



Department
for Environment
Food & Rural Affairs

Conditions of Contracts

**ECM_65535 - Framework for a Radioactive Waste
Quality Checking Service**

September 2022

Contents

A GENERAL PROVISIONS.....3

B. THE SERVICES.....13

C PAYMENT.....17

D. STATUTORY OBLIGATIONS20

E PROTECTION OF INFORMATION24

F. CONTROL OF THE CONTRACT36

G LIABILITIES42

H DEFAULT, DISRUPTION AND TERMINATION46

I DISPUTES AND LAW.....54

A GENERAL PROVISIONS

A1 Definitions and Interpretation

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

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

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

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

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

“Authority Data” means:

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

(b) any Personal Data for which the Authority is the Controller as further described in Schedule 5.

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

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

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

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

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

“Commencement Date” means the date of commencement of the service, which is 1st October 2022

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

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

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

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

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

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

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

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

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

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7.

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

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

“Controller” has the meaning given in the GDPR.

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

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

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

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

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

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

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

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

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

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

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA 2018” means the Data Protection Act 2018.

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

“End Date” means the date the service is expected to end, in this case 30th September 2026, unless the option periods are invoked.

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

“Extension” means the Option Period the customer has included in the period of the Contract. The Contract may, subject to satisfactory contractor performance, be extended for up to an additional 3 years, in annual increments

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

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

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

“General Anti-Abuse Rule” means:

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

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would

reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

“HMRC” means HM Revenue & Customs.

“ICT Environment” means the Authority System and the Contractor System.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the End Date.

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

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

“Key Personnel” mean those persons named in the Specification as key personnel.

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

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

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

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

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

(a) a substantial portion of the Contract; or

(b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

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

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

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

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

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

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

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

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

“Processor” has the meaning given in the GDPR.

“Prohibited Act” means:

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

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

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

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

(c) an offence:

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

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

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

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

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

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

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

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

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

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

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

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

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

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

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

a) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or

b) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services.

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

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

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

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

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

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

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

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

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

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

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

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7.

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

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

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

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

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

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

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

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated, re-enacted from time to time and in the case of EU Law as is it retained under the European Union (Withdrawal) Act 2018 as applicable in England and Wales from time to time; and

(h) references to the Contract are references to the Contract as amended from time to time.

A2 The Authority's Obligations

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

A3 Contractor's Status

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

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

A4 Notices and Communications

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

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

(a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and

(b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

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

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

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

(a) For the Authority:

[REDACTED]

[REDACTED]

[REDACTED]

(b) For the Contractor:

[REDACTED]

[REDACTED]

[REDACTED]

A5 Mistakes in Information

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

A6 Conflicts of Interest

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

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

B. THE SERVICES

B1 Specification

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

B2 Provision and Removal of Equipment

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

B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.

B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.

B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.

B2.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

B2.8 Within 20 Working Days following the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.

B3 Delivery

B3.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that all Staff supplying the Services do so with all reasonable due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.

B3.3 N/A

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

B3.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any installation in accordance with clause B10.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

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

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

B4 Key Personnel

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

B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to Approval, which shall not be unreasonably withheld. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 N/A

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

B5 Contractor's Staff

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

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

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

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

B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final.

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

B6 Inspection of Premises

B6.1 N/A

B7 Licence to Occupy Premises

N/A

B8 Property

B8.1 All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.

B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

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

B9 Offers of Employment

B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

B10 Employment Provisions

TUPE not applicable for this requirement

C PAYMENT

C1 Price

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

C2 Payment and VAT

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

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

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

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

C2.5 Valid Invoices shall include:

- (a) the Contractor's full name, address and title of the Contract;
- (b) the Purchase Order number

and, if requested by the Authority:

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

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

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

C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.

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

C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.

C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises

then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.

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

C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).

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

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

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

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

C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address: APinvoices-ENV-U@gov.sscl.com (the Authority's preferred option); or SSCL AP, Environment Agency – Payments Section, PO Box 797, Newport Gwent, NP10 8FZ.

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

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

C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

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

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

C3 Recovery of Sums Due

C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract.

C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price during Extension

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

D. STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

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

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

D1.2 Each Party shall not during the Contract Period:

- (a) commit a Prohibited Act; and/or

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

D1.3 Each party shall, during the Contract Period:

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

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

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

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

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

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

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

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

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

(b) immediately terminate the Contract.

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

D2 Discrimination

D2.1 Each Party shall:

- (a) perform its obligations under the Contract in accordance with:
 - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;
 - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

D3 Rights of Third Parties

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

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

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

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

D4 Health and Safety

D4.1 Each Party shall perform its obligations under the Contract in accordance with:

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

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

D5 Environmental Requirements

D5.1 Each Party shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("Environmental Policies") which require the Authority through its procurement and management of suppliers:

- (a) conserve energy, water, wood, paper and other resources and reduce waste;
- (b) phase out the use of ozone depleting substances;
- (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
- (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
- (e) reduce fuel emissions wherever possible;
- (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
- (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

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

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

unless given written permission by the Authority to do so.

D5.3 Each Party shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

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

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

D5.6 Each Party shall:

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

D6 Timber and Wood Derived Products

N/A

E PROTECTION OF INFORMATION

E1 Authority Data

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

E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

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

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

E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.

E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.

E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or

(b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E2 Data Protection

E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor of the Authority Data (defined in Schedule 5) and Contractor is the Controller and the Authority is the Processor of the Contractor Data (defined in Schedule 5) unless otherwise specified in Schedule 5. The only processing that the Parties are authorised to do is listed in Schedule 5 by the Controller and may not be determined by the Processor. The obligations in clause E2 expressed as applying to the Controller in respect of processing the Authority Data shall apply equally to the Authority when processing the Contractor Data..

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

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

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

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

- (a) process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
- (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
 - (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

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

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

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

E2.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

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

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

- (a) the Authority determines that the processing is not occasional;

(b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

(c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

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

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

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

(a) notify the Authority in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and

(d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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

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

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

E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry in respect of any Personal Data retained under clause E2.4(e).

E3 Official Secrets Acts and Finance Act

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

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989.

E4 Confidential Information

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

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

E4.3 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6 and, if applicable, incorporating the requirements of clause E2.11. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

E4.4 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

E4.5 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.6 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E4.7 Clause E4.1 shall not apply to the extent that:

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

E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

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

provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

E4.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.

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

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

E4.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

E4.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

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

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

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

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

E6 Publicity, Media and Official Enquiries

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

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

E7 Security

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

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

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

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

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

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

(b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

E8 Intellectual Property Rights

E8.1 Subject to E8.10 all Intellectual Property Rights in:

(a) the Results; or

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

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.2 Subject to E8.10 the Contractor hereby assigns:

(a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clauses E8.1(a) and (b). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor; and

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

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

E8.3 The Contractor shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority ("Indemnified Persons");
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
- (d) during and after the Contract Period, indemnify and keep indemnified the Authority and the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E8.3c, except to the extent that any such claim results directly from:
 - i) items or materials based upon designs supplied by the Authority; or
 - ii) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E8.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.

E8.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Contractor or Indemnified Person) arising from the performance of the Contractor's obligations under the Contract ("Third Party IP Claim"), provided that the Contractor shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and

E8.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and

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

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

E8.8 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.3(b) and G2.1(g)) use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

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

E8.9 The Contractor grants to the Authority and, if requested by the Authority, to a Replacement Contractor, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority (or the Replacement Contractor) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E8.10 All Background Intellectual Property Rights provided by the Contractor shall remain the property of the Contractor.

The Contractor shall provide a non-exclusive, royalty free license to the Authority in the Contractor Background Intellectual Property Rights to the extent that the Authority require use of the Contractor Background Intellectual Property Rights to give effect to any arising Intellectual Property Rights and receive the benefit of the Contract.

For the purposes of this Contract "Background Intellectual Property Rights" shall mean any Intellectual Property Rights owned by the Contractor prior to the commencement of the Contract or developed independently of the Contract.

E9 Audit

E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request

afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E9.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

E10 Tax Compliance

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

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

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

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

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

F2 Monitoring of Contract Performance

F2.1 The Contractor shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "Review Date"), the Authority shall carry out a review of the performance of the Contractor ("Checkpoint Review"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.

F2.4 The Authority may produce a report (a "Checkpoint Review Report") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.

F2.5 The Authority shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.

F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.

F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to

meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

F3 Remedies for inadequate performance

F3.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (c) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (d) terminate the Contract in accordance with clause H2.

F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

F3.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

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

- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
- (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

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

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

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

F4 Transfer and Sub-Contracting

F4.1 Except where clauses F4.6 and F4.7 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.

F4.4 If the Authority has consented to the award of a Sub-Contract, the Contractor shall ensure that:

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

F4.5 If the Authority believes there are:

- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or

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

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

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both clauses F4.7 and F4.8.

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

F4.8 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.

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

F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

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

F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting

Authority (in the remainder of this clause both such bodies being referred to as the “Transferee”):

- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F4.13 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F5 Waiver

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

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).

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

F6 Variation

F6.1 If, after the Commencement Date, the Authority’s requirements change, the Authority may request a Variation subject to the terms of this clause 6.

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

F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:

- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
- (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as shown in Schedule 3 of the Contract

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

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

F7 Severability

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

F8 Remedies Cumulative

N/A

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F10 Counterparts

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

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

G1.2 Subject to clauses G1.3 and G1.4 and G1.6, 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 any other loss which is caused directly by any act or omission of the Contractor.

G1.3 Subject to the Excluded Matter and clauses G1.1, G1.4 and G1.6 and notwithstanding anything to the contrary in this Contract the Contractor's aggregate liability in respect of the Contract shall not exceed an amount equivalent to the value of the particular Purchase Order under which the liability arises.

For the purposes of this clause G1.3 Excluded Matter shall be the amount recovered under the Contractor's Public Liability Insurance in respect of death, personal injury or loss or damage to property arising from the Contractor's negligence.

G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.5 Subject to Clauses G1.3 and G1.6 the Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as directly 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 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 (in each case to the extent that such compensation or interest amount is reasonable); and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any reasonable costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

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

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

G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.

G1.8 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.

G1.9 The Contractor shall give the Authority, on request, a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

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

G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:

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

- ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

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

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

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

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

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

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

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

(a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:

- i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
- ii) neither Party shall be liable for any Default arising as a result of such failure;

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

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

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

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

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

H1.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“Change of Control”). Save in

respect of a significant weakening of financial standing of the Contractor or for reasons of Security, the Authority shall not be permitted to terminate the Contract.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

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

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:

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

H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Termination on Notice

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

H4 Other Termination Grounds

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

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- (d) the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H5 Consequences of Expiry or Termination

H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract and any other committed costs (including without implying limitation demobilisation, subcontract commitments) but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

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

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

H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 Recovery upon Termination

H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:

(a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;

(c) immediately vacate any Authority Premises occupied by the Contractor;

(d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and

(e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.

H7.2 If the Contractor does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

H8.1 Within 21 days of being requested by the Authority, and subject to being funded on a reimbursable basis at the rates provided in Schedule 2, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

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

H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.

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

H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all

computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H9 Exit Management

H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10, subject to being funded on a reimbursable basis at the rates provided in Schedule 2.

H10 Exit Procedures

H10.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements, subject to being funded on a reimbursable basis at the rates provided in Schedule 2

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

- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price.

H10.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

H11 Knowledge Retention

H11.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

(b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

(c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

(d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

(e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

(f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

(a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;

(b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and

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

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

(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

(b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

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

- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(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

Contents:

	Page No.
Introduction	58
Objectives for the Waste Quality Checking Service	58
Overview of Service Requirements	59
Detailed Service Requirements	59
Additional Requirements	65
Quality Assurance	66
Health, Safety and Environment	68
Audits..	70
Sub-contracting	70
Confidentiality and Data Security	70
References	72

Technical Specification

INTRODUCTION

1. The Environment Agency undertakes independent verification of waste characterisation processes and solid radioactive wastes suitable for surface disposal. We take a flexible approach based around a call-off type contract, providing a range of services, to meet the varied demand and allow a wide range of checks on waste arisings. The main objectives behind this work are to provide assurance as far as is reasonably practicable, that Best Available Techniques (BAT) have been applied and that transfers of solid radioactive waste destined for disposal are in accordance with the relevant transfer and disposal permits and meet the Waste Acceptance Criteria (WAC) of disposal/treatment sites.
2. This document specifies the technical requirements for this flexible framework to provide services, commencing 1 October 2022. The framework will run for four years until 30 September 2026 and may, subject to satisfactory contractor performance, be extended for up to an additional 3 years, in annual increments (30 September 2029).

OBJECTIVES FOR THE WASTE QUALITY CHECKING SERVICE

3. The objective of this work is to support the Environment Agencies throughout the UK (Environment Agency, Natural Resources Wales and Scottish Environment Protection Agency(SEPA)) in the business critical area of regulation of radioactive substances activities (including discharges and disposals of radioactive wastes) under the Environmental Permitting (England and Wales) Regulations (EPR-16) in England and Wales and the Environmental Authorisations (Scotland) Regulations 2018 (EASR) in Scotland. The Environment Agency will normally represent Natural Resources Wales as it undertakes nuclear regulation on their behalf.
4. This work recognises the Nuclear Decommissioning Authority and the LLWR strategies for LLW which align with the National Nuclear LLW Strategy, including:
 - An overall aim to significantly reduce the quantity of LLW sent to the LLWR.
 - A move away from sending the majority of LLW to the LLWR as compactable and non-compactable waste.
 - Greater use of the waste hierarchy including sorting and segregating, reuse and recycling.
 - Introduction of new waste treatment processes – Increasing the availability of, and access to, treatment processes for LLW (e.g. incineration, metal recycling) and promoting their use.
 - Diversion of VLLW and low activity LLW to alternative disposals, in particular landfill disposal and use of the new exemption order regime.

There is also recognition of synergies between the LLW strategy and HAW policies and thus an optimised approach to radioactive waste management could be applied to make best use of capacity and capabilities within the industry, which could enable managing wastes by disposability assessment. Also the synergies between strategies for managing non-nuclear low level wastes and NORM are recognised, given their reliance on the same waste management routes.

5. There is a need to carry out verification checks on the existing wastes and new waste forms being generated. Our waste quality checking service must be able to check all the anticipated forms of waste (lower activity wastes (e.g. LLW and short lived ILW) suitable for near surface disposal) effectively and efficiently at all locations where wastes arise, are treated or to which they are disposed. These will allow us to be confident that wastes are properly understood, and that consignors are using Best Available Techniques (BAT) to characterise their radioactive waste arisings.

OVERVIEW OF SERVICE REQUIREMENTS

6. The framework will be let from 1 October 2022 covering the next 4 years up to 30 September 2026 and for each of these years a work programme will be developed early in the year, whilst recognising that there will be a reactive element to the work too. Subject to satisfactory contractor performance, the Environment Agency reserves the right to extend the contract for up to an additional 3 years, in annual increments (30 September 2029).
7. In undertaking the work associated with this framework, the ability to perform a number of services is required (a combination of these services may be required) as follows (and detailed in later sections):
 - Work planning and technical scope development
 - Auditing sites' procedures and operations for consigning LAW for treatment and disposal including use of the waste hierarchy.
 - Audit/review of the waste assurance approaches of the LLWR and other disposal sites or treatment facilities.
 - Sampling and analysis of wastes and residues. This may include non-destructive testing of waste consignments, packages and samples for physical properties and radioactive content at the waste consigning site and the suppliers' laboratory and detailed radiochemical testing of waste samples as appropriate.
 - Provision of appropriate non-destructive testing capabilities where appropriate. Flexible and innovative approaches to the use of non-destructive testing to support the contract alongside proven capability with current methods will be viewed favourably.
 - Providing, or utilising existing, reference drums/packages for undertaking testing of sites' own waste monitoring systems. Including their storage and associated radioactive sources.
 - Providing technical advice, and potentially training, on the relevant aspects of low activity waste checking and representation at relevant meetings.
 - Programme management and performance reporting.
8. NORM wastes are included in the scope of Services 4 and the types of material to be covered. We are also considering the characterisation and assurance of non-radiological properties which can have an effect on the behaviour/mobility of radionuclides and may wish to explore what can be achieved in this area within the timeframe of this framework (not part of the tender assessment).

DETAILED SERVICE REQUIREMENTS

9. There follows a description of the various services required under the framework. These activities can be either required as a single service or grouped together such that one piece of work may entail a number of different services, therefore it is essential that bidders must be able to supply the full range of services requested. For example one piece of work may include, an in-depth audit of a site including the taking of samples for fingerprint confirmation, in-situ monitoring and the removal of a few drums/items of waste for independent laboratory analysis. Or another piece of work may be the in-situ monitoring of drums of waste or a complete ISO container, or carrying out a test on the operators own monitoring equipment utilising reference drums.

Service 1 Work planning and technical scope development

10. The contractor shall work with the Environment Agency (also representing Natural Resources Wales) and the Scottish Environment Protection Agency on producing a work programme for each financial year. This will involve liaison with the Environment Agency's programme manager (PM), Scottish Environment Protection Agency representative and relevant nuclear regulators.
11. Areas for consideration in the plan will include targeted work at nuclear licensed sites as advised by the environment agencies' nuclear regulators, or as directed by a proportionate

programme of checking across nuclear licensed sites. Other areas for consideration could include work identified from the LLWR's risk-based work programme, and requirements to provide assurance monitoring at secondary treatment plants e.g. incinerators and metal recycling facilities and at disposal sites e.g. the LLWR, or landfill sites receiving low activity waste suitable for near surface disposal.

12. It is envisaged that up to four planned pieces of work will be undertaken in a year, split between the two agencies. These will vary between in-depth auditing of site processes, ins-situ monitoring activities, sampling and analysis and undertaking testing of operator's monitoring capabilities using reference items. As the Environment Agency and Scottish Environment Protection Agency need to have a reactive capability, the initial plan may only have 3 pieces of work to allow for additional work to be undertaken at what may be short notice (order of weeks), or we may require work above the envisaged four pieces.
13. The initial work plan needs to be produced in advance of the start of the financial year in which it will be undertaken, to allow for operator cost estimates to be produced. To enable this to happen discussions with interested parties will need to take place prior to this. The plan shall be reviewed if requests for additional work arise. For the period October 2022 - March 2023, a plan shall be produced by a date agreed with the Programme Manager at the framework start-up meeting.
14. Once pieces of work have been decided upon the contractor shall work with the Environment Agency or Scottish Environment Protection Agency, as relevant, in defining the technical scope for the work. This will include liaising with our relevant nuclear regulators and site representatives. An understanding of the Environment Agency's or Scottish Environment Protection Agency's objectives for the work will be needed and then technical input on the best ways of achieving these. Legitimate operator constraints will need to be considered, for timing and logistics.
15. Where requested, the contractor will work with the Environment Agency or Scottish Environment Protection Agency to prepare work definitions and work scopes. The contractor and the Environment Agency or Scottish Environment Protection Agency will agree in advance the process of defining, scoping and - where appropriate - quoting for pieces of work.

Service 2 Auditing sites' procedures and operations for consigning LAW for treatment and disposal

16. The consigning sites will be required to have procedures in place for characterising and consigning their low activity waste / wastes suitable for surface disposal. For characterising wastes this will include fingerprinting (scaling factors) and sampling / monitoring techniques and for consigning wastes this will include following the waste hierarchy, segregation and identifying the most appropriate disposal routes. As well as ensuring wastes are consigned appropriately in terms of their "radioactivity", other properties to be considered include non-radiological properties that may affect the behaviour/mobility of radionuclides and whether wastes are suitable for re-use or recycling.
17. The Environment Agencies will require the contractor to have the capability to assess the appropriateness of the consigning operator's procedures for the above. Findings and improvement suggestions to be reported back to the Environment Agency or Scottish Environment Protection Agency as appropriate. The contractor may also be required to undertake site audits to ensure that the procedures and associated operations are being correctly implemented and followed on site, again with findings and improvement suggestions reported back.
18. In the course of undertaking an audit the requirement to take and analyse samples/waste packages or undertake in-situ monitoring may arise with the aim of verifying the work being undertaken by the site to characterise and consign their wastes. Also samples may be required to confirm the waste fingerprint (scaling factors) being used. At this point sample plans would need to be produced (see Service 4) and the analysis/monitoring approach determined (see Service 5).

19. Similar auditing will be required at treatment and disposal facilities. This could be on arrival of wastes from a consigning site to ensure they are as described (e.g. in terms of activity and physical attributes) or for any secondary wastes and residues arising at treatment facilities at the end of the process. These audits may require the taking of samples. Auditing may also be required for wastes that will be disposed of in-situ.
20. An audit report containing a summary of the audit, findings and improvement suggestions shall be produced normally within 4 weeks of the audit taking place, unless otherwise agreed.

Service 3 Audit/Review of the waste assurance approaches of the LLWR and other disposal sites or treatment facilities

21. The LLWR undertakes waste assurance activities to provide a verification of the characterisation services that they offer. These assurance activities are targeted using a risk based prioritisation process.
22. For the Environment Agency and Scottish Environment Protection Agency to be assured that LLWR's own audits and waste assurance checks are being implemented correctly the contractor may be required to undertake reviews of their implementation. These reviews could be facilitated with joint in-depth site audits or duplicate monitoring of wastes to provide a direct comparison.
23. Timescales for reporting the joint in-depth audits or duplicate monitoring will be in line with those for Services 4 and 5.
24. Other waste disposal sites or treatment facilities may also undertake waste assurance activities and the contractor will need to be able to review/audit the suitability of these approaches, in a similar way as that laid out above for the LLWR.

Service 4 Sampling and analysis of waste and residues

Sampling

25. The contractor will be required to provide sampling services. There will be two main objectives for sampling campaigns: confirming scaling factors (fingerprints) and verifying accountancy. Sampling in this context covers the taking of individual samples of wastes, residues or swab samples (small quantities only, with enough to meet archiving requirements) to taking a few whole drums or items of wastes.
26. The Environment Agencies will require the development of sampling plans and the provision of equipment and personnel to undertake on site sampling. Sampling plans will need to be statistically based taking in to account the character of the waste (homogenous/heterogeneous), likely presence of "hot spots", provenance and information available on the waste. The sampling could also be guided by intelligence, auditing or in-situ monitoring.
27. The contractor shall have experience of undertaking representative sampling of the sample types listed in Appendix 2. For these sample types, tender submissions shall clearly describe the sampling methods (Question TM2) or approach to sampling previously used and how well it matches to existing industry and regulatory guidance, codes of practice such as the NICOP [Ref 1] and good practice [Ref 2]. If novel methods or equipment are required, prior agreement for their use will need to be obtained from the Environment Agency Programme Manager (PM) or Scottish Environment Protection Agency representative.
28. The contractor will need the capability to be able to recover the required samples from the waste stream being investigated and will be required to demonstrate they have appropriately trained personnel for undertaking these tasks in their tender submissions and throughout the framework term (Question QS1).
29. All samples taken will require a full chain of custody and the contractor shall transport the samples back to the analytical laboratory in a safe and secure manner, complying with all the appropriate transport/transfer legislation. The contractor shall also be responsible for the return, or disposal, of waste items following analysis.

- 30 The contractor may be required to provide technical advice in this area and develop sampling techniques suited to a particular task, these will need to be proven and demonstrated to be appropriate (with documentation). They will also need to meet the safety requirements of the site operators before they can be deployed. Tender submissions shall describe experience of developing sampling techniques (Question TM4).

Analysis

- 31 The contractor will be required to provide analytical services. The required analysis strategy will vary depending on the physical form of the waste and whether dealing with individual samples, or drums / larger items. More importantly it will be determined on whether samples have been taken to confirm the fingerprint (scaling factors) or verify the accountancy of a waste stream (or both). If confirming the fingerprint the analytical methods will need to be such to identify key components present and if verifying accountancy the aim will be to produce a reliable estimate of the radioactivity content of the waste with tolerable uncertainties. The contractor will be expected to advise the Environment Agency or Scottish Environment Protection Agency, as relevant, on what non-destructive testing methods and radiochemical analyses (including the number of samples, taking into account the homogeneity and nature of the waste) are required to best meet the requirements. The specific radionuclides required will depend on the consigning information and provenance of the waste and any specific intelligence.
32. Where drums/bags of waste are opened there may be a requirement to catalogue the contents and check for the inclusion of any items not permitted by the conditions for acceptance appropriate for the site to which the waste is destined. Additionally to check for items that should not be present if the waste hierarchy had been correctly applied e.g. metals that could have been recycled. This cataloguing and recording of information needs to be completed, maintaining the chain of custody evidence (see also Appendix 1) and needs to be of a high quality, sufficient to be used as evidence in a prosecution if necessary.

Non-destructive analysis

33. The analysis would include non-destructive testing utilising the equipment referred to in Service 5 below and any other suitable equipment offered by the contractor for monitoring larger items, drums or contents of packages.

Radiochemical analysis

34. The contractor shall have the capability to undertake the analyses for all combinations of sample type and radionuclides detailed in Appendix 2.
35. The required limits of detection are specified in Appendix 2. A summary table is provided in the Annex 1 to the Invitation to Tender, which shall be completed, to indicate whether the specified LoD can be met or bettered (Question TM5). If a LoD cannot be met tenderers shall provide alternative method specific detection limits. Details for and a definition of detection limit used shall also be included, these shall be consistent with the ISO standard for the determination of detection limits [Ref 3]. Detection limits need to be suitable to allow measurement and calculation to full drum or item of waste activity concentrations such that the activity concentrations can be distinguished at the low end of LLW close to the exemption boundary.
36. Clear and concise summaries of the analytical methods to be used for the various determinands are to be provided with tender submissions (Question TM1). Where significant differences in the methods occur for analysing different sample types these shall also be included. These brief summaries shall also include details of all the major pieces of analytical equipment which will be utilised on the contract – see further details in the “Equipment” sub-section of the “Quality Assurance” section. The Environment Agency reserves the right to review the contractor’s procedures in detail prior to framework award. It is expected that these methods will be deployed throughout the contract unless alternatives (equivalent or improved) are agreed.

37. After the framework has been awarded the contractor may be asked to submit detailed analytical procedures, for approval by the Environment Agency's PM and Scottish Environment Protection Agency representative. See further details below under "Quality Assurance".
38. Key determinands/analysis methods employed on the framework shall be accredited by the United Kingdom Accreditation Service (UKAS) or equivalent organisation. This is explained in greater detail below under "Quality Assurance".
39. The Environment Agencies require that all sources of analytical uncertainty are included along with the reported results at the 95 % confidence level (i.e. 1.96σ). A clear statement on the sources of uncertainty considered and the way these are assessed and combined shall be included with the method summaries.
40. Reports presenting the results of analysis (non-destructive and radiochemical) and interpretation of these results shall be produced normally within 10 weeks of the sampling unless otherwise agreed. These reports shall also link in to the audit report for the relevant visit (and if appropriate any in-situ measurement reports) to provide a final report for the work.

Non-radiological properties – potential future work area (not evaluated)

41. As environmental safety cases for disposal sites are being developed, a recognition of the importance of non-radiological parameters and how they affect the behaviour/mobility of radionuclides in the waste is emerging (for example the presence of complexants or chelators). During the course of the framework term the Environment Agencies may want to explore what can be achieved in this area with the contractor.
42. We would be interested in understanding what monitoring or analytical techniques could be deployed to measure/identify complexants and chelators (or their residues) in the waste. Also at what stage(s) this could be done and how it could be best targeted? At some point during the timeframe of this framework we may require support to develop this area further and undertake investigative monitoring activities.

Service 5 Provide in-situ monitoring capability

43. The contractor shall have the capability and suitable experience to provide appropriate in-situ monitoring. This monitoring could take place at nuclear sites consigning waste, treatment facilities (e.g. metal decontamination facilities, WAMAC and incinerators) or final disposal sites such as the LLWR and landfill sites. The in-situ monitoring capability shall be used to assess the activity content and radionuclide composition of individual items, or wastes held in a range of waste packages e.g. drums, bags, over-packs or ISO containers. Also to monitor bulk wastes awaiting characterisation and preparation for disposal or structures, such as pipelines, that are still in-situ (see Appendix 2 - Monitoring, Sampling and Analysis Requirements).
44. The Environment Agencies are keen to see innovative and value added approaches alongside standard equipment to give the best level of service, i.e. flexibility, mobility and the best chance of accurately assessing the radioactivity content. In-situ systems shall be suitable for monitoring the beta/gamma content of the wastes and packages. The contractor should give consideration to options and techniques for assessing the alpha and low energy beta content. The effects of inhomogeneous density and activity distribution must be allowed for. Our preferred approach is for the use of monitoring techniques that can directly detect specific radionuclides, such as low or high resolution gamma spectrometry for gamma emitting radionuclides, combined with scaling factors where necessary. Reliance on inferred activity based on dose rate monitoring methods, such as the Dawson method, is unlikely to be sufficiently rigorous for the assurance work undertaken on this contract.
45. Tender submissions shall clearly describe what capabilities are being offered (Question TM3) and the equipment that will be made available for use and shall summarise the main characteristics of the method and equipment (such as detection efficiency or typical limits of detection for a range of materials/disposal packages) which justify their appropriateness (Question QE1). Costs for use of the equipment shall be included in the summary tables provided in the Pricing Schedules attached in the Invitation to tender on the eSourcing Portal.

46. For in-situ monitoring activities external radio-isotope calibration sources may not be permitted on sites. Tender submissions shall clearly describe what alternative approaches could be taken to calibrate equipment or interpret the measurements (Question QE1). The contractor will be responsible for ensuring that an acceptable approach can be provided.
47. If the proposed in-situ monitoring system requires cooling it should be noted that liquid nitrogen filling may not be allowed on sites. Tender submissions shall clearly described what alternative approaches could be taken (Question QE1). The contractor will be responsible for ensuring that an acceptable approach can be provided.
48. The range of measured activity concentration must cover the full LLW spectrum (4 MBq/t to 12 GBq/t) with reasonable accuracy for defined waste geometries, matrices and activity distribution. Wastes outside this activity concentration range, such as short lived ILW, may also be encountered as wastes are increasingly managed by disposability assessment. The Environment Agencies require that uncertainties and confidence levels associated with the heterogeneous distribution of the waste shall be presented for each measured container/package/item.
49. The contractor may be required to develop monitoring techniques suited to a particular task, these will need to be proven and demonstrated to be appropriate (with documentation). They will also need to meet the safety requirements of the site operators before they can be deployed. Tender submissions shall describe experience of developing monitoring techniques (Question TM4).
50. Preliminary findings should be fed back immediately and a final report of the monitoring shall be produced normally within 4 weeks of the measurements taking place, unless otherwise agreed.

Service 6 Undertake testing of site's own waste monitoring equipment

51. The contractor shall provide, or utilise existing, reference drums for undertaking testing of sites' own waste monitoring systems. These need to be appropriate for the equipment being tested. This testing could take place at nuclear sites consigning waste, treatment facilities or final disposal sites such as the LLWR and landfill sites.
52. Appendix 3 gives details of the drums and associated radioactive sources owned by the Environment Agency, that can be configured into reference drums.
53. The reference drums are intended to be modular to allow sources to be exchanged and different density materials to be incorporated. The contents of the drum may therefore be varied according to the requirements of the test, for example to match radionuclides commonly present in the waste stream from each site.
54. Tender submissions should indicate if these current reference materials and sources can be utilised on the framework. If they are required their continued suitability will need to be reviewed (Question QE2). The contractor will be responsible for obtaining the required permits to allow the safe keeping and use of the reference drums and sources. Costs for storing and utilising the reference drums shall be provided in the table in the Pricing Schedules attached in the Invitation to tender on the eSourcing Portal.
55. Further drums or packages may also need to be produced. Tender submissions should indicate what capabilities can be offered in this regard (Question QE2) and the associated costs shall be provided in the table in the Pricing Schedules attached in the Invitation to tender on the eSourcing Portal. If the preferred option is not to utilise the existing reference materials reasons shall be presented and alternative costs presented. Any system offered needs to be adjustable so that the test items are applicable to the systems being assessed. Source activity concentrations shall be representative of the range of activity concentrations present in LAW from the nuclear industry.
56. For the on-site testing activities, the contractor shall liaise with the site operator and deliver the test item (e.g. drum or waste package) to the site and be responsible for its removal after the test. The site operator will undertake measurements on the item using their standard procedures and these shall be witnessed by the contractor.

57. The contractor shall collate and appraise the resulting test data from the operator and produce a report. This shall include a comparison of the operator's measurements with the known activities and location of sources in the test item (and appropriate measurements carried out by the contractor on the test item with their own equipment), and also assess the adequacy of the operator's monitoring equipment and procedures taking in to account:
 - Type of equipment being used
 - Measurement procedure being used
 - Context (e.g. the role of the plant, typical waste throughput)
 - Previous results obtained for tests at other operators/sites.Reports shall be produced normally within 4 weeks of the test, unless otherwise agreed.
58. Results and experience gained from undertaking these tests may be periodically reviewed with the Environment Agency and the Scottish Environment Protection Agency in order to develop and optimise the test protocols. Also the design of the packages will need to be kept under review and periodically new ones may be required.
59. The contractor shall ensure that all reference drum/package testing is carried out in accordance with Nuclear Site Licence Conditions, relevant legislation and regulations including the Department of Transport's regulations for transport of radioactive materials when transporting reference drums/packages and radioactive sources through the public domain.
60. The contractor shall be responsible for maintaining a live inventory of the reference sources owned by the Environment Agency. This inventory must record source movements as they are removed and returned to store to ensure each item can be accounted for at all times. The exact format of the inventory will be agreed at the framework start-up meeting.

Service 7 Provision of technical advice and training

61. The contractor may be called upon to provide technical advice and training to the Environment Agency or Scottish Environment Protection Agency on matters related to LAW characterisation and assurance.
62. The contractor may also be called up on to provide technical advice and representation at relevant meetings. The contractor shall represent the interests of the Environment Agencies when attending on their behalf. Short reports from these meetings and copies of relevant documents such as minutes shall be provided. In the past representation has been provided on the European Network for Testing of Radioactive Waste Packages (ENTRAP) and Labonet a further international network of specialists in radioactive waste checking set up by the International Atomic Energy Agency (IAEA).
63. Agreed membership fees (e.g. for ENTRAP) will be paid by the contractor and reimbursed by the Environment Agency. Time, travel and subsistence costs for attending meetings and providing technical advice will be claimed as per rates in the Pricing Schedules. Any significant pieces of work will be dealt with on a case by case basis and will be costed either on the basis of agreed staff hourly rates or as a separate costed item.

Service 8 Programme management and performance reporting

64. The contractor shall manage the work undertaken in accordance with this specification, including the general administrative functions specified in Appendix 1 – General Framework Arrangements. In particular the contractor shall attend progress meetings and provide performance information. If separate project management costs and / or separate consortium management costs are envisaged these should be included separately in the Pricing Schedules.

ADDITIONAL REQUIREMENTS

65. Regarding the access to analytical laboratories for services requiring work on samples or items of waste that have been taken for checking, or for the deployment of reference drums etc, account will be taken of the practicalities and impacts of where analytical facilities are

located. The Environment Agency and Scottish Environment Protection Agency have a number of considerations in this regard as follows:

- One of our principle aims as set out in the Environment Act 1995 is to discharge our functions towards the objective of achieving sustainable development. If long distance, or overseas, transport is being proposed for waste items, samples, reference drums etc there would be a risk of criticism to the Environment Agency or Scottish Environment Protection Agency unless a better environmental outcome could be demonstrated for not using local facilities.
- The work is likely to lead to a number of small shipments of samples/items and we would need to be reassured that efficient and legally compliant transfrontier shipments could be undertaken if analytical facilities were going to be based overseas.
- There may be occasions where results will be required on short time-scales and in the past the ability to drive samples to an analytical laboratory within the UK has proven helpful in expediting this requirement.

Tender submissions shall evidence how our considerations have been taken into account when choosing the analytical facilities offered to support the service requirements (Question ES2).

66. For all the services where access is required to sites the contractor will be required to liaise with the relevant site and the Environment Agency or Scottish Environment Protection Agency representative to ensure all arrangements for access, health and safety, security, planning etc are adequately understood and covered.
67. As noted under Service 5 to provide in-situ monitoring capability, external calibration sources and liquid nitrogen filling may not be allowed on sites. It will be up to the contractor to liaise with sites and offer appropriate alternatives where necessary.
68. For the taking and transport of samples, waste drums, reference drum/packages, radioactive sources etc. the contractor is responsible for ensuring this is carried out in accordance with Nuclear Site Licence Conditions, relevant legislation and regulations including the Department of Transport's regulations for transport of radioactive materials. As well as meeting all legal and safety requirements the transport should be done efficiently to minimise on environmental impact.
69. The contractor shall ensure that their current and ongoing permit arrangements for storage and disposal of radioactive waste will be sufficient for the needs of this framework for the duration of the framework term. The contractor will ensure they have sufficient contingency and plans to ensure they can manage small amounts of more active waste that might be identified as part of the assurance processes carried out under this framework, for example wastes that are suitable for near surface disposal allows for short lived ILW, or the checking could identify mis-consigned higher activity wastes. The Environment Agency reserve the right to audit these arrangements and a serious breach or persistent minor breaches may lead to termination of the contract. If permit arrangements are suspended or revoked, this may lead to termination of the contract.

QUALITY ASSURANCE

Company Quality Management System

70. After framework award the company Quality Assurance manual for internal quality control, participation in external quality control schemes and information on accreditation under UKAS (or equivalent) shall be made available to the Environment Agency PM on request.

Quality Plan for Framework

71. Following framework award, the contractor may be required to submit a Quality Plan for work scope activities that they are asked to undertake. The main objective of the Quality Plan will be to demonstrate how the contractor will meet the requirements of these activities. The Quality Plan shall include details of:
 - The quality objectives to be attained.

- The contractor's company/team structure (for relevant staff involved on the contract).
- Allocation of specific responsibilities to work scope activities and authority throughout the framework.
- List of relevant procedures, methods and working instructions, relating to specified activities etc.

72. Where required Quality Plans will need to be agreed between the contractor and the Environment Agency.

UKAS Accreditation

73. The contractor shall hold and maintain UKAS accreditation (or equivalent) under the BS EN ISO/IEC 17025:2017 'General requirements for the competence of testing and calibration laboratories' standard, for determinands/analysis methods involved in the work programme, described as **key** requirements, listed in Appendix 2, for the lifetime of the framework. The materials likely to be measured have been grouped into categories and we will accept an accreditation of any of the materials in the category as evidence accreditation is held. The contractor, and any subcontractor used by the contractor, shall achieve such accreditation for the key requirements within 6 months of the date of framework award, unless otherwise agreed, for example if workload is not indicating an imminent need. It is expected that most tenderers will already hold some/most of the necessary accreditations at framework award. However, tenderers with no such accreditations will not necessarily be discounted so long as they have a commitment to achieving UKAS accreditation.
74. Tenderers shall return the list of the required UKAS accredited (or equivalent) analyses (by completing the table in Annex 1 to the ITT and attaching to QA2 in Bravo) with their submissions, indicating the methods for which they currently hold UKAS accreditation. In cases where UKAS accreditation is currently not held, tenderers shall offer a date by which such accreditation will be secured (such timescales must allow for UKAS' own time for assessment activities).
75. The list of UKAS accredited determinands/methods will be continuously reviewed during the lifetime of the framework. The Environment Agencies may require the contractor to obtain/hold UKAS accreditation for additional determinands/methods should the need arise. Conversely, it is possible that the Environment Agencies may agree to determinands/methods being deleted from the list of requirements in the event that they are no longer needed. All changes to UKAS accreditation requirements shall be agreed with the Environment Agency's PM.
76. Failure to achieve the required **key** UKAS accreditations (at least one material per category) within the prescribed time period shall be deemed a breach of contract unless otherwise agreed, for example if workload is not indicating an imminent need. The Environment Agencies reserve the right to have samples analysed at a UKAS accredited laboratory at the Contractors expense if accreditation for the key analyses is not achieved in the required time period.

Documentation

77. Following framework award, the contractor may be required to submit procedures to cover:
- Sampling / witnessing
 - Instrumental monitoring
 - Analysis (determinands listed in the Sampling and Analysis Requirements (Appendix 2)).
78. These are to specify the details of methods used and where appropriate detection limits and uncertainties and to show how the results will be representative and traceable. Sampling procedures, where appropriate, shall detail the optimum conditions under which samples are to be stored to eliminate or minimise loss of the principle constituents under investigation.
79. Detailed procedures shall be provided to the Environment Agency PM within a month of any request. These shall be marked as "Protect Commercial" as befits their status. Updates for these procedures may be required when substantial changes are made. The Environment

Agency reserves the right to review the contractor's procedures in detail prior to framework award.

80. Only members of the Environment Agency's Nuclear Regulatory Group or Scottish Environment Protection Agency's Radioactive Substances Unit will have access to the procedures. The procedures will be treated in confidence and information will not be divulged to third parties without express written permission from the contractor. The procedures will be returned at the end of the framework.

Inter-comparisons

81. The contractor's laboratory is to participate in national/inter-national (e.g. NPL) inter-laboratory comparisons (a minimum of one per year) to assist in quality control checking. Where possible inter-comparisons should be chosen which relate not only to relevant determinands, but also relevant media. The results, along with their interpretation, identification of anomalies and recommendations for improvement are to be made available to the Environment Agency PM and Scottish Environment Protection Agency's representative in a written report within 3 months of the inter-comparison exercise, these results will be treated in confidence.

Personnel

82. The contractor shall provide suitably skilled, experienced and qualified personnel to undertake work on this framework for the duration of the framework. Security checks as described in paragraph 109 should also be undertaken. Curriculum vitae for key staff and team structure are to be submitted with the tender returns along with a description of the process for dealing with staff changes to ensure the management of change is effective and the new post holder is also suitably skilled, experienced and qualified. Any changes to key staff during the framework term must be approved by the Environment Agency PM prior to being implemented. The contractor shall provide the Agencies' PM with reasonably requested personal and career information about their employees if requested.

Equipment

83. The contractor shall provide suitable equipment to undertake the work required under the framework. Information on the amount and type of equipment for use on this framework are to be provided. The suitability of the equipment proposed will be approved by the Environment Agency PM.
84. An up to date inventory and accountancy of the reference materials and sources must be kept and shared with the Environment Agency PM.

Calibration

85. All equipment and instruments used, whether on-site or within a laboratory, are to be suitably and regularly calibrated, labelled with the due date and carry calibration records. Records must be available for audit by the Environment Agency PM or Scottish Environment Protection Agency representative upon request for the duration of the framework term.

Standards

86. Where they exist, British Standards or other internationally recognised standards, relevant to the work, should be used. During the course of the framework, the contractor shall make the Environment Agency aware of any additional or new technologies or techniques which become available if they are considered to be superior to current methods or otherwise relevant to work on the framework.

HEALTH, SAFETY AND ENVIRONMENT

Company Policy

87. The contractor (and any sub-contractors used by the contractor) shall operate health, safety and environmental policies which are acceptable to the Environment Agencies and consistent with the Environment Agencies' policies, values and practices.

General Requirements

88. The contractor will be a representative of the Environment Agencies and as such high standards of attitudes to safety, behaviour and professionalism are required. The contractor is required to provide adequately trained, safety conscious and experienced staff for execution of all work under the framework – both at the contractor's laboratory and when visiting sites for auditing, sample collection, in-situ monitoring and testing sites' assay equipment. All equipment used by the contractor on the framework shall meet the minimum safety standards required.
89. The contractor is to regularly monitor his/her own health and safety performance in respect of this framework and must be able to demonstrate this to the Environment Agency's PM on request.
90. Contractor staff working on this framework should not normally work for more than 10 hours per day, including travel time. Under exceptional and infrequent circumstances this can be extended to 12 hours.
91. The contractor is to have satisfactory health and safety procedures and training in respect of staff driving vehicles to/from work locations.
92. The contractor is to provide a contact name and telephone number for emergency use outside of normal working hours.
93. Whilst working on operators' sites, the contractor must at all times follow the operator's instructions and regulations with respect to Health & Safety matters and procedures. This is especially an issue in the case of work on Nuclear Licensed Sites, where the operator may require the contractor staff to undergo some basic training on site-specific safety arrangements/procedures and provide information on Safe Systems of Working.
94. For any of the Environment Agency reference materials and sources that are accepted for use on the framework the Environment Agency will, provide an update of the current contractor information on activities and condition (Appendix 3). As part of the hand-over process the contractor shall make any necessary acceptance tests and arrange for safe transport and source security.

Risk Assessments

95. A risk assessment shall be undertaken for each site visit. A generic risk assessment can be prepared prior to the visit based on knowledge of the operation to be undertaken, type of location and type of risks that are likely to be encountered. On arrival at the site the assessment shall be reviewed and any unforeseen risks assessed. Issues to be considered in this respect include:
 - Industrial hazards associated with major industrial plant e.g. equipment, vehicles and machinery in operation, hazardous materials, working at heights, slippery surfaces and ionizing radiation issues.
 - Manual and sample handling (e.g. large items, chemical or physical hazards etc.)
 - Travelling/driving to and from sites and sampling / monitoring locations.
 - Carrying samples in vehicles from sampling location to the contractor's laboratory.
96. The risk assessments shall be made available to the Environment Agency's PM or Scottish Environment Protection Agency representative on request. If for any reason during a visit conditions are deemed unsafe, work must not be carried out and the Environment Agency PM or Scottish Environment Protection Agency representative shall be notified immediately
97. All laboratory based work is to be undertaken following and in accordance with an appropriate COSHH assessment. Where appropriate, work shall also be undertaken in accordance with the Ionising Radiation Regulations 1999.

Training

98. The contractor shall provide adequate training to staff engaged in work on the framework with respect to all aspects of health, safety and environmental matters relating to the service they

will be providing under the framework and their working environment for the duration of the framework term.

Reporting of Incidents

99. Safety accidents/incidents shall be reported to the Environment Agency's PM or Scottish Environment Protection Agency representative, as relevant, as soon as possible after the event, on the same working day. A copy of the contractor's incident report shall be emailed to the Environment Agency's PM or Scottish Environment Protection Agency representative, as relevant, within one working day of the incident.
100. Significant "near-misses" shall also be reported to the Environment Agency's PM or Scottish Environment Protection Agency representative within 3 working days.

AUDITS

101. It is expected that the contractor will periodically carry out both internal Quality Assurance Audits and Safety, Health and Environment Audits appropriate to the framework (or on the department which carries out work on this framework). The contractor shall provide details of such audits (in particular, non-compliances, observations and corrective actions) to the Environment Agency's PM upon request.
102. The Environment Agency reserves the right to audit the contractor periodically. The main focus of Environment Agency audits is to ensure that the contractor (and any sub-contractors) is fully compliant with the requirements of the framework as laid down in this technical specification. The Environment Agency audits will be complimentary to UKAS surveillance audits and may cover aspects which are not subject to UKAS accreditation in order to provide additional reassurance to the quality of the work, for example Safety, Health and Environment (SHE) issues. To facilitate this the contractor shall make available any UKAS audit report findings relating to this framework.
103. Audits will normally be carried out by Environment Agency staff, although the Environment Agency reserves the right to involve third party organisations (e.g. consultants, Scottish Environment Protection Agency, Natural Resources Wales) in audits if it so wishes. Audits may cover work carried out in-situ at operator's sites as well as work carried out at the contractor's laboratory. Audits may take place on an unannounced basis.
104. Environment Agency audits will be followed by audit reports which will be copied to the contractor. As well as making general comments and recommendations the audit reports will specify any non-compliances and observations found. The contractor is under obligation to rectify all non-compliances on a timescale to be agreed at the time with the Environment Agency's PM.

SUB-CONTRACTING

105. Any intentions to use sub-contractors for work scope activities, other than those already agreed at the time of framework award (if any), must have the prior approval of the Environment Agency's PM or Scottish Environment Protection Agency representative. The Environment Agencies reserve the right to refuse permission for such sub-contractors if it has reservations (an example of this would be if there were undue conflicts of interest) – however, permission shall not be unreasonably withheld.
106. Where sub-contractors are used, details of the sub-contractor's staff, facilities, equipment, QA/QC, methods etc must be provided to the Environment Agency's PM or Scottish Environment Protection Agency representative and should at least be of comparable quality to those of the main contractor.

CONFIDENTIALITY AND DATA SECURITY

107. All results and all information obtained by the contractor through the execution of this framework will at all times remain the property of the Environment Agency or Scottish Environment Protection Agency, depending on which body instructed a given work package. The contractor is forbidden to either use for his/her own purposes or pass on to others

information so gained. Any use or disclosure of such information will result in termination of the contract and possible prosecution.

108. During execution of this contract there may be requirements to handle sensitive nuclear information. The contractor, including any sub-contractors, must have processes in place to manage, handle and store this information to comply with Government guidelines (including on marking) and ensure no unauthorised access to, or disclosure of, the information. In the case of Reportable OFFICIAL and/or OFFICIAL-SENSITIVE documents, they must be stored in a secure location. If the contractor is required to receive, store, process or forward Official Information on any PC, Laptop or other IT system, that system must be designed, implemented and operated securely. Removable media shall not be used for storage and if used for transferring data they must be encrypted.
109. The contractor shall carry out periodic Base Line Security Checks (BLSC) in accordance with the Cabinet Office (CO) Guidance for its own personnel, and ensure those of any sub-contractors, involved in this contract, are also undertaken. See link below:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299547/HMG_Personnel_Security_Controls.pdf

For some packages of work personnel with higher level security clearance may be required. The Agencies may request evidence that satisfactory checks have been completed prior to commencing work packages or at any time during the framework period.

If the Agencies are not satisfied that the results of the security checks are appropriate for the works to be carried out, the contractor will be required to provide a suitable alternative to deliver the works.

Conflicts of Interest

110. As part of its supplier selection and tender evaluation process, the Environment Agencies will reserve the right to not award the framework to any contractor that appears to have an unacceptable level of conflict of interest. Being a legal entity that holds the permit for a nuclear licensed site is an unacceptable conflict of interest to be a sole service provider. You may be considered as part of a consortium if the consortium can cover the required work on any conflicted sites and demonstrate the conflicted company have had no influence on the work. For any sole service provider if, subsequent to framework award, the contractor takes over a permit for a nuclear licensed site the contract will be terminated.
111. It is recognised that in this field with multi-faceted organisations a contractor could be undertaking work with organisations that we will be targeting for assurance monitoring. The contractor must manage any emerging conflict of interest. For any potential conflicts of interest of which you are currently aware the Environment Agencies need to see evidence that the work streams would be managed separately and that no undue influences could be applied. Also we require information on how you would operate to minimise conflict of interest and what procedures you have in place for managing these.
112. Throughout the period of the framework, the contractor shall continuously check for any emerging or apparent conflicts of interest with regard to the work they are being asked to undertake under this waste quality checking framework. It would be an unacceptable conflict of interest for a contractor undertaking an Operator waste characterisation project to also undertake the Environment Agencies' independent assurance monitoring for that project, without the implementation of robust (and agreed) processes for work separation. Tender submissions shall indicate how this monitoring for conflict of interest will be undertaken and how boundaries and actions to deal with it will be set (Question OC1). The Environment Agency's PM or Scottish Environment Protection Agency representative, must be notified immediately if a potential conflict of interest arises and the Environment Agency's PM or Scottish Environment Protection Agency representative will assess whether the work is an undue conflict of interest. We would reserve the right to seek an alternative contractor to undertake any effected pieces of work, where appropriate mitigations could not be put in place.

REFERENCES

1. Clearance and Exemption, Principles, Processes and Practices for Use by the Nuclear Industry. A Nuclear Industry Code of Practice published on behalf of the Nuclear Industry Safety Directors Forum in July 2005.
2. Solid Radioactive Waste Characterisation Good Practice Guide. Nuclear Decommissioning Authority, Issue 1, November 2019.
3. Determination of the detection limit and decision threshold for ionizing radiation measurement – Part 7 Fundamentals and general applications ISO 11929-7 (2005).

APPENDIX 1

GENERAL FRAMEWORK ARRANGEMENTS

FRAMEWORK MANAGEMENT AND OPERATION

1. The Environment Agency will act as the Framework Manager and will appoint a designated Programme Manager to undertake the management of the overarching operation of the framework including audits, framework terms, supplier performance measures, framework rates and other contractual matters. The Environment Agency Programme Manager will be responsible for taking the final decision on any disputes that may arise between parties regarding the operation of the framework, technical specifications, annual work programmes or individual work commissions.
2. The Environment Agency Programme Manager will be responsible for co-ordinating annual work programmes and agreeing priorities with the Contractor and the Scottish Environment Protection Agency Representative.
3. The Environment Agency will manage and commission work programmes for Natural Resources Wales. It is not anticipated that this arrangement will change during the framework term but if a change occurs, this will be discussed with the contractor and they may be required to provide services directly to Natural Resources Wales.
4. Individual work packages will be managed by the relevant commissioning body, i.e. the Environment Agency Programme Manager or the nominated Scottish Environment Protection Agency Representative. The contractor shall invoice the relevant commissioning body for works carried out in accordance with the invoicing arrangements for that organisation.
5. All call-offs under the framework will be governed by the overarching framework technical specifications set out in this tender and the Conditions of Contract – Services. To note - SEPA reserve the right, at their sole discretion, to specify that any call-off requested by SEPA is governed by Scots Law.

DESIGNATED RESPONSIBILITIES

Programme Manager

6. The Environment Agency's Programme Manager (PM) is the single point of contact between the Environment Agency and the Contractor. Unannounced contact with others including Environment Agency staff, must be reported to the PM without delay. The Scottish Environment Protection Agency (SEPA) will have their own identified point of contact for work they commission.

Nuclear Regulator and Inspectors

7. In England this refers to the Environment Agency's Nuclear Regulators who regulate particular operators/sites with respect to the Environment Agency's Radioactive Substances Regulation (RSR) Function and RSR Officers who regulate non-nuclear sites (e.g. hospitals, landfill sites) for the same Function. In Scotland this refers to any warranted Officer of the Scottish Environment Protection Agency's Radioactive Substances Unit (RSU).
8. The Contractor may occasionally have direct dealings with the Nuclear Regulators or RSR Officers or RSU Officers related to the waste quality checking programme. The Contractor is required to keep the Environment Agency PM or Scottish Environment Protection Agency's representative apprised of at all times of discussions/issues arising.

Contractor Liaison

9. In respect of the programme of work, its execution, scope and pricing, the Environment Agency's PM or his/her authorised (in writing) representative(s) shall be the sole person(s) authorised to issue instructions to the Contractor on behalf of the Environment Agency. Requests from Nuclear Regulators, Site Inspectors etc. for changes to the scope must be agreed with the PM before undertaking the work. Failure to do so may result in non-payment for that part of the work. The Scottish Environment Protection Agency representative will be responsible for any commissions made directly by them.

Communications

10. It is expected that all normal communication methods will be employed between the Environment Agency or Scottish Environment Protection Agency representative and the Contractor. Documents produced in electronic format will need to be produced using the Microsoft (MS) Office suite of software. The mandatory requirements are for MS Word (word processing), MS Excel (spreadsheets) and MS Access (databases). For final electronic reporting Adobe Acrobat (pdf files) is preferred. It would also be advantageous if the Contractor also used MS Project (Gantt chart programmes) and MS PowerPoint (presentations).

PROGRESS REPORTING

Meetings

11. The contractor shall attend meetings with the Environment Agency PM to discuss progress and other issues relating to the framework. Representative(s) from SEPA may also attend. These meetings will normally alternate between the Environment Agency PM's office and the contractor's office (the default being the PM's office). Video conferencing may also be used.
12. The contractor shall take the minutes of all meetings and provide a draft version to the Environment Agency PM for approval within 4 weeks of the meeting.
13. Kick-off meeting: Following the award of framework the Environment Agency PM will arrange a 'kick-off' meeting. Representative(s) from SEPA may also attend. Issues to be covered at this meeting include a detailed review of the technical specification to confirm mutual understanding. Any issues arising from the Environment Agency terms and conditions, pricing or technical issues will also be discussed. Further information may also be sought on, for example, the resources of the contract organisation, conflicts of interest and confidentiality.
14. Progress meetings: These meetings will be held as necessary, proportionate to the amount of work allocated. Issues to be discussed will include the current progress status and technical issues arising from the framework, health and safety, contractual, financial and quality assurance matters. Where possible meetings will be planned to coincide with work planning meetings.
15. Work planning meetings: Where more complex pieces of work are planned, meetings will be held as required either face to face or via telephone or video conferencing to scope these out and to confirm the work specification and costs. Representatives of the site operators may also be invited to attend as necessary or the meeting may need to take place at the specified operator's site.
16. Close-out meeting: At the end of the framework period, when the Environment Agency PM is satisfied that the framework deliverables have been satisfactorily delivered, a meeting may be held to review the work undertaken on the framework and any outstanding issues. Representative(s) from SEPA may also attend. A review of any technical, safety and QA/QC issues arising will be undertaken with the aim of learning from the framework.

Performance Reporting

17. To enable the Environment Agency to track the performance of the contract, quarterly progress reports are required covering the following information:
 - A review of the work plan.
 - A summary of the services carried out – which service(s) and where undertaken.
 - A summary of reference drum/package testing.
 - Spend for the quarter, broken down against service and site.
 Other performance reporting may be introduced as appropriate.

Supplier Performance Measures (SPMs)

18. The Environment Agency PM will measure the contractors' performance throughout the framework term using a defined set of metrics that will be agreed with individual the contractor

at framework award, appropriate to the services to be provided and developed during the framework term. It is expected that the SPMs will be based on the following:

- Service quality
- Service delivery: timescales and framework management
- Suitability of equipment and personnel
- Quality, Health, Safety and Environmental Performance

RESULTS REPORTING

Report Production

19. Electronic copies of the final reports will be required.

Timescales

20. The Contractor shall produce reports in accordance with the specific requirements described for the services in the main body of the Technical Specification. Where different services are combined for an in-depth audit the individual components of the work will be reported to the timescales identified and a compilation report produced to the timescale of the longest process (likely to be Service 4).
22. For complex jobs requiring extensive analysis / monitoring special agreement over reporting timescales will be made, at the outset of the work.
23. For urgent jobs the Environment Agency or Scottish Environment Protection Agency may wish for analyses which can be completed in shorter timeframes to be reported separately and for the contractor to make efforts to report all results as soon as possible. This will be discussed with the contractor at the time of requesting the work.

Timeliness / Late Reporting

24. The reports of results are required within the specified time-scales to enable the Environment Agency or Scottish Environment Protection Agency to take appropriate action on those results in the exercise of its regulatory responsibilities. Time is therefore of the essence and the Environment Agency or Scottish Environment Protection Agency reserves the right to reject reports on the basis of late delivery and adjust or with-hold payment accordingly.

Approval Process

25. Final, quality checked versions of the report, signed off by the author and person authorised to check the report, are to be sent to the Environment Agency PM or Scottish Environment Protection Agency representative. The Environment Agency PM or Scottish Environment Protection Agency representative will review the reports and any major comments or corrections will be fed back to the contractor, correct versions of the report must be produced within agreed timescales after receiving comments or requests for changes. An electronic draft, in a form that can be edited e.g. MS Word, may be requested for approval before production of the final report. Secure electronic signatures can be used to improve the efficiency of sign-off.

ARCHIVING

Sample Archiving

26. The Environment Agency or Scottish Environment Protection Agency representative may request repeat analysis at a later date on any samples taken from a waste consignment. To achieve this objective the Contractor is to take sufficient sample when sampling to enable a repeat analysis to be performed. From point of receipt, all waste that is checked and samples taken from the waste are to be stored in a secure and appropriate manner under storage conditions which minimise or eliminate deterioration or change of the principal constituents under investigation and in accordance with environmental legislation. The contractor shall seek approval from the Environment Agency PM or Scottish Environment Protection Agency representative, as relevant, before returning to operator or disposing of samples. Permission for sample disposal is usually granted once a piece of work has been reported and the

Environment Agency or Scottish Environment Protection Agency is sure that no further work is required (e.g. no regulatory action is pending).

Paperwork Archiving

27. All documents pertaining to the framework shall be kept for the duration of the framework and for a period of 12 months following the end of the framework.

Electronic Archiving

28. All electronic files pertaining to the framework should be kept for the duration of the framework and for a period of 12 months following the end of the framework.

INVOICING

Procedure for Invoicing

29. Invoices for work packages under this framework commissioned by the Environment Agency should be emailed to:

APinvoices-ENV-U@gov.sscl.com

Alternatively, hard copy invoices should be submitted to:

SSCL
Environment Agency – Payments Section
P O Box 797
Newport
Gwent
NP10 8FZ

Supporting documentation (i.e. an Advice Note) giving a breakdown of the amount being claimed on each invoice should be submitted to the Environment Agency Programme Manager for authorisation prior to any invoice being submitted. In order to ensure prompt payment all invoices must quote the relevant order number.

30. Electronic invoices for work packages under this framework commissioned by the Scottish Environment Protection Agency should be e-mailed to:

supplier.invoices@sepa.org.uk

Alternatively, hard copy invoices should be submitted to:

Accounts Payable
SEPA
Strathallan House
Castle Business Park
Stirling
FK9 4TZ

Supporting documentation (i.e. an Advice Note) giving a breakdown of the amount being claimed on each invoice should be submitted to the Scottish Environment Protection Agency representative for authorisation prior to any invoice being submitted. In order to ensure prompt payment all invoices must quote the relevant order number.

31. For any underlying baseline costs advice notes are to be sent on a quarterly basis to the Environment Agency PM and Scottish Environment Protection Agency representative apportioned as agreed. The advice notes for individual services are to be sent to the Environment Agency PM or Scottish Environment Protection Agency representative for each completed issue of reports. For combined services, undertaken for one investigation, one advice note would be preferable on completion of the final report. Advice notes should not be submitted until the work is completed i.e. results reports have been issued.
32. Advice notes involving a change to the Contract price shall be accompanied by the information necessary to support that change.

Period of Payment

33. The Environment Agency and Scottish Environment Protection Agency undertakes to pay each undisputed invoice within the payment guidelines set by the UK Government as detailed in the Conditions of Contract.

Overpayment

34. In the event of overpayment for any reason, such over payment shall be recoverable by the Environment Agency or Scottish Environment Protection Agency from the Contractor. Credit notes of similar format to the invoices will be issued.

LEGAL ASPECTS OF WORK PROGRAMME

Chain of Custody and Audit Trail

35. An audit trail of all samples shall be maintained from the point of collection to final analysis. It should be possible to demonstrate that samples and the analytical process cannot be tampered with at any stage of the process.
36. A chain of custody record is required for all samples taken. The record must give the sampling date and time and the identity of the person taking the samples. The record will show the identity of the person taking responsibility for the custody of the samples. The record must be continuous and show the time and date when samples were passed from one person to the next. The samples must be sealed and kept under lock and key in such a way that the custodian is the only person with access. If there are any special storage requirements, there should be procedures to ensure that these are maintained.
37. In the event of a prosecution being brought by the Environment Agency or Scottish Environment Protection Agency, evidence of the operation of this system may be required by the Court. The Contractor may be called by the Court to give evidence.

Storage and transport

38. The samples will need to be transported to and stored in the laboratory in a secure manner under storage conditions that minimise or eliminate loss or change of the principal constituents under investigation. The methods employed for secure transport, storage and stabilisation must all be rigorous enough to withstand scrutiny in a court of law.
39. The Department of Transport's regulations for transporting radioactive materials must be complied with at all times.

Data protection

40. Personal data held by the Contractor on behalf of the Environment Agency or Scottish Environment Protection Agency representative shall be held in compliance with the GDPR and Data Protection Act 2018.

INSURANCE

41. The Environment Agency requires the Contractor to hold a specified level of insurance for professional indemnity and third party insurance. Details of these requirements are contained in the Environment Agency's terms and Conditions (included elsewhere within the Invitation to Tender).

APPENDIX 2

MONITORING, SAMPLING AND ANALYSIS REQUIREMENTS

The Environment Agencies require that the contractor be capable of monitoring the following bulk wastes/packages (potential wastes as listed under sample types):

Our preferred approach is for the use of monitoring techniques that can directly detect specific radionuclides, such as low or high resolution gamma spectrometry for gamma emitting radionuclides, combined with scaling factors where necessary. Reliance on inferred activity based on dose rate monitoring methods, such as the Dawson method is unlikely to be sufficiently rigorous for the assurance work undertaken on this contract.

Bulk Wastes/packages – Waste Consignment Monitoring

Packages	Individual Items	In-situ/emplaced structures
ISO freights (e.g. full and half height)	Redundant equipment	Piles of rubble/soil etc
Skips	Concrete blocks	Pipelines
Drums	Filter arrays	Buildings or parts of buildings that will be left in-situ
Bags (e.g. 1 tonne “dumpy” bags)		

The Environment Agencies require that the contractor be capable of representative sampling, using an appropriate process, and undertaking all the analyses listed on the waste products below. Please note that this is not an exhaustive list and other materials may require analysis from time to time.

The required detection limits for these analyses are presented. A returnable table for these is included in the Annex 1 to the Invitation to Tender.

The key requirements for UKAS accreditation are also presented. Returnable tables for these and any additional accreditations held are included in Annex 1 to the ITT.

Sample Types – Waste Consignment Checking:

Laboratory/Plant Materials	Building/Plant Materials	Residues	Natural Materials	NORM
Paper	Concrete	Swarf	Soil / Sediment	Sludge
Plastics	Bricks	Ash	Grass	Soil
Clothing	Wood	Shot blast	Sludge	Clay
Glassware	Metal	Paint residues and rust	Animal carcasses	Slurries
<i>Filters</i>	Asbestos	Slag		Oily wastes
	Plastics	Oil and solvents		

Required Analyses and Limits of Detection

	Required Limit of Detection Bqg ⁻¹
Total Alpha	0.005
Total Beta	0.05
Gamma Spectrometry: Artificial radionuclides ¹	0.005
¹⁰³ Ru, ¹⁰⁶ Ru, ¹⁴⁴ Ce	0.05
Gamma Spectrometry: Natural radionuclides	0.05
²¹⁰ Pb ²	0.0005
²²⁶ Ra ²	0.0005
²²⁸ Th	0.0005
²³⁰ Th	0.0005
²³² Th	0.0005
²³⁴ U	0.0005
²³⁵ U	0.0005
²³⁸ U	0.0005
²³⁷ Np	0.05
²³⁸ Pu	0.0005
^{239/240} Pu	0.0005
²⁴¹ Am ²	0.0005
^{243/244} Cm	0.0005
Total ³ H	0.1
¹⁴ C	0.05
³⁶ Cl	0.15
⁵⁵ Fe	0.15
⁶³ Ni	0.05
⁹⁰ Sr	0.05
⁹⁹ Tc	0.05
¹²⁹ I	0.1
²⁴¹ Pu	0.05

¹ Unless otherwise stated.

² If specific analyses required, rather than determination by gamma spectrometry.

Key UKAS Requirements

Total Alpha

Total Beta

Gamma Spectrometry: To specifically include the following nuclides ⁶⁰Co, ¹⁰⁶Ru, ¹²⁵Sb, ¹³⁴Cs, ¹³⁷Cs, ¹⁵⁴Eu, ¹⁵⁵Eu and ²⁴¹Am.

²³⁸Pu, ^{239/240}Pu.

Total ³H, ¹⁴C and ⁹⁰Sr.

APPENDIX 3

ENVIRONMENT AGENCY REFERENCE MATERIALS AND SOURCES.

Table 6.1 Reference Drums and Sources

Item	Description				
WQCL/RD01	220 L drum used for on-site testing programme				
WQCL/RD16	220 L drum used for on-site testing programme				
WQCL/RD13	220 L drum – concrete filled which provides shielding, weighing 450 kg				
2 of IP3 steel overpack drums	Suitable for transporting 200 L standard drums. Capacities of 250kg and 160 kg				
Item	Nuclide	Activity at 03/02/11	Reference Date	Source Form	Other Relevant Information
Sources that can be used in reference drums (10 ampoules)	Am-241	3.51 MBq	4-Oct-07	E	WRL15/0291 - RS475/2
	Ba-133	154 kBq	1-Oct-03	E	WRL15/0294 - RS475/5
	Co-60	140 kBq	1-Feb-03	E	WRL15/0290 - RS475/1
	Cs-137	599 kBq	1-Jan-03	E	WRL15/0292 - RS475/3
	Am-241	230 kBq	01-Aug-08	E	RS555
	Ba-133	1.54 MBq	01-Oct-03	E	RS552
	Co-60	941 kBq	01-Jan-05	E	RS550
	Cs-137	1.49 MBq	01-Mar-06	E	RS554
	Co-60	1.63 MBq	01-Dec-03	E	RS547
	Cs-137	3.47 MBq	01-Jan-03	E	RS548

Source Form

E = Encapsulated (e.g. liquid in a flame sealed ampoule or vial with glued lid)

Notes

Whilst drums not in use sources to be accessibly stored to facilitate accountancy.

Sources will need to be verified before reuse

Reference drums may be reconfigured using the verified sources and packing materials

Costs for the handling and storage the above Environment Agency reference materials must be completed in the Pricing Schedules if they are required by the bidder for use on this contract.

[REDACTED]



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SCHEDULE 3 - CHANGE CONTROL

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

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

IT IS AGREED as follows

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

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

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

SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).

1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.

1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.

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

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:
3. The contact details of the Contractor Data Protection Officer are:
4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.

Data Processing Descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor of Authority Data and the Contractor is the Controller and the Authority is the Processor of the Contractor Data in accordance with Clause E2.1.
Subject matter of the processing	The processing is needed in order to ensure that the Parties can effectively administer the Contract.
Duration of the processing	For the duration of the Contract Period.
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>For the purposes of: (i) administering and providing the Services; (ii) requesting and receiving the Services; (iii) compiling, dispatching and managing the payment of invoices relating to the Services; (iv) managing the Contract and resolving any disputes relating to it; (v) responding and/or raising general queries relating to the Services; and (vi) for the Parties to comply with their respective regulatory obligations ("Agreed Purposes").</p>
Type of Personal Data	Names, email addresses, telephone numbers, CVs, SQEP, grade/rates of the Contractor's Staff and Key Personnel ("Contractor Data").

	Names, email addresses and telephone numbers of the Authority personnel.
Categories of Data Subject	Authority personnel involved with the Agreed Purposes. Contractor's Staff and Key Personnel.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	At the written direction of the Controller, the Processor shall delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

SCHEDULE 6 - NON DISCLOSURE AGREEMENT

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

BETWEEN:

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

and

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

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

WHEREAS:

(a) The Contractor has contracted with the Secretary of State for Environment, Food and Rural Affairs (the "Authority") to provide services to the Authority in an agreement dated [insert date] (the "Contract").

(b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an [insert employee, professional advisor or consultant] of the Contractor engaged in the provision of services to the Authority in support of or in connection with the services to be provided by the Contractor under the Contract.

(c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.

(d) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

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

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

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

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

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

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

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

CONFIDENTIALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL

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

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

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

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

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

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

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

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

SIGNED by the Disclosee:

SCHEDULE 7 - CONTRACTOR AND THIRD PARTY SOFTWARE

CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, “Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

THIRD PARTY SOFTWARE

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

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

SCHEDULE 8
