier's ability to comply with applicable auditor independence requirements provided that the Supplier shall use reasonable endeavours to mitigate the impact of any such circumstances and seek a work-around solution with the Customer, prior to issuing any notice of termination.

6.4 Assignment and Novation

Clauses 48.2, 48.3 and 48.4 of MCF2 Call Off Terms RM6008 shall not apply to this Project Engagement Letter and the following new clause shall apply:

48.2 The Customer shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without the prior written consent of the Supplier.





Department
for Environment
Food & Rural Affairs