



Department
for Environment
Food & Rural Affairs

Conditions of Contract

**Blue Planet Fund Ocean Community
Empowerment and Nature (OCEAN) Grants
Programme - Grant Administrator**

C5174

August 2023

SECTION 1

FORM OF CONTRACT

PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Seacole Building, 2 Marsham Street, London SW1P 4DF (the “**Authority**”).

AND

- (2) NIRAS Group (UK) registered in England and Wales whose registered office is Kings Ride Court, Kings Ride, Ascot, SL5 7JR (the “**Contractor**”)

(each a “**Party**” and together the “**Parties**”).

WHEREAS

Following a competitive tender process, the Authority wishes to appoint the Contractor to provide certain services and the Contractor agrees to provide those services in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

- 1.1 The “**Contract**” comprises the following:


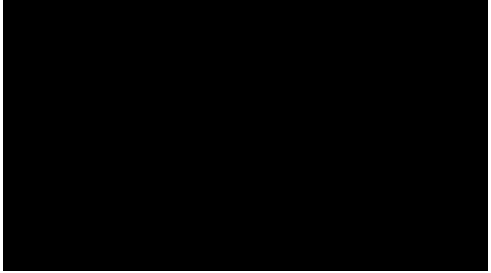
Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Specification
	Specification Appendices (A-M)
Schedule 2:	Pricing and Payment Schedule
Schedule 3:	Change Control
Schedule 4:	Commercially Sensitive Information
Schedule 5:	Non-Disclosure Agreement
Schedule 6:	Contractor and Third-Party Software
Schedule 7:	Security Requirements, Policy and Plan
Schedule 8:	Key Personnel
Schedule 9:	Key Performance Indicators
Schedule 10:	Processing, Personal Data and Data Subjects
Schedule 11:	The Contractor’s Solution
Schedule 12:	Social Value

- 1.2 The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority’s electronic contract management system (“**Atamis**”).

- 1.3 The Contract shall commence on 4th September 2023 (the “**Commencement Date**”) and ends on 31st March 2025 (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.

- 1.4 The Authority may extend the term of the Contract until 31st March 2029 (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

- 1.5 In the event of any conflict between the provisions of the clauses of the Contract and the provisions of the Schedules or Appendices, the following order of precedence shall apply:
- - i. The Form of Contract.
 - ii. Section 2 (Terms and Conditions) and within Section 2, the following order of precedence shall apply:
 - (a) Schedule 1 (Specification) including its Appendices and Schedule 2 (Pricing and Payment Schedule).
 - (b) Schedules 3 to 10 and Schedules 12 and 13.
 - (c) Schedule 11 (the Contractor's Solution).

I confirm the agreement of NIRAS Group UK to the terms and conditions in this Contract and its Schedules		Accepted on Behalf of the Authority
Contractor-Signature [text anchor for docusign] 		Authority-Signature [text anchor for docusign] 

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1. GENERAL PROVISIONS

1.1 Definitions and Interpretation

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

Affected Party	the Party seeking to claim relief in respect of a Force Majeure Event.
Affiliate	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	the prior written consent of the Authority.
Approved	the prior written consent of the Authority.
Authorised Representative	the Authority representative named in the CCN as authorised to approve agreed Variations.
Authority Data	<p>(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:</p> <p>(i) supplied to the Contractor by or on behalf of the Authority; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) any Personal Data for which the Authority is the Controller.</p>
Authority Premises	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	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	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	the HMG Baseline Personnel Security Standard for Government employees.
Atamis	has the meaning given in paragraph 1.2 of the Form of Contract.
CCN	a change control notice in the form set out in Schedule 3.
Commencement Date	the date set out in paragraph 1.3 of the Form of Contract.

Commercially Sensitive Information	<p>the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the Price; (b) details of the Contractor's Intellectual Property Rights; and (c) the Contractor's business and investment plans which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.
Confidential Information	<p>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:</p> <ul style="list-style-type: none"> (a) was public knowledge at the time of disclosure otherwise than by breach of Clause 5.4; (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	<p>the period from the Commencement Date to:</p> <ul style="list-style-type: none"> (a) the End Date; or (b) following an Extension, the end date of the Extension <p>or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.</p>
Contracting Authority	any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.
Contractor Software	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	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	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	as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.
Crown	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	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	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation	<ul style="list-style-type: none"> (a) the UK GDPR; (b) the EU GDPR to the extent the EU GDPR applies, the LED and any applicable national implementing Laws as amended from time to time (c) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (d) 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	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	as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.
Default	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	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 powers 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	the Data Protection Act 2018.
EIR	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	the date set out in paragraph 1.3 of the Form of Contract.
Equipment	the Contractor's equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.
Escrow Account	the account referred to in Clause 3.5.
EU GDPR	the General Data Protection Regulation (EU) 2016/679.
Extension	has the meaning given in paragraph 1.4 of the Form of Contract.
FOIA	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	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	Section 1 of the Contract.
GDPR	the UK GDPR or the EU GDPR (as applicable).
General Anti-Abuse Rule	(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	standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
Halifax Abuse Principle	the principle explained in the CJEU Case C-255/02 Halifax and others.
HMRC	HM Revenue & Customs.

ICT Environment	the Authority System and the Contractor System.
Information	has the meaning given under section 84 of the FOIA.
Initial Contract Period	the period from the Commencement Date to the End Date.
Intellectual Property Rights	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	the Income Tax (Earnings and Pensions) Act 2003.
Joint Controllers	where two or more Controllers jointly determine the purposes and means of processing.
Key Personnel	those persons named in Schedule 11 (The Contractor's Solution) as key personnel.
Know-How	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	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	Law Enforcement Directive (Directive (EU) 2016/680).
Malicious Software	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	<p>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:</p> <ul style="list-style-type: none"> (a) a substantial portion of the Contract; or (b) any of the obligations set out in Clauses 1.6, 4.1, 5.1, 5.2, 5.3, 5.4, 5.7, 5.8 or 5.10.
Month	calendar month.
NICs	National Insurance Contributions.

Occasion of Tax Non-Compliance

- (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

the Contractor's office locations where the Services are to be supplied as set out in the Specification.

Price

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

- (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;
- (iv) 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	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	the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.
Purchase Order	the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract.
Contractor Backed Up Authority Data	Authority Data which the parties have agreed in writing will be backed up by the Contractor, and which is designated as such in a Schedule to this Contract.
Quality Standards	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	the physical or electronic arrival of the invoice at the address specified in Clause 1.4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.
Regulations	the Public Contract Regulations 2015 (SI 2015/102).
Regulatory Body	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	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	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	HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
Replacement Contractor	any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in

	substitution for any of the Services following the expiry, termination or partial termination of the Contract.
Request for Information	a request for information under the FOIA or the EIR.
Results	<p>any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:</p> <ul style="list-style-type: none"> (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	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	the HMG Security Policy Framework (available from the Cabinet Office's Government Security Secretariat) as updated from time to time.
Services	the services set out in Schedule 1 including any modified or alternative services.
Specification	the description of the Services to be supplied under the Contract as set out in Schedule 1 Part 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
SSCBA	the Social Security Contributions and Benefits Act 1992.
Staff	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	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	any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.
Tender	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 and which is set out in Schedule 1 Part 2.
TFEU	the Treaty on the Functioning of the European Union.
Third Party IP Claim	has the meaning given to it in Clause 5.8.5 (Intellectual Property Rights).
Third Party Software	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	the Treaty on European Union and the TFEU.
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006.
TUPE Information	the information set out in Clause 2.10.1.
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
Valid Invoice	an invoice containing the information set out in Clause 3.2.5.
Variation	a variation to the Specification, the Price or any of the terms or conditions of the Contract.
VAT	value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.
Working Day	a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.1.2 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.

1.2 The Authority’s Obligations

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.

1.3 Contractor’s Status

1.3.1 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.

- 1.3.2 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.
- 1.3.3 The parties agree that notwithstanding anything contrary in this Agreement:
- (a) the Contractor shall not be, and the Authority shall not require the Contractor to be, a party to, or principal under, any of the grant documents included at Annex G of the Specification (the **Grant Documents**);
 - (b) where requested by the Authority, the Contractor will sign or issue Grant Documents, provided that the Contractor shall only do so on the Authority's behalf, in order to bind the Authority as a party to such Grant Documents; and
 - (c) the Parties shall agree appropriate amendments to the Grant Documents to give effect to this Clause 1.3.3 before issuing them to any third party.

1.4 Notices and Communications

- 1.4.1 Subject to Clause 1.4.3, 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 Atamis.
- 1.4.2 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.
- 1.4.3 Notices pursuant to Clause 7.3, Clause 9.2 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.
- 1.4.4 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]

Email: [REDACTED]

For the Contractor:

Contact Name: [REDACTED]

Address: [REDACTED]
[REDACTED]

Email: [REDACTED]

1.5 Mistakes in Information

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.

1.6 Conflicts of Interest

1.6.1 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.

1.6.2 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 1.6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

1.6.3

- (a) The Authority acknowledges and agrees that the Contractor is subject to legal and regulatory obligations relating to audit independence, which may affect the performance of its obligations under this Contract. Within six weeks of the date this Contract is fully signed, the Contractor shall prepare and deliver to the Authority, a plan setting out the Contractor's proposed methodologies for handling a conflict of interest or audit independence restriction scenario, relating to third parties with which the Contractor may be required to deal as part of the Services, and identifying potential workarounds to ensure as a priority that the Contractor can still deliver the Services in a way that is permissible (the **COI Plan**). The Parties shall promptly discuss the draft COI Plan and any required amendments, and when finalised, they shall document their agreement to it via CCN.
- (b) Where the Contractor believes that the performance of any obligation under this Contract may cause the Contractor to breach any legal or regulatory requirement the Contractor shall promptly notify the Authority, and will implement the provisions of the COI Plan.
- (c) If the nature of a conflict of interest or audit independence restriction is such that the Parties agree there are no possible workarounds or acceptable mitigations and the Contractor must cease dealing with the relevant third party in order to avoid a breach of the relevant legal or regulatory requirement, then the Authority may:
 - (i) terminate the Contract immediately by notice; or
 - (ii) agree with the Contractor:
 - (A) an amendment to this Contract to reduce: (A) the scope as necessary to remove the obligations that are not permissible (B) proportionately the Contractor's fees to reflect the non-delivery of the removed obligations; and

- (B) alternative arrangements for the delivery of the removed obligations, which may include the Authority procuring the removed obligations from a third party supplier, and which in each case shall be Contractor's cost (both the Authority's official internal time costs incurred, and the fee payable to the relevant third party supplier for its performance of the removed obligations).

2. THE SERVICES

2.1 Specification

In consideration of the Contractor supplying the Services in accordance with the Specification the Contractor shall be paid the Price.

2.2 Provision and Removal of Equipment

- 2.2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- 2.2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.
- 2.2.3 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.
- 2.2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 2.2.5 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.
- 2.2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- 2.2.7 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.
- 2.2.8 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.

2.3 Delivery

- 2.3.1 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.

- 2.3.2 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.
- 2.3.3 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.
- 2.3.4 If the Authority rejects the installation pursuant to Clause 2.3.3(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.
- 2.3.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with Clause 2.3.3(a). Notwithstanding acceptance of any installation in accordance with Clause 2.3.3(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.
- 2.3.6 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.

2.4 Key Personnel

- 2.4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.
- 2.4.2 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.
- 2.4.3 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.
- 2.4.4 The Authority shall not unreasonably withhold its agreement under Clause 2.4.2 or Clause 2.4.3. 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.

- 2.4.5 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.

2.5 Contractor's Staff

- 2.5.1 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.

- 2.5.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission into 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.

- 2.5.3 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 2.5.2 shall be final.

- 2.5.4 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.

2.6 Inspection of Premises

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.

2.7 Licence to Occupy Premises

- 2.7.1 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.

- 2.7.2 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 cooperate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.

- 2.7.3 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.

- 2.7.4 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.

- 2.7.5 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.

2.8 Property

- 2.8.1 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.
- 2.8.2 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.
- 2.8.3 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.
- 2.8.4 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.
- 2.8.5 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.

2.9 Offers of Employment

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.

2.10 Employment Provisions

- 2.10.1 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 2.10.1(a);
 - (c) the terms and conditions of employment/engagement of the Staff referred to in Clause 2.10.1(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.
- 2.10.2 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.
- 2.10.3 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.
- 2.10.4 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.
- 2.10.5 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 JURE 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.
- 2.10.6 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.
- 2.10.7 This Clause 2.10 applies during the Contract Period and indefinitely thereafter.
- 2.10.8 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.

2.11 Roles and Responsibilities

2.11.1 The Authority and the Contractor shall comply with the provisions of Schedule 9 (Roles and Responsibilities).

3. PAYMENT

3.1 Price

In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with Clause 3.2.

3.2 Payment and VAT

- 3.2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.
- 3.2.2 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.
- 3.2.3 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.
- 3.2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 3.2.5 Valid Invoices shall include:
 - (a) the Contractor's full name, address and title of the Contract;
 - (b) the Purchase Order number and, if requested by the Authority;
 - (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;

- (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
 - (e) identification of which individuals are Contractor's staff and which are Sub-contractors;
 - (f) the address of the Premises and the date on which work was undertaken;
 - (g) the time spent working on the Premises by the individuals concerned;
 - (h) details of the type of work undertaken by the individuals concerned;
 - (i) details of plant or materials operated and on standby;
 - (j) separate identification of time spent travelling and/or meal or rest breaks; and
 - (k) where appropriate, details of journeys made and distances travelled.
- 3.2.6 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.
- 3.2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.
- 3.2.8 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.
- 3.2.9 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.
- 3.2.10 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.
- 3.2.11 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.
- 3.2.12 The Authority acknowledges that the Contractor staff and partners may perform Services from Premises, or from home or other remote working locations.
- 3.2.13 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).
- 3.2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to Clause 8.1, Clause 8.2 and/or Clause 8.3 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.
- 3.2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.

- 3.2.16 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.
- 3.2.17 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 3.2.
- 3.2.18 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:
[REDACTED] (the Authority's preferred option); or [REDACTED]
[REDACTED]
- 3.2.19 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.
- 3.2.20 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.
- 3.2.21 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 3.2.21 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.
- 3.2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under Clause 8.2.3 for failure to pay undisputed sums of money.
- 3.2.23 The Authority shall not pay an invoice which is not Valid Invoice.

3.3 Recovery of Sums Due

- 3.3.1 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.
- 3.3.2 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.
- 3.3.3 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.
- 3.3.4 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.

3.4 Price during Extension

Subject to Schedule 2 and Clause 6.6, 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.

3.5 Escrow Account

- 3.5.1 Within 25 Working Days of the Commencement Date, it is the intention to establish a separate escrow account (**Escrow Account**) on such terms as may be agreed by the Authority.
- 3.5.2 The terms of the Escrow Account will ensure that no withdrawals can be made from the Escrow Account without the prior approval of the Authority in each case.
- 3.5.3 At no time shall the monies in the Escrow Account become the property of the Contractor.
- 3.5.4 The Authority shall, where appropriate, issue pre-financing payments to the Escrow Account.

4. STATUTORY OBLIGATIONS

4.1 Prevention of Fraud and Bribery

- 4.1.1 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.
- 4.1.2 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.
- 4.1.3 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 4.1.3(a) and make such records available to the Authority on request.
- 4.1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 4.1.1 and/or Clause 4.1.2, 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.
- 4.1.5 If the Contractor notifies the Authority pursuant to Clause 4.1.4, 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,
- 4.1.6 If the Contractor is in Default under Clause 4.1.1 and/or Clause 4.1.2, 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.
- 4.1.7 Any notice served by the Authority under Clause 4.1.6 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).

4.2 Discrimination

The Contractor shall:

- 4.2.1 perform its obligations under the Contract in accordance with:
- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - (b) the Authority's equality and diversity policy as given to the Contractor from time to time;
 - (c) 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
- 4.2.2 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).

4.3 Rights of Third Parties

- 4.3.1 The provisions of Clause 2.10.5 and Clause 5.8.3 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**).

- 4.3.2 Subject to Clause 4.3.1, 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.
- 4.3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- 4.3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

4.4 Health and Safety

- 4.4.1 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.
- 4.4.2 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.

4.5 Environmental Requirements

- 4.5.1 The Contractor shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies (**Environmental Policies**) which require the Authority through its procurement and management of suppliers:
- (a) conserve energy, water, wood, paper and other resources and reduce waste;
 - (b) phase out the use of ozone depleting substances;
 - (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
 - (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
 - (e) reduce fuel emissions wherever possible;
 - (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
 - (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).
- 4.5.2 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), batons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or
- (b) MFCs and other gaseous and non-gaseous substances with a high global warming potential;

unless given written permission by the Authority to do so.

- 4.5.3 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.
- 4.5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under Clause 4.5.3.
- 4.5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.
- 4.5.6 The Contractor shall:
 - (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
 - (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

4.6 Timber and Wood Derived Products

- 4.6.1 For the purposes of Clause 4.6.1 to 4.6.8 the following terms shall have the following meanings:

CPET	the UK Government's Central Point of Expertise on Timber.
FLEGT	Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber
FLEGT-licensed	production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions only, as defined by a bilateral Voluntary Partnership Agreement (VPA) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government.
Legal and Sustainable	production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available at www.gov.uk/government/publications/timber-definition-of-legal-and-sustainable-for-timber-procurement)

sustainable or CPET). The edition current on the day the Contract is awarded shall apply.

Recycled

recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source.

Short-rotation coppice

a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy.

Timber

any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element, for example, paper. Timber and wood-derived products supplied or used in performance of the Services that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Services that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry.

4.6.2 All Timber supplied or used by the Contractor in providing the Services (including all Timber supplied or used by Sub-Contractors) shall comply with Schedule 1 and shall originate from a forest source where management of the forest has full regard for:

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

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

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

- 4.6.5 The Contractor shall maintain records of all Timber delivered to and accepted by the Authority for 6 years from final delivery under the Contract.
- 4.6.6 The Authority shall decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber complies with Schedule 1 and complies with the requirements of the Social Criteria. If the Authority is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will:
- (a) verify the forest source of the timber or wood; and
 - (b) assess whether the source meets the relevant criteria.
- 4.6.7 In the Contract "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time) or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time) or equivalent.
- 4.6.8 The Authority may reject Timber that does not comply with Schedule 1 or with the Social Criteria. If the Authority rejects any Timber the Contractor shall supply alternative Timber which does comply at no additional cost to the Authority and without causing delay to delivery of the Services.

4.7 Safeguarding

- 4.7.1 The Contractor will take all reasonable steps to prevent the sexual exploitation, abuse and harassment of any person linked to the performance of the Contract. This shall include, without limitation, that the Contractor will:
- (a) maintain a safeguarding policy which includes a statement of commitment to safeguarding and a zero-tolerance statement on bullying, harassment and sexual exploitation and abuse;
 - (b) maintain a detailed register of safeguarding issues raised and how they were dealt with;
 - (c) have clear investigation and disciplinary procedures to use when allegations and complaints are made, and have clear processes in place for when a disclosure is made;
 - (d) share its safeguarding policy with representatives or Third Parties involved in the Project;
 - (e) maintain a whistle-blowing policy which protects whistle blowers from reprisals and includes clear processes for dealing with concerns raised;
 - (f) maintain a code of conduct for staff and volunteers that sets out clear expectations of behaviours - inside and outside the workplace - and make clear what will happen in the event of non-compliance or breach of these standards; and
 - (g) meet or be working towards the minimum standards for Sexual Exploitation, Abuse and Harassment safeguarding: the Inter-Agency Standing Committee Minimum Operating Standards on Protection from Sexual Exploitation and Abuse (**PSEA**) and/or the PSEA elements of The Core Humanitarian Standard on Quality and Accountability.

- 4.7.2 The Contractor shall provide to the Authority, on the Authority's request, any documents maintained pursuant to Clause 4.7.1 and/or evidence of compliance with the requirements of Clause 4.7.1.
- 4.7.3 The Authority has a zero-tolerance approach towards sexual exploitation, abuse and harassment. The Contractor will immediately contact the Authority at to report any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment related to this Contract. The Contractor should assess credibility based on the source of the allegation, the content, and the level of detail or evidence provided. All sexual activity with children (persons under the age of 18) is prohibited, regardless of the age of majority, or age of consent locally.
- 4.7.4 The Contractor shall also report any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment that are not directly related to this Contract, but which would impact to the Authority or the reputation of the Authority or UK aid. For example, events that affect the governance or culture of the Contractor, such as those related to senior management, must be reported.
- 4.7.5 The Contractor will fully co-operate with investigations into any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment, whether led by the Authority or any of its duly representatives.

5. PROTECTION OF INFORMATION

5.1 Authority Data

- 5.1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 5.1.2 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.
- 5.1.3 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.
- 5.1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- 5.1.5 The Contractor shall perform secure back-ups of all Contractor Backed Up 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.
- 5.1.6 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.
- 5.1.7 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.
- 5.1.8 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.

5.2 Data Protection

- 5.2.1 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.
- 5.2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 5.2.3 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.
- 5.2.4 The Contractor shall, in relation to any Personal Data processed by the Contractor as Processor in connection with its obligations under this Contract (and in respect of which the Authority is the Controller):
- (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.

5.2.5 Subject to Clause 5.2.6 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed by the Contractor as Processor in connection with its obligations under this Contract (and in respect of which the Authority is the Controller), 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.

5.2.6 The Contractor's obligation to notify under Clause 5.2.5 shall include the provision of further information to the Authority in phases, as details become available.

5.2.7 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 by the Contractor as

Processor in connection with its obligations under this Contract (and in respect of which the Authority is the Controller) and any complaint, communication or request made under Clause 5.2.5 (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.

5.2.8 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.

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

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

5.2.11 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 5.2 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.

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

5.2.13 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).

5.2.14 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.

5.2.15 This Clause 5.2 shall apply during the Contract Period and indefinitely after its expiry.

5.3 Official Secrets Acts and Finance Act

The Contractor shall comply with the provisions of:

5.3.1 the Official Secrets Acts 1911 to 1989; and

5.3.2 section 182 of the Finance Act 1989.

5.4 Confidential Information

5.4.1 Except to the extent set out in this Clause 5.4 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.

5.4.2 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.

5.4.3 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 5.2.11. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this Clause 5.4.3.

5.4.4 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.

5.4.5 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.

5.4.6 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.

5.4.7 Clause 5.4.1 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.
- 5.4.8 Nothing in Clause 5.4.1 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 Clause 5.4.8(c) and Clause 5.4.8(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.
- 5.4.9 Nothing in Clause 5.4.1 to Clause 5.4.6 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.
- 5.4.10 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 5.4.6 is made aware of the Authority's obligations of confidentiality.
- 5.4.11 If the Contractor does not comply with Clause 5.4.1 to Clause 5.4.6 the Authority may terminate the Contract immediately on written notice to the Contractor.
- 5.4.12 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.
- 5.4.13 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 cooperate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

- 5.4.14 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 5.4.12.

5.5 Freedom of Information

- 5.5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- 5.5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:
- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
 - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
 - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.
- 5.5.3 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.

5.6 Publicity, Media and Official Enquiries

- 5.6.1 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.
- 5.6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with Clause 5.6.1.

5.7 Security

- 5.7.1 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.
- 5.7.2 The Authority shall give the Contractor upon request copies of its written security procedures.
- 5.7.3 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.
- 5.7.4 Notwithstanding Clause 5.7.3, 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.
- 5.7.5 Any cost arising out of the actions of the Parties taken in compliance with Clause 5.7.4 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).

5.8 Intellectual Property Rights

5.8.1 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 created by the Contractor under this Contract and furnished to or made available to the Contractor by or on behalf of the Authority (together with the Results, the **IP Materials**)

subject in each case to Clause 5.8.3(b), Clause 5.8.9 and Clause 5.10, 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.

5.8.2 Subject to Clause 5.8.3(b) and Clause 5.8.9, 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 Clause 5.8.1(a) and Clause 5.8.1(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 Clause 5.8.1(a) and Clause 5.8.1(b),

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

5.8.3 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) ensure that the Results and the Services do 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 5.8.3(c), 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.
- 5.8.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.
- 5.8.5 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).
- 5.8.6 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 5.8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in Clause 5.8.3(d)(i) and Clause 5.8.3(d)(ii).
- 5.8.7 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- 5.8.8 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 Clause 5.8.3(b) and Clause 7.2.7) 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 Clause 5.8.8(a) or Clause 5.8.8(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.

- 5.8.9 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).
- 5.8.10 Any technology tools (and their contents and outputs) that the Contractor shares with the Authority (unless otherwise agreed in writing):
- (a) remain the Contractor's property;
 - (b) are not deemed to be IP Materials or deliverables and may only be used by the Authority at the Authority's risk; and
 - (c) may not be provided to anyone else.

5.9 Audit

- 5.9.1 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.
- 5.9.2 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.
- 5.9.3 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.
- 5.9.4 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.

5.10 Tax Compliance

- 5.10.1 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.
- 5.10.2 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 tax liability, deduction, contribution, assessment or claim made by the relevant tax authorities against the Authority, relating to the Contractor's Staff.

6. CONTROL OF THE CONTRACT

6.1 Failure to meet Requirements

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.

6.2 Monitoring of Contract Performance

- 6.2.1 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.
- 6.2.2 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.
- 6.2.3 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.
- 6.2.4 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.
- 6.2.5 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.

- 6.2.6 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.
- 6.2.7 Agreed remedial actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract or failure to meet the Authority's expectations as communicated to the Contractor pursuant to this Contract) shall be implemented by the Contractor at no extra charge to the Authority.

6.3 Remedies for inadequate performance

- 6.3.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under Clause 8.2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - (c) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
 - (d) terminate the Contract in accordance with Clause 8.2
- 6.3.2 Without prejudice to its right under Clause 3.3 (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.
- 6.3.3 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.
- 6.3.4 If the Contractor has been notified of a failure in accordance with Clause 6.3.3 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 and proportionate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- 6.3.5 If the Contractor has been notified of a failure in accordance with Clause 6.3.3, 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 6.3.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- 6.3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with Clause 6.3.5 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.

6.4 Transfer and Sub-Contracting

- 6.4.1 Except where Clause 6.4.6 and Clause 6.4.7 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.
- 6.4.2 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.
- 6.4.3 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 5.9. 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.
- 6.4.4 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 6.4.4(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.
- 6.4.5 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.
- 6.4.6 Notwithstanding Clause 6.4.1, 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 3.2). Any assignment under this Clause 6.4.6 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 3.3;
- (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 Clause 6.4.7 and Clause 6.4.8.

6.4.7 If the Contractor assigns the right to receive the Price under Clause 6.4.6, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

6.4.8 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.

6.4.9 The provisions of Clause 3.2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

6.4.10 Subject to Clause 6.4.11, 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.

6.4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 6.4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

6.4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 6.4.10 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 Clause 8.1 and Clause 8.2 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.

6.4.13 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.

- 6.4.14 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.

6.5 Waiver

- 6.5.1 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.
- 6.5.2 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 1.4.
- 6.5.3 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.

6.6 Variation

- 6.6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this Clause 6.6.
- 6.6.2 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.
- 6.6.3 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 9.2.
- 6.6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.
- 6.6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via the E-tendering system, Atamis. On the date it communicates acceptance of the CCN in this way the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in Clause 7.2.
- 6.6.6 The provisions of Clause 6.6.4 and Clause 6.6.5 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.

6.7 Severability

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.

6.8 Remedies Cumulative

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.

6.9 Entire Agreement

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.

6.10 Counterparts

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.

7. LIABILITIES

7.1 Liability, Indemnity and Insurance

7.1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clauses Clause 4.1, 5.1, 5.2 and 5.4;
- (e) Schedule 8; or
- (f) any liability to the extent it cannot be limited or excluded by Law.

7.1.2 Subject to clauses 7.1.3 and 7.1.4, 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 in connection with this Contract.

- 7.1.3 Subject to Clause 7.1.1 the Contractor's total aggregate liability in each contract year in respect of the Contract shall not exceed £5m or 150% of the estimated yearly charges, whichever is greater, as defined within Schedule 2, payable to the Contractor.
- 7.1.4 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.
- 7.1.5 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.
- 7.1.6 Subject to clauses 7.1.1 and 7.1.5, 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.
- 7.1.7 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.
- 7.1.8 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.
- 7.1.9 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.
- 7.1.10 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.

- 7.1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 7.1.12 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.
- 7.1.13 The Parties agree that the indemnities given by the Contractor under Clauses 7.1.2 and 8.8.4 are subject to:
- (a) the limits and exclusions on liability under Clauses 7.1.3 and 7.1.6;
 - (b) the Authority taking all reasonable steps to mitigate its losses; and
 - (c) in the case of the indemnity in Clause 8.8.4, the Authority giving the Contractor control of the defence and settlement of the claim and not making any admission which may be prejudicial to any litigation or negotiation of the claim.

7.2 Warranties and Representations

The Contractor warrants and represents on the Commencement Date and for the Contract Period that:

- 7.2.1 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;
- 7.2.2 in entering the Contract it has not committed any fraud;
- 7.2.3 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;
- 7.2.4 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;
- 7.2.5 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;
- 7.2.6 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;
- 7.2.7 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;
- 7.2.8 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;
- 7.2.9 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:

- (a) 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;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) 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;
- 7.2.10 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
- 7.2.11 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.

7.3 Force Majeure

- 7.3.1 Subject to the remaining provisions of this Clause 7.3, a Party may claim relief under this Clause 7.3 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.
- 7.3.2 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.
- 7.3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this Clause 7.3 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.
- 7.3.4 Subject to Clause 7.3.5, 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.
- 7.3.5 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.
- 7.3.6 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 8.2.1 or 8.2.3; 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.
- 7.3.7 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.
- 7.3.8 Relief from liability for the Affected Party under this Clause 7.3 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 7.3.7.

8. DEFAULT, DISRUPTION AND TERMINATION

8.1 Termination on Insolvency and Change of Control

- 8.1.1 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 Clause 8.1.1(a)-(g) occurs under the law of any other jurisdiction.

- 8.1.2 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 8.1.2(a) to (g) occurs under the law of any other jurisdiction.
- 8.1.3 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.
- 8.1.4 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;
 - (iv) any event similar to those listed in Clause 8.1.4(a) to Clause 8.1.4(f) occurs under the law of any other jurisdiction

8.1.5 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 1 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 Clause 8.1.5(a) to Clause 8.1.5(h) occurs under the law of any other jurisdiction.

8.1.6 References to the Insolvency Act 1986 in Clause 8.1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

8.2 Termination on Default

8.2.1 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.

8.2.2 If, through any Default of the Contractor, Contractor Backed Up Authority 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.

8.2.3 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 3.3.1 or to a Force Majeure Event.

8.3 Termination on Notice

The Authority may terminate the Contract at any time by giving 90 days' notice to the Contractor.

8.4 Other Termination Grounds

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

- 8.4.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- 8.4.2 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;
- 8.4.3 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
- 8.4.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

8.5 Consequences of Expiry or Termination

- 8.5.1 If the Authority terminates the Contract under Clause 8.2 or Clause 8.4 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.
- 8.5.2 If Contract is terminated under Clause 8.2 or Clause 8.4 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.

- 8.5.3 If the Authority terminates the Contract under Clause 8.3 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.
- 8.5.4 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 Clause 3.2, Clause 3.3, Clause 4.1, Clause 5.2, Clause 5.3, Clause 5.4, Clause 5.5, Clause 5.8, Clause 5.9, Clause 6.9, Clause 7.1, Clause 8.5, Clause 8.7 and Clause 9.1.

8.6 Disruption

- 8.6.1 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.
- 8.6.2 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.
- 8.6.3 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.
- 8.6.4 If the Contractor's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- 8.6.5 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.

8.7 Recovery upon Termination

- 8.7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
 - (c) immediately vacate any Authority Premises occupied by the Contractor;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for

the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.

- 8.7.2 If the Contractor does not comply with Clause 8.7.1(a) and Clause 8.7.1(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.

8.8 Retendering and Handover

- 8.8.1 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.
- 8.8.2 The Authority shall take all necessary precautions to ensure that the information referred to in Clause 8.8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- 8.8.3 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.
- 8.8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Clause 8.8.1.
- 8.8.5 The Contractor shall allow access to agreed Contractor office 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.
- 8.8.6 If access is required to the Contractor's Premises for the purposes of Clause 8.8.5, 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.
- 8.8.7 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.
- 8.8.8 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 requested 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.
- 8.8.9 The Contractor may retain records of its performance of the Services, and copies of such materials that are necessary to comply with its legal and regulatory obligations, which may extend for at least seven years after the end of the Contract Period.

8.9 Exit Management

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 8.10.

8.10 Exit Procedures

- 8.10.1 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.
- 8.10.2 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.
- 8.10.3 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.
- 8.10.4 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.

8.11 Knowledge Retention

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.

9. DISPUTES AND LAW

9.1 Governing Law and Jurisdiction

Subject to the provisions of Clause 9.2 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.

9.2 Dispute Resolution

- 9.2.1 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.

- 9.2.2 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.
- 9.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 either Party may refer it to mediation pursuant to the procedure set out in Clause 9.2.5.
- 9.2.4 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.
- 9.2.5 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 9.2.6
- 9.2.6 Subject to Clause 9.2.2, the Parties shall not institute court proceedings until the procedures set out in Clause 9.2.1 and Clause 9.2.3 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 9.2.7;
 - (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 9.2.7; and

- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with Clause 9.2.7, to which the Authority may consent as it sees fit.

9.2.7 If any arbitration proceedings are commenced pursuant to Clause 9.2.6,

- (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 Clause 9.2.7(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 9.2.7(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

SCHEDULE 2

Pricing

Part 1

The Price payable to the Contractor by the Authority is set out within this Schedule 2 the Price payable to the Contractor is comprised of 4 (FOUR) elements:

1. Fixed Priced Element;
2. The actual cost incurred of Applications processed, independent assessments and due diligence review as defined in Schedule 1 Specification of Requirement;
3. Schedule of Rates Element for delivery of the Supplementary Activity, as defined by Section 4 of Schedule 1 Specification of Requirement; and
4. The sum of the approved grant funding payable to Delivery Partners.

The Contractor will present a consolidated quarterly invoice to the Authority, The Contractor must provide full backing data with the consolidated quarterly invoice to enable the Authority to verify the Contractors invoice.

5. FIXED PRICED ELEMENT

The Authority will pay the Contractor the following sums in equal quarterly instalments in arrears:

Year	Price
Year 1 (ONE)	
Year 2 (TWO),	
Year 3 (THREE),	Option Year subject to extension
Year 4 (FOUR),	Option Year subject to extension
Year 5 (FIVE),	Option Year subject to extension
Year 6 (SIX).	Option Year subject to extension

6. DUE DILIGENCE REVIEWS

- 6.1 As defined by Schedule 1 Specification of Requirement, the Authority will meet the actual costs incurred to undertake any Due Diligence Reviews.
- 6.2 Following satisfactory completion of each Due Diligence Review, the Authority will make payment at the following quarterly invoice.

7. SCHEDULE OF RATES ELEMENT

- 7.1 The Schedule of Rates will apply to additional activity carried out by the Contractor in delivery of the Supplementary Activity as defined by section 4 of Schedule 1 Specification of Requirement.
- 7.2 The rate below will be a ceiling but can vary between individuals. It is not expected that all individuals will charge at the maximum day rates stated.

8. JOB FAMILY DESCRIPTIONS:

Job Family	Description
Programme leadership	This job family covers positions responsible for leading a whole programme. Responsibilities will include setting up strategic directions to the programme team and interacting with FCDO leads and any identified stakeholder (Governments/Industry Institutions/Ministries etc.). These positions are very often short term, and typically include positions such as Project Directors, Chair of Groups, CEOs, team leaders, etc.
Programme management	<p>This job family covers middle-management positions responsible for the execution/delivery of programmes and managing their related teams. The roles require effective coordination of the programme's projects and management of their inter-dependencies including Risk/Financial and</p> <p>Contract Management control. It typically includes positions such as programme managers, finance managers, office managers to a certain extent and junior/graduate advisers at lower pay scales. These positions are long term roles.</p>
Technical advisory/experts	are recognised subject matter experts who are appropriately qualified in their fields of knowledge and hired to provide detailed information and advice to the wider team, in the successful delivery of the programme. They can be short and/or long-term roles. This job family relates to specific technical skills related to individual programme themes, such as advisers, academics, web developers, report authors.
Support and Admin	<p>This job family covers all positions relating to the programme support and administration. Program assistants provide administrative support in a variety of office settings (incl. "in country" and "back office"). General administrative duties for program assistants are often clerical in nature. They gather information, control documents and maintain records, schedule meetings, prepare necessary materials and compile reports. Duties can also involve computer work i.e. logging data, creating charts and updating websites.</p> <p>Program support duties include gathering information from program team members, reporting or investigating concerns and performing research. Program assistants also keep program plans up to date, allowing program managers to get a clear view of a programme current status. Program assistants also develop methods to coordinate and manage data and reports. These positions are mostly long term and include office support staff.</p>

9. ROLE LEVELS FOR PROGRAMME LEADERSHIP, PROGRAMME MANAGEMENT AND TECHNICAL ADVISORY/EXPERT ADVANCED:

Level	Description
Expert	Internationally recognised expert in their field with exceptional knowledge of the subject area and extensive sectoral and / or regional expertise. Will have outstanding capabilities to conceptualise, design, and deliver complex interventions in a timely fashion. It is expected that an advanced individual will have a minimum of 15 years professional experience relevant to their field.
Standard	Exceptional knowledge of the subject area with extensive sectoral and / or regional expertise and proven ability to translate theory into practice. Will have proven capability to undertake team leader functions and provide quality assurance of the work of other team members. It is expected that a standard individual will have a minimum of 10 years professional experience relevant to their field.
Entry	Thorough theoretical knowledge of the subject area with proven ability to translate theory into practice. Will have proven capability to provide quality assurance of the work of other team members. Will have recognised, independently verified qualifications, i.e. through professional body membership. It is expected that an entry level individual will have a minimum of 5 years professional experience relevant to their field.

10. ROLE LEVELS FOR SUPPORT AND ADMIN:

Level	Description
Expert	Exceptional knowledge of the subject area with extensive sectoral and / or regional expertise and proven ability to translate theory into practice. Will have proven capability to undertake team leader functions and provide quality assurance of the work of other team members. It is expected that an advanced individual will have a minimum of 10 years professional experience relevant to their field.
Standard	Thorough theoretical knowledge of the subject area with proven ability to translate theory into practice. Will have proven capability to provide quality assurance of the work of other team members. Where relevant, will have recognised, independently verified qualifications, i.e. through professional body membership. It is expected that a standard level individual will have a minimum of 5 years professional experience relevant to their field.
Entry	Strong theoretical knowledge of the subject area with proven ability to translate theory into practice together with (where relevant) recognised, independently verified qualifications, i.e. through professional body membership. It is expected that an entry level individual will have a minimum of 2 years professional experience relevant to their field.

11. MAXIMUM DAY RATES (SUBJECT TO CONTRACT PRICE ADJUSTMENT):

Job Family	Level	Maximum Day Rate exc. VAT
Programme Leadership	Expert	██████
	Standard	██████

Job Family	Level	Maximum Day Rate exc. VAT
	Entry	██████
Programme Management	Expert	██████
	Standard	██████
	Entry	██████
Technical Advisory/Expert	Expert	██████
	Standard	██████
	Entry	██████
Support and Administration	Expert	██████
	Standard	██████
	Entry	██████

Part 2

Key Performance Indicators

The Contractor's performance will be monitored against the following suite of KPIs.

Workstream 1: Core Design & Development of the Fund (KPI value 20%)

KPI 1: Fund process and tools are delivered in full and on time, enabling the successful launch of the first funding round

- All process and tools outlined in workstream 1, and as detailed throughout the Specification of Requirements, are finalised and delivered on time and ahead of Fund launch.

Acceptable Standard: All requirements outlined in Workstream 1 and detailed throughout the Specification of Requirements are created within the initial set-up period and completed and in place by the end of the formally agreed set-up period. This allows the first funding round to launch on time, fully utilising all resources and process outlined across each workstream. The establishment of these processes and resources causes no delay to the start of the Fund.

Reporting: Regular discussions with the Authority throughout the set-up period will be used to ensure that the Grant Administrator timelines remain on track. The Grant Administrator will inform if there is a delay with the development of any process or resource that may either cause the launch date to be postponed or for a temporary solution to be put in place.

- All forms of data relating to the Fund, including personal details relating to Delivery Partners and Applicants, are stored in a safe and secure way, and are fully backed up.

Acceptable Standard: All data collected throughout the duration of the programme is stored in a safe and secure way that is fully in line with GDPR and Information Security measures to ensure that all data associated with the processes below is held securely and shared in accordance with clause E2, Authority's Conditions of Contract. The data is available to be provided to the Authority within 24 hours of a request being submitted to the Grant Administrator. All data is fully backed up, including through a secure off-site back-up.

Reporting: The Authority will conduct ad-hoc audit checks through requests for information and evidence of security compliance.

Workstream 2: Supporting Projects and Applications (KPI value 10%)

KPI 2: High Delivery Partner performance and strong applications are enabled by adaptive and tailored support provided by the Grant Administrator

- a. Requests from Applicants and Delivery Partners are efficiently acknowledged and actioned.

Acceptable Standard: Questions and requests are all actioned and responded to within five working days. Responses are dealt with to an acceptable quality as deemed by the Authority.

Reporting: The Grant Administrator will be required to keep a log of all queries and requests for support from Applicants and Delivery Partners. This will be reviewed by the Authority. Applicants and Delivery Partners will be asked to provide feedback on the quality of support they are receiving, which will be logged and reviewed by the Authority.

- b. The guidance for Applicants that is produced is clear and of a high quality, encouraging high quality applications from smaller organisations.

Acceptable Standard: There is growth in the number of high-quality fund applications being submitted for the smaller pot size. High quality applications are defined as applications that make it through the first Expert Committee sift for evaluation and fund approval.

Reporting: The number of high-quality small pot size applications grows. This will be measured by the Grant Administrator.

- c. The feedback provided to unsuccessful Applicants is clear and of a high quality, leading to previously unsuccessful applicants reapplying with stronger applications.

Acceptable Standard: Unsuccessful Applicants are encouraged to reapply as a result of a transparent of assessment process and the provision of detailed, constructive feedback. After the first year, there is growth in the number of previously unsuccessful organisations submitting successful applications.

Reporting: The number of successful applications from previously unsuccessful organisations grows. This will be measured by the Grant Administrator.

Workstream 3: Annual Applicant Rounds: The Fund Cycle (KPI value 20%)

KPI 3: Grant Administrator will be responsible for developing their own management and administration performance Key Performance Indicator

The KPI must be challenging, measurable and specifically relate the requirements in the specification listed as part of Workstream 3 (Annual Applicant Rounds: The Fund Cycle).

The KPI must include a definition of the Acceptable Standard as well as the way in which the Grant Administrator will report to the Authority on this.

The KPI must be agreed with the Authority before the end of the agreed Workstream 1 set-up period.

Workstream 4: The Expert Committee (KPI value 10%)

KPI 4: The Expert Committee is efficiently supported to ensure quality application evaluation and approvals

- a. The sift & evaluation pack, guidance, and instructions for the Expert Committee are provided on time and are of high quality.

Acceptable Standard: The Expert Committee are provided with clear sift & evaluation documents, guidance, and instruction, requiring no substantive support to access, evaluate and return scored applications on time.

Reporting: The sift and evaluation pack.

- b. The secretariat function for the Expert Committee is delivered to a high standard, including briefings, and facilitating sift meetings to allow the Expert Committee to have informed discussions and report robust recommendations to the BPF Programme Board.

Acceptable Standard: Secretariat function of the Expert Committee informs and accurately reports upon discussions and recommendations put forward on successful applications to the BPF Programme Board.

Reporting: The report of the Expert Committee evaluations, feedback, and recommendations. Expert Committee members will also be asked annually to provide a satisfaction rating based on the secretariat service provided.

Workstream 5: Day to Day Project Management (KPI value 10%)

KPI 5: Management of projects, and their finances, are delivered to a high standard

- a. Funds are disbursed to Delivery Partners within the agreed timeframe.

Acceptable Standard: At least 90% of all disbursements to Delivery Partners are completed on time, with the money being issues from the escrow account to the account of the Delivery Partner within five working days of that quarter's payment date.

Reporting: The Grant Administrator will be required to keep a log of all payments made, including dates.

- b. Financial forecasts accurately match the monthly expenditure needs.

Acceptable Standard: The financial forecasts are accurate and reliable, delivered on time to the Authority, with variation from initial forecast less than 10%.

Reporting: The Grant Administrator will be required to submit monthly financial forecasts to the Authority.

- c. Fraud, corruption, and safeguarding issues are identified and reported.

Acceptable Standard: All fraud, corruption and safeguarding cases are formally reported to the Authority within two working days of notification to Grant Administrator by the Delivery Partner or whistleblower. Nil response returns should be provided to the Authority where appropriate.

Reporting: The Authority will conduct ad-hoc audit checks.

Workstream 6: New and Live Projects (KPI value 10%)

KPI 6: The Fund is managed in an agile and adaptive way, responding to risks and opportunities to strengthen performance

- a. The Grant Administrator shall look to develop, maintain, and improve efficiency, quality and, where possible, provide a reduction in charges to enhance the overall delivery of the awarded Contract.

Acceptable Standard: The Grant Administrator will make regular evidence-based recommendations to the Authority on ways that the fund could be adapted to improve its performance.

Reporting: The Grant Administrator will be required to make regular improvement recommendations to the Authority.

- b. Management Information (MI) tools including, registers, trackers and automated reports, will be created and used to support adaptive management of the fund.

Acceptable Standard: MI tools are fully utilised and are updated regularly. The Grant Administrator will use these to look across projects and analyse reports and data from them, and will report this information as well as recommendations for improvements, to the Authority.

Reporting: The Grant Administrator will be required to make regular improvement recommendations to the Authority.

Workstream 7: Monitoring, Evaluation and Learning (KPI value 10%)

KPI 7: The performance of projects and the Fund is strengthened by adapting and responding to recommendations arising from feedback, projects and annual reviews

- a. Project reporting and annual reviews are completed and actively used to strengthen performance.

Acceptable Standard: Projects are well supported in completing and understanding the outcomes of their reporting requirements and annual reviews. The Grant Administrator actively engages and adaptively supports Delivery Partners to ensure at least 80% of the recommendations made in annual reviews are completed in the agreed timeframe.

Reporting: The project annual review tracker.

- b. Programme annual reviews are completed on time and are actively used to strengthen the performance of the Fund as a whole.

Acceptable Standard: Implementation of annual review recommendations is delivered efficiently, meeting all agreed milestones.

Reporting: The programme annual review tracker.

Workstream 8: Communications and Promotion of the Fund (KPI value 10%)

KPI 8: International awareness and understanding of the fund is strengthened, and the opportunity to apply reaches new prospective Applicants

- a. An effective communication and promotion plan is developed that raises profile of the fund and leads to an increase in high applications from a wider range of potential Delivery Partners.

Acceptable Standard: There is growth in the number of high-quality fund applications being submitted for the smaller pot size from new organisations that haven't submitted previous applications to the Fund. High quality applications are defined as applications that make it through to the Expert Committee sift for evaluation and fund approval.

- b. The Communication and Promotion Plan for next (rolling) twelve months is shared with Authority on time and is of a high quality.

Reporting: The Grant Administrator will be required to submit the latest Communication and Promotion Plan to the Authority on a monthly basis. The number of high-quality applications from new organisations will be measured by the Grant Administrator.

- c. Engagement with the programme online grows and promotional activity through online platforms reaches a global audience.

Acceptable Standard: Strong upward trend (as defined by the Authority) in website statistics and engagement with the fund on social media platforms (unique and returning visitors, time spent, downloads, country of origin, subscriptions), representing broad readership (geographic and sectoral).

Reporting: A communications dashboard will record promotional statistics.

SCHEDULE 3
Change Control

Contract Change Note	
CCN Number	[x]
Contract Reference Number and Title	[x]
Variation Title	[x]
Number of Pages	[x]

WHEREAS the Contractor and the Authority entered into a Contract for the provision of a Fund Manager to support the Blue Planet Fund dated [●] (the **Original Contract**) and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

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

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

SCHEDULE 4

Commercially Sensitive Information

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 5.5.1 (Freedom of Information).
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.
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.
4. Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

Commercially Sensitive Information		
Contractor's Commercially Sensitive Information	Date	Duration of Confidentiality

SCHEDULE 5

Processing, Personal Data and Data Subjects

1. This Schedule shall be completed by the Authority, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
2. The contact details of the Authority Data Protection Officer are: [REDACTED]
3. The contact details of the Contractor Data Protection Officer are: [REDACTED]
[REDACTED]
4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.

Data Processing Descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause 5.2.1.
Subject matter of the processing	<p>The Independent Evaluator will undertake field visits to engage with stakeholders and beneficiaries to provide opportunities for input and feedback to the evaluation. The Contractor and the Independent Evaluator will process this information.</p> <p>The Contractor may also undertake any field visits and may collect personal data of stakeholders and beneficiaries, as well as Delivery Partners and Delivery Partners which could be processed by the Contractor.</p>
Duration of the processing	The duration of the Contract
Nature and purposes of the processing	The nature of the processing includes collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, and use. Personal data will be anonymised prior to dissemination or otherwise making available e.g. on the Biodiverse Landscapes Fund learning platform/website. This platform/website will optimise lessons learnt and share best practice, that can be accessible to any interested party including members of the public. The Authority will approve all uploads to the BPF platform/website
Type of Personal Data	Name, gender, ethnicity, disability, religion, address/location, geolocation related data, organisations they belong to, opinions on interventions, political and thematic opinions, income, health, sexual orientation.
Categories of Data Subject	Stakeholders and beneficiaries impacted by programme interventions including government officials.

Data Processing Descriptor	Narrative
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The Contractor will destroy all data at the end of the Contract and return to the Authority.</p>

SCHEDULE 6

Non Disclosure Agreement

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

BETWEEN:

- (1) NIRAS Group UK (the **Contractor**).
- (2) [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 services to the Authority in an agreement dated [●] (**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 services to the Authority in support of or in connection with the services to be provided by the Contractor under the Contract.
- (C) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.
- (D) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

1.1 In this Agreement:

Confidential Information 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.

Law

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.

- 1.2 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.
- 1.3 Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
- 1.4 Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
- 1.5 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).

2. CONFIDENTIALITY

- 2.1 The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor's delivery of the services under the Contract without the prior written permission of the Authority.
- 2.2 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.
- 2.3 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.
- 2.4 The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.

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

- 2.9.1 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;
- 2.9.2 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;
- 2.9.3 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;
- 2.9.4 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.

- 2.10 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.
- 2.11 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).
- 2.12 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.
- 2.13 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.
- 2.14 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.
- 2.15 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.

3. GENERAL

- 3.1 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.
- 3.2 No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.

- 3.3 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.
- 3.4 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.
- 3.5 This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
- 3.6 The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

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

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

SIGNED by the Disclosee:

SCHEDULE 7

Contractor and Third Party Software

1. 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:

2. THIRD PARTY SOFTWARE

For the purposes of this Schedule 7, **Third Party Software** means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 7 The Third Party Software shall consist of the following items:

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

SCHEDULE 8

Security Requirements, Policy and Plan Interpretation and Definition

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

Breach of Security	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	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	software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 7.
ICT	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	the Contractor's security plan prepared pursuant to Paragraph 3 of Schedule 8 an outline of which is set out in an Appendix to this Schedule 8.
Software	Specially Written Software, Contractor Software and Third Party Software.
Specially Written Software	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	software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 7.

1. INTRODUCTION

This Schedule 8 covers:

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

2. PRINCIPLES OF SECURITY

- 2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.
- 2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
 - 2.2.1 is in accordance with Good Industry Practice and Law;
 - 2.2.2 complies with Security Policy Framework; and
 - 2.2.3 meets any specific security threats to the Contractor System.
- 2.3 Without limiting Paragraph 2.2 of Schedule 8, 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 endeavours 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 9.2. No approval to be given by the Authority pursuant to this Paragraph 3.4 of Schedule 8 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 Paragraph 3.1 of Schedule 8 to Paragraph 3.4 of Schedule 8 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 1SQ/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 Paragraph 5.2 of Schedule 8 or Paragraph 5.3 of Schedule 8 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 of Schedule 8, 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 of Schedule 8, 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 **Error! Reference source not found.**
- 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>

SCHEDULE 9

Roles and Responsibilities

Blue Planet Fund (BPF) – Contractor Roles and Responsibilities

This document defines the broader roles and responsibilities of the Authority and the Contractor to ensure that both parties have clear expectations of accountability and their respective involvement in the management of the BPF.

Selection

Grant agreement terms

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> The Authority is responsible for providing grant agreement templates to the Contractor which will be used to draft the grant agreements with each Delivery Partner (DP). The Authority is responsible for approving the draft grant agreements with each DP once these have been drafted by the Contractor. 	<ul style="list-style-type: none"> The Contractor is responsible for drafting grant agreements with each DP using the templates provided by the Authority. This will involve selecting relevant options from the grant agreement template depending on the specific grant being awarded and the Contractor will not change the terms of the grant agreement templates. The Contractor must not award any grant agreement without the express and written approval of the Authority and must not vary a grant agreement without the express and written approval of the Authority.

Delivery Partner Reviews

Roles and responsibilities	
The Authority	The Contractor (assuming the Authority approves the Contractor to conduct DPRs)
<ul style="list-style-type: none"> Following selection of preferred DPs following the grant competitions, the Authority will determine whether a full or light touch DPR is carried out. The Authority will determine which areas of the assessment pillars in Schedule 1 Part 1: The Specification Annex 5: Due Diligence Assessments – Delivery Partner Review (DPR) Section 4 Assessment Pillars will be included in the DPRs. Following completion of the DPR report by either the Contractor or a separate contractor, the Authority will determine whether an DP is awarded a grant. 	<ul style="list-style-type: none"> The Contractor will conduct DPRs on DPs in line with the scope determined by the Authority. The Contractor will produce a DPR report to be sent to the Authority which will include all detailed findings covering each of the assessment pillars determined by the Authority such that Authority is able to determine whether DPs have met the required standard for each pillar and potentially to identify which areas require further action to meet the required standard. The Contractor will include in the DPR report its own assessment of the strengths and weaknesses of the DP for each pillar.

Award Decisions

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> Following the grant competition evaluations, the Authority will approve grant award reports for the preferred DPs once drafted by the Contractor. The Authority will review the DPR report on preferred DPs and approve awarding a grant accordingly. The Authority will approve grant agreements once these have been drafted by the Contractor in line with the templates provided by the Authority. 	<ul style="list-style-type: none"> Following the grant competition evaluations, the Contractor will draft a grant award report summarising the grant competition and outlining the preferred DP and submit this to the Authority for approval. If approved by the Authority to conduct DPRs on the preferred DPs, the Contractor will conduct these DPRs and present reports to the Authority in line with the Schedule 1 Part 1: The Specification Annex 5: Due Diligence Assessments – Delivery Partner Review (DPR). Once the Authority has approved awarding grants to the preferred DPs, the Contractor will draft grant agreements in line with the templates provided by the Authority and submit these to the Authority for approval. Once the Authority has approved the draft grant agreements, the Contractor will sign the grant agreements with the DPs.

Special Conditions

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> The Authority is responsible for approving the draft grant agreements with each DP once these have been drafted by the Contractor. 	<ul style="list-style-type: none"> The Contractor must not award any grant agreement without the express and written approval of the Authority and must not vary a grant agreement without the express and written approval of the Authority.

Performance Management

Finance

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> The Authority has responsibility for approval of any advance payment requests submitted by the Contractor from Delivery Partners (and only in exceptional circumstances). Any withdrawals by the Contractor from the Escrow Account must be first approved by the Authority The Authority is responsible for approving any exceptions to the Grant disbursement process Funding will only be released into the Escrow account on the Authority's approval of the Claim Assurance Statement, provided by the Contractor 	<ul style="list-style-type: none"> The Contractor must provide the Authority with a breakdown of claims each quarter along with a Claim Assurance Statement to provide assurance that the Contractor has checked all claims are valid and legitimate The Contractor will be responsible for clawing back any funds which need returning to the Authority in the event of termination or suspension of grants Ensuring Delivery Partners disburse funds to downstream delivery partners in line with the terms of the grant Agreement Administering payments to the Delivery Partners on the Authority's approval

Delivery Partner Performance Reporting

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> The Authority is responsible for decision making with respect to recommended actions where grants are failing to perform adequately. Approving a Delivery Partner Remedial Action Plan which will be developed by the Contractor 	<ul style="list-style-type: none"> The Contractor is responsible for managing Grant Agreements with Delivery Partners and proactively monitoring the performance of Delivery Partners The Contractor will conduct project audits and take required action, including recommending to the Authority the suspension or termination of any grants that fail to perform adequately Adaptive programming decisions made by the Authority will be disseminated by the Contractor to the Delivery Partners In the event a Delivery Partner is underperforming, a Remedial Action Plan will be developed by the Contractor for approval by the Authority

Activities

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> Approving the methodologies for monitoring, evaluation and learning activities Approving quarterly and annual progress reports Approving adaptive programming decisions 	<ul style="list-style-type: none"> Ensuring appropriate collection and quality of data, and the implementation of sufficient monitoring, evaluation, and learning activities, in line with Schedule 1 Part 1: The Specification Section 3 Core Deliverable 4 Monitoring, Evaluation and Learning, to ensure the

	effective delivery of BLF grants in line with grant agreements with DPs and to provide adaptive programming recommendations to assist the Authority in making adaptive programming decisions.
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Risk Management

Financing

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> The Authority is responsible for reviewing the Assurance Statement (as in Annex 22 of the Contract) produced by the Contractor of fund claims made by Delivery Partners before approving or rejecting the funding claim (Contract, Schedule 1, 3.47). The Authority is responsible for providing funding claim approvals each quarter to those claims that are evidenced as valid and legitimate and supported by an Assurance Statement. Once the claim is approved, the Authority will be responsible for issuing funding to the Contractor's client account for onwards payment (Contract, Schedule 1, 3.47). The Authority is responsible for approving advance payment requests submitted by the Contractor from Delivery Partners (only in exceptional circumstances). 	<ul style="list-style-type: none"> The Contractor is responsible for providing the Authority with a breakdown of claims received from Delivery Partners in each landscape and a total figure for payment alongside an Assurance Statement (as in Annex 22 of the Contract) that shows the Contractor has checked the claims to be valid and legitimate (Contract, Schedule 1, 3.46). Upon receiving funding for approved claims, the Contractor will be responsible for disbursing funds within 5 working days to Delivery Partners (Contract, Schedule 1, 3.48).

Grant Agreement Terminations

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> The Authority is responsible for terminating grant agreements when necessary. Where the Authority determine that an Event of Default has occurred, the Authority must notify the Delivery Partner to that effect in writing, setting out any relevant details, of the failure to comply with the conditions of the grant agreement or pertaining the Event of Default, and details of any action that 	<ul style="list-style-type: none"> The Contractor is not responsible for terminating Grant Agreements. The Contractor is responsible for alerting the Authority as to any Event of Default, listed within the Grant Agreement, that the Contractor becomes aware of having occurred or that may have occurred, for the information of the Authority to determine whether termination of the Grant Agreement is necessary.

the Authority intends to take or has taken (Grant Agreement, 27.1-27.19).	
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Independent Evaluator Performance

Roles and responsibilities	
The Authority	The Contractor
<ul style="list-style-type: none"> The Authority is responsible for managing the overarching contract between the Independent Evaluator and the Authority. If the Authority determines that the performance of the Independent Evaluator is unsatisfactory, the Authority will determine the next steps in managing the overarching contract between the Authority and the Independent Evaluator. 	<ul style="list-style-type: none"> The Contractor is responsible for alerting the Authority as to any issues with the performance of the Independent Evaluator, for the information of the Authority to determine the next steps in managing the overarching contract.