



# **CONTRACT FOR THE DELIVERY OF HABITAT FOR GREAT CRESTED NEWTS**

**Project Reference: Project\_27461**

# SECTION 1

## FORM OF CONTRACT

### PARTIES:

- (1) NATURAL ENGLAND of Foss House, Kings Pool, 1 – 2 Peaseholme Green, York, YO1 7PX (“**Natural England**”);

### AND

- (2) [REDACTED] (registered in England and Wales under number 02623590) whose registered office is [REDACTED] [REDACTED] (the “**Habitat Delivery Body**”)

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

### WHEREAS

- A. Natural England has developed a district-level approach to the licensing of developments affecting great crested newts, as an alternative to licensing procedures that require detailed survey, capture, exclusion and mitigation works. Under the district-level approach the conservation of great crested newts is to be achieved by creating suitable amounts of new and optimum habitat for the species.
- B. Under district level licensing developers of land may opt to make an appropriate financial contribution to the costs of creating and maintaining compensatory habitat for great crested newts. Where this option is pursued Natural England will collect the financial contribution and oversee the creation and maintenance of the compensatory habitat by authorised bodies.
- C. Pond creation and/or inspection and/or maintenance tasks shall be divided by Natural England into Work Package Orders which may be offered by Natural England to bodies appointed for the purposes of habitat delivery. Such bodies shall not be obliged to accept Work Package Orders and Natural England shall be at liberty to offer Work Package Orders to more than one body.
- D. Following a competitive tender process Natural England wishes to appoint the Habitat Delivery Body to provide habitat delivery services and the Habitat Delivery Body agrees to provide those services in accordance with these terms and conditions.

### NOW IT IS HEREBY AGREED as follows:

#### 1. TERMS OF CONTRACT

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

Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Risks and dependencies
Schedule 2:	Template Work Package Order
Schedule 3A:	Strategic Opportunity Area map
Schedule 3B:	General Pond Creation / Restoration / Maintenance / Inspection Specifications

Schedule 4:	Monitoring Specification
Schedule 5A:	Landowner's Privacy Notice
Schedule 5B:	Landowner's Letter
Schedule 6:	Pond Creation / Restoration Checklist
Schedule 7:	Data Processing
Schedule 8:	Change Control
Schedule 9:	Contract Management and Key Performance Indicators
Schedule 10:	Natural England's Tendering Specification
Schedule 11:	Habitat Delivery Body's Tender Documents
Schedule 12A	Ordnance Survey Standard Form Contractor Licence
Schedule 12B	Cranfield University – Natural England Soils Data Base Licence for Contractors
Schedule 12C	Contractor Licence for Use of Data Licenced from Centre for Ecology & Hydrology

- 1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on Natural England's electronic contract management system ("**Bravo**").
- 1.3 The Contract starts on the date of issue (the "**Commencement Date**") and ends 31<sup>st</sup> October 2022 (the "**End Date**") unless it is terminated early or extended in accordance with the Contract.
- 1.4 Natural England may extend the term of the Contract until 31<sup>st</sup> October 2023 ("**Extension**"). The terms of the Contract will apply throughout the period of any Extension.

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## SECTION 2

# TERMS AND CONDITIONS

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# A GENERAL PROVISIONS

## A1 Definitions and Interpretation

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

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

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

**“Approval”** and **“Approved”** means the prior written consent of Natural England.

**“Area”** means the geographical territory within which the Habitat Delivery Body may be required to deliver the Services and is defined as:

Lot 1 areas	Lot 2 areas
Worcestershire, North Northamptonshire, Leicestershire & Rutland, Suffolk, Cumbria, County Durham	Worcestershire, North Northamptonshire, Leicestershire & Rutland, Suffolk, Cumbria, County Durham

**“Authorised Representative”** means Natural England’s representative named in the CCN as authorised to approve agreed Variations.

**“Bravo”** has the meaning given in paragraph 1.2 of the Form of Contract.

**“CCN”** means a change control notice in the form set out in Schedule 8.

**“CDM Regulations”** means the Construction (Design and Management) Regulations 2015.

**“Commencement Date”** means the date set out in paragraph 1.3 of the Form of Contract.

**“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 E3;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.



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

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

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

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

**“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 Licences”** means the forms of licence contained at Schedules 12A, 12B and 12C or in such other form as may be required by Data Providers for Natural England’s contractors from time to time.

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Habitat Delivery Body 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 Providers”** means Ordnance Survey, Cranfield University and the Centre for Ecology and Hydrology.

**“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 set out in paragraph 1.3 of the Form of Contract.

**“Equipment”** means the Habitat Delivery Body’s equipment, consumables, plant, materials and such other items supplied and used by the Habitat Delivery Body in the performance of Work Package Orders.

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

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

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

**“Form of Contract”** means Section 1 of the Contract.

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

**“General Anti-Abuse Rule”** means:

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

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

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

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

**“Habitats Regulations”** means the Conservation of Habitats and Species Regulations 2017.

**“HMRC”** means HM Revenue & Customs.

**“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.

**“IP materials”** means 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 Habitat Delivery Body by or on behalf of Natural England.

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

**“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).

**“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 Natural England 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, E6, or E8.

**“Month”** means calendar month.

**“Natural England 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 Habitat Delivery Body by or on behalf of Natural England; or (ii) which the Habitat Delivery Body is required to

generate, process, store or transmit pursuant to the Contract; or

- (b) any Personal Data for which Natural England is the Controller.

**“NICs”** means National Insurance Contributions.

**“Occasion of Tax Non-Compliance”** means:

- (a) any tax return of the Habitat Delivery Body 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 Habitat Delivery Body 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 Habitat Delivery Body 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 Habitat Delivery Body 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.

**“Pond Creation/Restoration Checklist”** means the list of information to be provided by the Habitat Delivery Body in relation to each pond created or restored and set out at Schedule 6, or as may be further notified by Natural England to the Habitat Delivery Body.

**“Pond Tracker”** means Natural England’s computerised system from time to time for receiving and holding information provided by the Habitat Delivery Body in relation to each pond created or restored or inspected or maintained.

**“Project”** means the delivery and maintenance of new great crested newt habitat by the fulfilment of Pond Creation or Restoration Work Package Orders and Pond Inspection and Maintenance Work Package Orders in the Area.

**“Price”** means the price (excluding any applicable VAT) payable to the Habitat Delivery Body by Natural England under the Contract for the full and proper performance by the Habitat Delivery Body of Work Package Orders in the terms required 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 Natural England 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 Natural England;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

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

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

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

**“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 Habitat Delivery Body is established.

**“Replacement Habitat Delivery Body”** means any third party supplier appointed by Natural England 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.

**“Services”** means the performance of Work Package Orders.

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

**“Staff”** means all persons employed by the Habitat Delivery Body to perform its obligations under the Contract together with the Habitat Delivery Body’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 Natural England 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-Habitat Delivery Body”** shall be construed accordingly.

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

**“Tender”** means the documents submitted by the Habitat Delivery Body to Natural England in response to Natural England’s invitation to suppliers for formal offers to supply the Services.

**“Tendering Specification”** means the documents produced by Natural England in the course of its invitation to tender.

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

**“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 B5.1.

**“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.

**“Work Package Order”** means an instruction by Natural England to carry out works in furtherance of the Project.

***In the Contract, unless the context implies otherwise:***

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

## **A2 Natural England's Obligations**

- A2.1 Save as otherwise expressly provided, the obligations of Natural England under the Contract are obligations of Natural England 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 Natural England in any other capacity, and the exercise by Natural England of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of Natural England to the Habitat Delivery Body.

## **A3 Habitat Delivery Body's Status**

- A3.1 The Habitat Delivery Body 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 Habitat Delivery Body 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 Habitat Delivery Body is acting as the agent or employee of Natural England.

## **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 Natural England:

[REDACTED]

[REDACTED]

[REDACTED]

(b) For the Habitat Delivery Body:

[REDACTED]

[REDACTED]

[REDACTED]

## **A5 Mistakes in Information**

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

## **A6 Conflicts of Interest**

- A6.1 The Habitat Delivery Body shall take appropriate steps to ensure that neither the Habitat Delivery Body nor any Staff is placed in a position where, in the reasonable opinion of Natural England, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Habitat Delivery Body and the duties owed to Natural England under the provisions of the Contract. The Habitat Delivery Body will notify Natural England without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 Natural England may terminate the Contract immediately by notice and/or take or require the Habitat Delivery Body to take such other steps it deems necessary if, in Natural England's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Habitat Delivery Body and the duties owed to Natural England under the provisions of the Contract. The actions of Natural England 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 Natural England.

# **B. THE SERVICES**

## **B1 Appointment as Habitat Delivery Body for the Project**

- B1.1 For the duration of this Contract the Habitat Delivery Body is appointed by Natural England as a body authorised for the purposes of the Project. It is acknowledged and agreed that such appointment is not exclusive to the Habitat Delivery Body and that Natural England shall be at liberty to appoint other bodies for the same purposes within the Area and elsewhere.
- B1.2 In all matters relating to the Project the Habitat Delivery Body shall have regard to the matters set out at Schedule 1 – Risks and Dependencies.
- B1.3 The contents of Schedule 1 may be amended by Natural England by Notice to the Habitat Delivery Body and the amended schedule shall then apply to work required by Work Package Orders commenced after the date of Notice.
- B1.4 In all matters relating to the Project the Habitat Delivery Body shall have regard to the requirements set out in the Tendering Specification a copy of which is attached at Schedule 10.



B1.5 In the event of inconsistency between the terms and conditions of this Contract (including its Schedules 1 to 9 (inclusive) and 11) and the Tendering Specification, the terms and conditions of this Contract (minus Schedule 10) shall prevail.

B1.6 Natural England shall be entitled to rely on representations given by the Habitat Delivery Body in its Tender, a copy of which is attached at Schedule 11.

## **B2 Work Package Orders**

B2.1 Natural England may from time to time and in its absolute discretion issue Work Package Orders to the Habitat Delivery Body. A Work Package Order shall describe the works required and shall specify the Price.

B2.2 An indicative template Work Package Order is set out at Schedule 2 but Natural England shall be entitled to alter the template and in any event shall tailor each individual Work Package Order according to the nature of the works required and their timescale.

B2.3 The issue of a Work Package Order is a request by Natural England for the Habitat Delivery Body to indicate its willingness to take on the work therein described.

B2.4 The Habitat Delivery Body shall be under no obligation to take on the work described in a Work Package Order.

B2.5 If the Habitat Delivery Body wishes to take on the work described in a Work Package Order it shall authorise the signature of the Work Package Order and return it to Natural England.

B2.6 When received by Natural England a Work Package Order duly signed for the Habitat Delivery Body shall take effect as an offer by the Habitat Delivery Body to carry out the work described in the Work Package Order subject on the terms of this Contract and to any further terms contained in the Work Package Order.

B2.7 If Natural England in its absolute discretion opts to accept the Habitat Delivery Body's offer to carry out the work described in a Work Package Order it shall sign date and return a copy of the Work Package Order to the Habitat Delivery Body which shall then be obliged to carry out that work on the terms of this Contract and any further terms contained in the Work Package Order.

B2.8 Natural England shall be at liberty to offer an individual Work Package Order to more than one body and shall be entitled to withdraw a Work Package Order from the Habitat Delivery Body at any time before it has been finally signed on behalf of Natural England.

B2.9 In the event of a conflict between the terms of a Work Package Order and the terms of this Contract the terms of this Contract shall prevail.

## **B3 Habitat Delivery Works**

B3.1 Works that may be included by Natural England in a Work Package Order may include, without limitation:

- Identification of and liaison with landowners willing to have new great crested newt habitat created on their land;
- The digging of new ponds;
- The restoration of existing ponds;

- Monitoring of ponds;
- Maintenance of ponds;
- Provision of information to Natural England concerning the above.

- B3.2 All pond creation or restoration work carried out in furtherance of a Work Package Order shall be located within the Strategic Opportunity Areas an example of which is shown at Schedule 3A, subject to any provisions to the contrary set out within Schedule 3B.
- B3.3 All work carried out in furtherance of a Work Package Order shall be fully in accordance with the general pond creation / restoration / maintenance / inspection specifications set out at Schedule 3B.
- B3.4 All work carried out in furtherance of a Work Package Order that includes pond monitoring shall be fully in accordance with the monitoring specification set out at Schedule 4.
- B3.5 The contents of Schedules 3A and 3B and 4 may be amended by Natural England by Notice to the Habitat Delivery Body and such amended schedules shall then apply to work required by Work Package Orders commenced after the date of Notice.

#### **B4 Further Habitat Delivery Responsibilities**

- B4.1 In relation to all great crested newt habitat that is created or restored pursuant to this Contract it is acknowledged and agreed that:
- B4.1.1 Natural England may in its absolute discretion (but acting reasonably and on the basis of its statutory duties and scientific understanding) treat such habitat as compensating for harm that specific development works may cause to great crested newts elsewhere within the Area; and
- B4.1.2 any such conclusion may form part of Natural England's deliberations when determining licences under Regulation 55 of the Habitats Regulations for specific development works that may kill great crested newts or damage or destroy their breeding sites or resting places elsewhere within the area covered by this Agreement; and
- B4.1.3 without the prior consent in writing of Natural England great crested newt habitat created or restored pursuant to this Contract will not be used by the Habitat Delivery Body for this or any similar purposes; and
- B4.1.4 without the prior consent in writing of Natural England the Habitat Delivery Body will not represent or warrant to any other body, authority or person that great crested newt habitat created or restored pursuant to this Contract may be treated by any body, authority or person other than Natural England for this or any similar purposes; and
- B4.1.5 the Habitat Delivery Body acknowledges the applicability of Regulation 59 of the Habitats Regulations to statements or representations made for the purposes of obtaining a licence under Regulation 55 of those regulations.
- B4.2 The Habitat Delivery Body shall ensure that no ponds created in the course of the Project lie within areas identified by Natural England pursuant to clause C4.1 of this Agreement as being areas where ponds cannot be created without the likelihood of significant effect on Natura 2000 sites unless a further assessment pursuant to Regulation 63 of the Habitats Regulations ascertains that such operations will not adversely affect the integrity of any Natura 2000 site.

- B4.3 The Habitat Delivery Body shall use best endeavours to ensure that new ponds created pursuant to the Project are located upon land in diverse ownership; to avoid over-commitment to a small number of landowners.
- B4.4 The Habitat Delivery Body shall ensure that groundworks associated with delivery of the Project do not commence until the Habitat Delivery Body has the benefit of a licence under regulation 55 of the Habitats Regulations to permit the access and ground-clearance works necessary for pond creation.
- B4.5 The Habitat Delivery Body shall apply for planning permission wherever the works specified in a Works Package Order represent a development or change of use of land such as in the circumstances to attract the requirement for planning permission.
- B4.6 The Habitat Delivery Body shall ensure that before any works commence each owner of land upon which new ponds are created or restored is supplied with a Privacy Notice in the form of the notice attached at Schedule 5A, or as amended by Natural England from time to time.
- B4.7 The Habitat Delivery Body shall obtain and provide to Natural England in relation to all lands upon which new ponds are created or restored the signature of the owner of the land of a document in the form of that attached at Schedule 5B or as amended by Natural England from time to time.
- B4.8 The Habitat Delivery Body shall gather and keep the information set out in the Pond Creation/Restoration Checklist at Schedule 6 or as further advised by Natural England as soon as such information is available and to update the Pond Tracker with all such information within 5 Working Days of its having been gathered.
- B4.9 The Habitat Delivery Body shall carry out an assessment of each pond created or restored three months after creation or restoration using such assessment criteria as may be provided by Natural England and then to update the Pond Tracker with information arising from that assessment.
- B4.10 The Habitat Delivery Body shall inform Natural England of any difficulties it experiences in locating landowners willing to accommodate new great crested newt habitat on their land.
- B4.11 The Habitat Delivery Body shall inform Natural England whenever it becomes aware of a threat to the continued existence or quality of great crested newt habitat created or maintained by the Habitat Delivery Body pursuant to the Project.
- B4.12 The Habitat Delivery Body shall comply with Natural England's guidance from time to time relating to best practice in the creation of new great crested newt habitat and ensure that all Staff engaged in the creation of such habitat are appropriately qualified and trained.
- B4.13 The Habitat Delivery Body shall be responsible for the administration and financial management of all work undertaken by the Habitat Delivery Body in relation to the Project and maintain and retain detailed income and expenditure accounts and related documentation which shall be made available to Natural England upon request.
- B4.14 The Habitat Delivery Body shall provide all the Equipment and resource necessary for the supply of the Services.
- B4.15 The Habitat Delivery Body shall at all times have all licences, approvals and consents necessary to enable the fulfilment of Work Package Orders.

- B4.16 The Habitat Delivery Body shall not in fulfilling Work Package Orders in any manner endanger the safety or convenience of the public.
- B4.17 The Habitat Delivery Body shall if so requested by Natural England or by an authorised representative of Data Providers enter into Data Licences with Natural England in relation to data underlying the map(s) at Schedule 3A.

## **B5 TUPE**

- B5.1 Not later than 12 Months prior to the end of the Contract Period, the Habitat Delivery Body shall fully and accurately disclose to Natural England all information that Natural England may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
  - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff;
  - (c) the terms and conditions of employment/engagement of the Staff, their job titles and qualifications;
  - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B5.2 At intervals determined by Natural England (which shall not be more frequent than once every 30 days) the Habitat Delivery Body shall give Natural England updated TUPE Information.
- B5.3 Each time the Habitat Delivery Body supplies TUPE Information to Natural England it shall warrant its completeness and accuracy and Natural England may assign the benefit of this warranty to any Replacement Habitat Delivery Body.
- B5.4 The Natural England may use TUPE Information it receives from the Habitat Delivery Body for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Habitat Delivery Body shall provide the Replacement Habitat Delivery Body with such assistance as it shall reasonably request.
- B5.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Habitat Delivery Body shall indemnify and keep indemnified Natural England, the Crown and any Replacement Habitat Delivery Body against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which Natural England or the Crown or any Replacement Habitat Delivery Body may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;

- (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Habitat Delivery Body or any Sub-Habitat Delivery Body in respect of any Returning Employee on or before the end of the Contract Period;
- (c) any failure by the Habitat Delivery Body or any Sub-Habitat Delivery Body to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of Natural England or a Replacement Habitat Delivery Body to comply with its duties under regulation 13 of TUPE;
- (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Habitat Delivery Body or any Sub-Habitat Delivery Body to comply with any legal obligation to such trade union, body or person; and
- (e) any claim by any person who is transferred by the Habitat Delivery Body to Natural England and/or a Replacement Habitat Delivery Body whose name is not included in the list of Returning Employees.

B5.6 If the Habitat Delivery Body becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify Natural England and provide Natural England with up to date TUPE Information.

B5.7 This clause B5 applies during the Contract Period and indefinitely thereafter.

B5.8 The Habitat Delivery Body undertakes to Natural England that, during the 12 Months prior to the end of the Contract Period the Habitat Delivery Body shall not (and shall procure that any Sub-Habitat Delivery Body shall not) without Approval (such Approval not to be unreasonably withheld or delayed):

- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Habitat Delivery Body and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
- (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Habitat Delivery Body, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## C. NATURAL ENGLAND'S OBLIGATIONS

### C1 Price

- C1.1 In relation to each Work Package Order that has been signed by Natural England and in consideration of the Habitat Delivery Body's performance of its obligations under each Work Package Agreement Natural England shall pay the Price in accordance with clause C2.

### C2 Payment and VAT

- C2.1 Subject to clause C3 the sums payable by Natural England to the Habitat Delivery Body shall be as set out in each Work Package Order.
- C2.2 The Habitat Delivery Body shall be entitled to submit invoices to Natural England according to the timeline set out in each Work Package Order, which may include staged payments.
- C2.3 In the event that a Work Package Order does not set out payment dates the Habitat Delivery Body shall be entitled to submit an invoice to Natural England upon completion of the works contained in that Work Package Order.
- C2.4 Natural England shall, in addition to the Price and following receipt of a valid invoice, pay the Habitat Delivery Body a sum equal to the VAT chargeable on the Price.
- C2.3 The Habitat Delivery Body 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 Habitat Delivery Body fails to show VAT on an invoice, Natural England will not, at any later date, be liable to pay the Habitat Delivery Body any additional VAT.
- C2.4 Valid invoices shall include:
- (a) the Habitat Delivery Body's full name, address, VAT number and the title of the Contract;
  - (b) the Work Package Order number and date.
- C2.5 Natural England shall pay all sums due to the Habitat Delivery Body within 30 days of receipt of a valid invoice. Valid Invoices should be submitted for payment to the following address: [Accounts-Payable.neg@sscl.gse.gov.uk](mailto:Accounts-Payable.neg@sscl.gse.gov.uk) (Natural England's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ.
- C2.6 If a payment of an undisputed amount is not made by Natural England by the due date, then Natural England shall pay the Habitat Delivery Body interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.7 The Habitat Delivery Body 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.
- C2.8 The Habitat Delivery Body shall indemnify Natural England on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on Natural England at any time in respect of the Habitat Delivery Body's failure to account for or to pay any VAT relating to payments made to the Habitat

Delivery Body under the Contract. Any amounts due under this clause C2.8 shall be paid by the Habitat Delivery Body to Natural England not less than 5 Working Days before the date upon which the tax or other liability is payable by Natural England.

C2.9 The Habitat Delivery Body shall not suspend the performance of any Work Package Order unless the Habitat Delivery Body is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C2.10 Natural England shall not pay an invoice which is not valid invoice.

### **C3 Key Performance Indicators**

C3.1 The provisions of Schedule 9 shall apply and shall entitle Natural England to withhold payment of the proportions of the Price set out in that Schedule as a result of the defaults set out in that Schedule.

C3.2 Determination of Key Performance Indicator scoring shall be in Natural England's sole discretion, save that it undertakes to act reasonably and to take full account of representations made by the Habitat Delivery Body in connection with any default or alleged default.

### **C4 Recovery of Sums Due**

C4.1 If under the Contract any sum of money is recoverable from or payable by the Habitat Delivery Body to Natural England (including any sum which the Habitat Delivery Body is liable to pay to Natural England in respect of any breach of the Contract), Natural England may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Habitat Delivery Body from Natural England under the Contract or under any other agreement with Natural England or the Crown.

C4.2 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.

C4.3 The Habitat Delivery Body shall make all payments due to Natural England without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Habitat Delivery Body has a valid court order requiring an amount equal to such deduction to be paid by Natural England to the Habitat Delivery Body.

C4.4 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.

### **C5 Natural England's further responsibilities**

C5.1 To carry out an assessment of the works required by the Project pursuant to Regulation 63 of the Habitats Regulations and to identify areas where ponds cannot be placed without the likelihood of significant effect on Natura 2000 sites.

C5.2 To assess the Project against the licencing tests given by Regulation 55 of the Habitats Regulations and, subject to the satisfactory conclusions of such assessment and without prejudice to the unfettered exercise of its statutory discretion, to provide where appropriate the Habitat Delivery Body with a licence under Regulation 55 of the Habitats Regulations to permit the creation or restoration of the ponds required by each Pond Creation or Restoration Works Package Order.

- C5.3 To ensure that all statutory consents, permissions and licences required to be obtained from Natural England by the Habitat Delivery Body in the course of the Project are assessed and determined by Natural England within the appropriate statutory timescale following supply by the Habitat Delivery Body of all necessary information.

## **D. STATUTORY OBLIGATIONS**

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

- D1.1 The Habitat Delivery Body represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Habitat Delivery Body shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause Natural England or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 The Habitat Delivery Body shall, during the Contract Period:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to Natural England on request.
- D1.4 The Habitat Delivery Body shall immediately notify Natural England 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 Habitat Delivery Body notifies Natural England pursuant to clause D1.4, the Habitat Delivery Body shall respond promptly to Natural England's enquiries, co-operate with any investigation, and allow Natural England to audit any books, records and/or any other relevant documentation.
- D1.6 If the Habitat Delivery Body is in Default under clauses D1.1 and/or D1.2, Natural England may by notice:
- (a) require the Habitat Delivery Body 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 Natural England under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who Natural England believes has committed the Prohibited Act and the action that Natural England has taken (including, where relevant, the date on which the Contract shall terminate).

## **D2 Discrimination**

- D2.1 The Habitat Delivery Body 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) Natural England's equality and diversity policy as given to the Habitat Delivery Body from time to time;
    - iii) any other requirements and instructions which Natural England reasonably imposes in connection with any equality obligations imposed on Natural England at any time under applicable equality Law; and
  - (b) take all necessary steps and inform Natural England 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 B5 TUPE and E8 IPR confer benefits on persons named in such provisions (together "**Third Party Provisions**") other than the Parties (each person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").
- D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

- D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

#### **D4 Health and Safety**

- D4.1 The Habitat Delivery Body shall perform its obligations under the Contract in accordance with all applicable Law regarding health and safety.
- D4.2 Without prejudice the generality of the previous clause D4.1 it is acknowledged and agreed that:
- D4.2.1 the CDM Regulations apply to the Project and to works undertaken pursuant to Work Package Orders; and
  - D4.2.2 for the purposes of those Regulations and as defined in Regulation 2 of the CDM Regulations:
    - (a) Natural England is a “designer”, and
    - (b) the Habitat Delivery Body is the “client”; and
    - (c) any person or entity engaged by the Habitat Delivery Body to carry out works in furtherance of the Project is a “contractor”.
  - D4.2.3 The Habitat Delivery Body agrees that the Project and all Work Package Orders shall be carried out in all respects in accordance with the CDM Regulations.
  - D4.2.4 The Habitat Delivery Body agrees that it will enter into written agreements with contractors to carry out works required by Work Package Orders and that it shall be a term of such agreements that each contractor acknowledges the applicability of the CDM Regulations to the required works and agrees that it shall carry out the required works in all respects in accordance with the CDM Regulations.
  - D4.2.5 The Habitat Delivery Body agrees that it will ensure that a “construction phase plan” as defined in Regulation 2 of the CDM Regulations is duly drawn up in relation to all works carried out in furtherance of a Works Package Order and that:
    - (a) Natural England shall be permitted but not obliged to request copies of each construction phase plan; and
    - (b) the Habitat Delivery Body will retain the construction phase plan for a period of at least six years following the completion of the works to which it relates.
- D4.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at Natural England’s Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Habitat Delivery Body shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **D5 Environmental Requirements**

- D5.1 The Habitat Delivery Body shall in the performance of the Contract have due regard to Natural England's environmental, sustainable and ethical procurement policies ("**Environmental Policies**") which require Natural England 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 Natural England;
  - (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 Habitat Delivery Body 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 Natural England to do so.
- D5.3 The Habitat Delivery Body 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 Natural England the Habitat Delivery Body shall provide Natural England with information about its compliance with its obligations under clause D5.3.
- D5.5 The Habitat Delivery Body shall ensure that its Staff are aware of Natural England's Environmental Policies.
- D5.6 The Habitat Delivery Body shall:
- (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the

supply of the Services; and

- (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

## **E. PROTECTION OF INFORMATION**

### **E1 Natural England Data**

- E1.1 The Habitat Delivery Body shall not delete or remove any proprietary notices contained within or relating to Natural England Data.
- E1.2 The Habitat Delivery Body shall not store, copy, disclose, or use Natural England Data except as necessary for the performance by the Habitat Delivery Body of its obligations under this Contract or as otherwise expressly authorised in writing by Natural England.
- E1.3 To the extent that Natural England Data is held and/or processed by the Habitat Delivery Body, the Habitat Delivery Body shall supply Natural England Data to Natural England as requested by Natural England in the format specified in the Specification.
- E1.4 The Habitat Delivery Body shall preserve the integrity of Natural England Data and prevent the corruption or loss of Natural England Data.
- E1.5 The Habitat Delivery Body shall perform secure back-ups of all Natural England Data and shall ensure that up-to-date back-ups are stored securely off-site. The Habitat Delivery Body shall ensure that such back-ups are made available to Natural England immediately upon request.
- E1.6 The Habitat Delivery Body shall ensure that any system on which the Habitat Delivery Body holds any Natural England Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.7 If Natural England Data is corrupted, lost or sufficiently degraded as a result of the Habitat Delivery Body's Default so as to be unusable, Natural England may:
  - (a) require the Habitat Delivery Body (at the Habitat Delivery Body's expense) to restore or procure the restoration of Natural England Data and the Habitat Delivery Body shall do so promptly; and/or
  - (b) itself restore or procure the restoration of Natural England Data, and shall be repaid by the Habitat Delivery Body any reasonable expenses incurred in doing so.
- E1.8 If at any time the Habitat Delivery Body suspects or has reason to believe that Natural England Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Habitat Delivery Body shall notify Natural England immediately and inform Natural England of the remedial action the Habitat Delivery Body proposes to take.

### **E2 Data Protection**

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, Natural England is the Controller and the Habitat Delivery Body is the Processor. The only

processing that the Habitat Delivery Body is authorised to do is listed in Schedule 7 by Natural England and may not be determined by the Habitat Delivery Body.

E2.2 The Habitat Delivery Body shall notify Natural England immediately if it considers that any of Natural England's instructions infringe the Data Protection Legislation.

E2.3 The Habitat Delivery Body shall provide all reasonable assistance to Natural England in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of Natural England, 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 Habitat Delivery Body 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 7 unless the Habitat Delivery Body is required to do otherwise by Law. If it is so required the Habitat Delivery Body shall promptly notify Natural England 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 Natural England may reasonably reject (but failure to reject shall not amount to approval by Natural England 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) Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 7);
  - (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 Habitat Delivery Body's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Habitat Delivery Body 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 Natural England 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 Natural England has been obtained and the following conditions are fulfilled:
  - (i) Natural England or the Habitat Delivery Body has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by Natural England;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Habitat Delivery Body 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 Natural England in meeting its obligations); and
  - (iv) the Habitat Delivery Body complies with any reasonable instructions notified to it in advance by Natural England with respect to the processing of the Personal Data;
- (e) at the written direction of Natural England, delete or return Personal Data (and any copies of it) to Natural England on termination of the Contract unless the Habitat Delivery Body is required by Law to retain the Personal Data.

E2.5 Subject to clause E2.6 the Habitat Delivery Body shall notify Natural England 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 Natural England;
- 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 Habitat Delivery Body's obligation to notify under clause E2.5 shall include the provision of further information to Natural England in phases, as details become available.

E2.7 Taking into account the nature of the processing, the Habitat Delivery Body shall provide Natural England 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 Natural England) including by promptly providing:

- (a) Natural England with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by Natural England to enable Natural

England to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- (c) Natural England, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by Natural England following any Data Loss Event;
- (e) assistance as requested by Natural England with respect to any request from the Information Commissioner's Office, or any consultation by Natural England with the Information Commissioner's Office.

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

- (a) Natural England determines that the processing is not occasional;
- (b) Natural England 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) Natural England determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E2.9 The Habitat Delivery Body shall allow for audits of its Personal Data processing activity by Natural England or Natural England'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 Habitat Delivery Body must:

- (a) notify Natural England in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of Natural England;
- (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 Natural England with such information regarding the Sub-processor as Natural England may reasonably require.

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

E2.13 The Natural England 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 Natural England may on not less than 30 Working Days' notice to the Habitat Delivery Body amend this Contract to ensure that it complies

with any guidance issued by the Information Commissioner's Officer.

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

### **E3 Confidential Information**

E3.1 The Parties acknowledge that pursuant to this Agreement they may disclose Confidential Information to the other. In consideration of the provision of such Confidential Information, each Party undertakes to the other:

E3.1.1 to keep secret and confidential all Confidential Information disclosed to it, (including its employees, agents or advisers) by or on behalf of the other in relation to the agreement or the business of the other Party which is of a confidential nature and not to use such Confidential Information for any purpose other than for the purposes of this Agreement; and

E3.1.2 not to disclose to any third party (other than its professional advisers or as required by law or any competent regulatory authority) any such Confidential Information other than that which comes into the public domain other than by breach of the undertakings contained in this clause E3.

E3.2 These confidentiality undertakings shall subsist indefinitely so far as permissible by law.

E3.3 The obligations of confidentiality set out in this clause shall not apply to information already known to either Party (other than through a breach of a confidentiality undertaking), information in the public domain or information required to be disclosed by law.

### **E4 Freedom of Information**

E4.1 The Habitat Delivery Body acknowledges that Natural England is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and the Habitat Delivery Body shall assist and co-operate with Natural England as necessary to comply with these requirements.

E4.2 In responding to a Request for Information, including information in connection with the Project, Natural England will use reasonable endeavours to consult with the Habitat Delivery Body. Notwithstanding this the Habitat Delivery Body acknowledges that Natural England may disclose information without consultation, or following consultation with the Habitat Delivery Body having taken its views into account.

E4.3 The Habitat Delivery Body shall ensure that all information produced in the course of the Project or relating to the Agreement is retained for disclosure and shall provide all necessary assistance as reasonably requested to enable Natural England to respond to a Request for Information within the time for compliance and shall permit Natural England to inspect such records as requested from time to time.

E4.4 The Habitat Delivery Body shall transfer to Natural England all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and (unless the Habitat Delivery Body is so required by law) shall not respond to directly to a Request for Information unless authorised to do so in writing by Natural England.

### **E5 Publicity, Media and Official Enquiries**

E5.1 The Habitat Delivery Body acknowledges that, except for any information which is



exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. Natural England shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract the Habitat Delivery Body hereby gives its consent for Natural England to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

- E5.2 Natural England may consult with the Habitat Delivery Body to inform its decision regarding any exemptions but it shall have the final right of decision in its absolute discretion.
- E5.3 The Habitat Delivery Body shall assist and cooperate with Natural England in relation to the publication of this Contract.

## **E6 Intellectual Property Rights**

- E6.1 All Intellectual Property Rights in any information or material introduced by one Party to the other pursuant to this Contract shall remain the property of the Party that owned such Intellectual Property Rights prior to such introduction. The Habitat Delivery Body shall grant Natural England a non-exclusive licence to use, publish and enable others to use all such pre-existing information and materials supplied under this Contract, including any Intellectual Property Rights in the same, in perpetuity.
- E6.2 The Habitat Delivery Body grants Natural England an irrevocable non-exclusive licence to any of its existing Intellectual Property Rights as are necessary for Natural England to further the Project including any arising Intellectual Property Rights and for Natural England to allow others to make use of the Project's outcomes including any arising Intellectual Property Rights.
- E6.3 Any new or future Intellectual Property Rights arising from or as a result of the Contract shall be owned by Natural England.
- E6.4 The Habitat Delivery Body shall do or procure to be done all such further acts and things and the execution of all such other documents as may from time to time be required for the purpose of ensuring all new and future Intellectual Property Rights arising from the Project vest in Natural England.
- E6.5 The Habitat Delivery Body agrees to waive any moral rights in any arising Intellectual Property and agrees not to institute support or maintain or permit any action or claim to the effect that any treatment exploitation or use of such Intellectual Property Rights or other materials infringes its moral rights.

## **E7 Audit**

- E7.1 The Habitat Delivery Body 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 and all payments made by Natural England. The Habitat Delivery Body shall on request afford Natural England or Natural England's representatives such access to those records and processes as may be requested by Natural England in connection with the Contract.
- E7.2 The Habitat Delivery Body agrees to make available to Natural England, free of charge, whenever requested, copies of audit reports obtained by the Habitat Delivery Body in

relation to the Services.

- E7.3 The Habitat Delivery Body shall permit duly authorised representatives of Natural England and/or the National Audit Office to examine the Habitat Delivery Body's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E7.4 The Habitat Delivery Body (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 Natural England and for carrying out examinations into the economy, efficiency and effectiveness with which Natural England has used its resources. The Habitat Delivery Body shall provide such explanations as are reasonably required for these purposes.

## **E8 Tax Compliance**

- E8.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Habitat Delivery Body shall:
- (a) notify Natural England in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly give Natural England:
    - 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 Natural England may reasonably require.
- E8.2 If the Habitat Delivery Body or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Habitat Delivery Body 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 Natural England 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 Habitat Delivery Body or any Staff.

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

### **F1 Failure to Meet Requirements**

- F1.1 If Natural England informs the Habitat Delivery Body in writing that Natural England 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 Natural England, the Habitat Delivery Body 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 Natural England.

## **F2 Monitoring of Contract Performance**

- F2.1 The Habitat Delivery Body shall immediately inform Natural England 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 In addition to the requirements of clause F2.1 the provisions of Schedule 9 (Contract Management and Key Performance Indicators) shall apply.
- F2.3 The contents of Schedule 9 , including the Key Performance Indicators, may be amended by Natural England by Notice to the Habitat Delivery Body and that amended schedule shall then apply after the date of Notice.

## **F3 Remedies for inadequate performance**

- F3.1 If Natural England reasonably believes the Habitat Delivery Body 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 Habitat Delivery Body has demonstrated to Natural England's reasonable satisfaction that the Habitat Delivery Body 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 individual Work Package Orders (or parts thereof) (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 Habitat Delivery Body in such amount as Natural England 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 C4 (Recovery of Sums Due), Natural England may charge the Habitat Delivery Body for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by Natural England or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Habitat Delivery Body for such part of the Services.
- F3.3 If Natural England reasonably believes the Habitat Delivery Body 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, Natural England may give the Habitat Delivery Body notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F3.4 If the Habitat Delivery Body has been notified of a failure in accordance with clause F3.3 Natural England may:
- (a) direct the Habitat Delivery Body to identify and remedy the failure within such time as may be specified by Natural England and to apply all such additional resources

as are necessary to remedy that failure at no additional charge to Natural England within the specified timescale; and/or

- (b) withhold or reduce payments to the Habitat Delivery Body in such amount as Natural England deems appropriate in each particular case until such failure has been remedied to the satisfaction of Natural England.

F3.5 If the Habitat Delivery Body 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 Natural England and to prevent such failure from recurring; and
- (b) immediately give Natural England such information as Natural England 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 Natural England.

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

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

F4.1 The Habitat Delivery Body shall not transfer, charge, assign or in any other way dispose of the Contract or any part of it without Approval.

F4.2 Sub-contracting any part of the Contract is permitted without Approval but shall not relieve the Habitat Delivery Body of any of its obligations or duties under the Contract.

F4.3 The Habitat Delivery Body shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Habitat Delivery Body shall provide each Sub-Habitat Delivery Body with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

F4.4 Subject to clause F4.11, Natural England may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to 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 Natural England; or to any private sector body which substantially performs the functions of Natural England in relation to the Project

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

F4.11 Any change in the legal status of Natural England shall not affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to Natural England.

#### **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, Natural England's requirements change, Natural England may request a Variation subject to the terms of this clause F6.

F6.2 Natural England may request a Variation by notifying the Habitat Delivery Body in writing of the Variation and giving the Habitat Delivery Body 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 Natural England. If the Habitat Delivery Body accepts the Variation it shall confirm it in writing.

F6.3 If the Habitat Delivery Body is unable to accept the Variation or where the Parties are unable to agree a change to the Price, Natural England may:

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

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

F6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo. On the date it communicates acceptance of the CCN in this way the Habitat Delivery Body is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Habitat Delivery Body 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 Natural England. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F7 Severability**

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

## **F8 Remedies Cumulative**

- F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F9 Entire Agreement**

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

## **F10 Counterparts**

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

# **G. LIABILITIES**

## **G1 Liability, Indemnity and Insurance**

- G1.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
  - (a) any breach of clauses D1, E1, E2 and E3;
  - (b) Schedule 6; or
  - (e) any liability to the extent it cannot be limited or excluded by Law.
- G1.2 Subject to clauses G1.3 and G1.4, the Habitat Delivery Body shall indemnify Natural England and keep Natural England 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 Habitat Delivery Body of its obligations under the Contract, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given

by the Habitat Delivery Body, or any other loss which is caused directly by any act or omission of the Habitat Delivery Body.

- G1.3 Subject to clause G1.1 the Habitat Delivery Body's aggregate liability in respect of matters arising from any single Work Package Order shall not exceed £1 million or ten times the Price of the Work Package Order giving rise to the claim, whichever is the lower.
- G1.4 The Habitat Delivery Body 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 Natural England or by breach by Natural England of its obligations under the Contract.
- G1.5 Natural England may recover from the Habitat Delivery Body the following losses incurred by Natural England to the extent they arise as a result of a Default by the Habitat Delivery Body:
- (a) any additional operational and/or administrative costs and expenses incurred by Natural England, including costs relating to time spent by or on behalf of Natural England in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional costs of procuring a Replacement Habitat Delivery Body for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Habitat Delivery Body 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 Natural England; and
  - (e) any fine or penalty incurred by Natural England pursuant to Law and any costs incurred by Natural England 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 Natural England, the Habitat Delivery Body shall, with effect from the Commencement Date for such period as necessary to enable the Habitat Delivery Body 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 Habitat Delivery Body, arising out of the Habitat Delivery Body'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 Habitat Delivery Body. 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 Habitat Delivery Body 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 Habitat Delivery Body shall give Natural England, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Habitat Delivery Body does not give effect to and maintain the insurances required by the provisions of the Contract, Natural England may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Habitat Delivery Body.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Habitat Delivery Body of any liabilities under the Contract.
- G1.12 The Habitat Delivery Body 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 Habitat Delivery Body, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Habitat Delivery Body is an insured, a co-insured or additional insured person.
- G1.13 Natural England's total liability to the Habitat Delivery Body arising under or in connection with this Contract whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to the total amount of money unpaid in relation to existing Work Package Orders.

## **G2 Warranties and Representations**

- G2.1 The Habitat Delivery Body warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and Natural England and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Habitat Delivery Body;
  - (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 Habitat Delivery Body to Natural England remains true, accurate and not misleading, save as may have been specifically disclosed in writing to Natural England prior to execution of the Contract and in addition, that it will advise Natural England 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 Habitat Delivery Body 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 Habitat Delivery Body'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 Habitat Delivery Body 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 Habitat Delivery Body 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 Natural England 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 Habitat Delivery Body in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Habitat Delivery Body or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Habitat Delivery Body or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Habitat Delivery Body.
- 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 Habitat Delivery Body 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 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 Habitat Delivery Body 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 Habitat Delivery Body 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 Natural England may terminate the Contract with immediate effect by notice and without compensation to the Habitat Delivery Body where the Habitat Delivery Body is a company and in respect of the Habitat Delivery Body:
- (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 Natural England may terminate the Contract with immediate effect by notice and without compensation to the Habitat Delivery Body where the Habitat Delivery Body 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 Habitat Delivery Body’s creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Habitat Delivery Body’s bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Habitat Delivery Body’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 Habitat Delivery Body 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 Habitat Delivery Body’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 Habitat Delivery Body shall notify Natural England 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 Habitat Delivery Body undergoes a change

of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“**Change of Control**”). The Natural England may terminate the Contract with immediate effect by notice and without compensation to the Habitat Delivery Body within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that Natural England becomes aware of the Change of Control,

but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Natural England may terminate the Contract with immediate effect by notice and without compensation to the Habitat Delivery Body where the Habitat Delivery Body 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 Natural England may terminate the Contract with immediate effect by notice and without compensation to the Habitat Delivery Body where the Habitat Delivery Body 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 Natural England may terminate the Contract with immediate effect by notice if the Habitat Delivery Body commits a Default and:

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

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

H2.3 If Natural England fails to pay the Habitat Delivery Body undisputed sums of money when due, the Habitat Delivery Body shall give notice to Natural England of its failure to pay. If Natural England fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Habitat Delivery Body 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 Natural England exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

### **H3 Termination on Notice**

- H3.1 Natural England may terminate the Contract at any time by giving three months' notice to the Habitat Delivery Body.

### **H4 Other Termination Grounds**

- H4.1 Natural England may terminate the Contract on written notice to the Habitat Delivery Body 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 Habitat Delivery Body 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 Habitat Delivery Body in view of a serious infringement of the obligations under 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 Habitat Delivery Body 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 Natural England terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services Natural England may recover from the Habitat Delivery Body the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by Natural England throughout the remainder of the Contract Period.
- H5.2 If Contract is terminated under clauses H2 or H4 Natural England shall make no further payments to the Habitat Delivery Body (for Services supplied by the Habitat Delivery Body prior to termination and in accordance with the Contract but where the payment has yet to be made by Natural England), until Natural England has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 If Natural England terminates the Contract under clause H3 Natural England shall make no further payments to the Habitat Delivery Body except for Services supplied by the Habitat Delivery Body prior to termination and in accordance with the Contract but where the payment has yet to be made by Natural England.
- 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 Natural England or the Habitat Delivery Body under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and

Bribery), E2 (Data Protection), E3 (Confidential Information), E4 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), F8 (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 Habitat Delivery Body shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of Natural England, its employees or any other contractor employed by Natural England.
- H6.2 The Habitat Delivery Body shall immediately inform Natural England 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 Habitat Delivery Body shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Habitat Delivery Body's proposals referred to in clause H6.3 are considered insufficient or unacceptable by Natural England acting reasonably, then the Contract may be terminated with immediate effect by Natural England by notice.
- H6.5 If the Habitat Delivery Body is unable to deliver the Services owing to disruption of Natural England's normal business, the Habitat Delivery Body may request a reasonable allowance of time, and, in addition, Natural England will reimburse any additional expense reasonably incurred by the Habitat Delivery Body as a direct result of such disruption.

## **H7 Recovery upon Termination**

- H7.1 On termination of the Contract for any reason, the Habitat Delivery Body shall at its cost:
- (a) immediately return to Natural England 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) assist and co-operate with Natural England to ensure an orderly transition of the provision of the Services to the Replacement Habitat Delivery Body and/or the completion of any work in progress; and
  - (c) promptly provide all information concerning the provision of the Services which may reasonably be requested by Natural England for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing Natural England and/or the Replacement Habitat Delivery Body to conduct due diligence.
- H7.2 If the Habitat Delivery Body does not comply with clauses H7.1(a) and (b), Natural England may recover possession thereof and the Habitat Delivery Body grants a licence to Natural England or its appointed agents to enter (for the purposes of such recovery) any premises of the Habitat Delivery Body 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 Natural England, the Habitat Delivery Body shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable Natural England to issue tender documents for the future provision of the Services.
- H8.2 Natural England 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 Natural England 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 Natural England; and that they shall not use it for any other purpose.
- H8.4 The Habitat Delivery Body shall indemnify Natural England against any claim made against Natural England at any time by any person in respect of any liability incurred by Natural England arising from any deficiency or inaccuracy in information which the Habitat Delivery Body is required to provide under clause H8.1.
- H8.5 The Habitat Delivery Body shall co-operate fully with Natural England 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.
- H8.6 Within 10 Working Days of being requested by Natural England, the Habitat Delivery Body shall transfer to Natural England, or any person designated by Natural England, 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 Natural England.

## **H9 Exit Management**

- H9.1 Upon termination the Habitat Delivery Body shall render reasonable assistance to Natural England to the extent necessary to effect an orderly assumption by a Replacement Habitat Delivery Body in accordance with the procedure set out in clause H10.

## **H10 Exit Procedures**

- H10.1 Where Natural England 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 Habitat Delivery Body shall co-operate fully with Natural England 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.

## **H11 Knowledge Retention**

- H11.1 The Habitat Delivery Body shall co-operate fully with Natural England in order to enable an efficient and detailed knowledge transfer from the Habitat Delivery Body to Natural England 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 Habitat Delivery Body shall provide Natural England free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other



information requested by Natural England. The Habitat Delivery Body shall comply with Natural England's request for information no later than 15 Working Days from the date that that request was made.

# I. DISPUTES AND LAW

## I1 Governing Law and Jurisdiction

- 11.1 Subject to the provisions of clause 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 Natural England to take proceedings against the Habitat Delivery Body in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## I2 Dispute Resolution

- 12.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Habitat Delivery Body and the commercial director of Natural England.
- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Habitat Delivery Body and the Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
  - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

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

- (a) Natural England may at any time before court proceedings are commenced, serve a notice on the Habitat Delivery Body requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;
- (b) if the Habitat Delivery Body intends to commence court proceedings, it shall serve notice on Natural England of its intentions and Natural England shall have 21 days following receipt of such notice to serve a reply on the Habitat Delivery Body requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
- (c) the Habitat Delivery Body may request by notice to Natural England that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which Natural England 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 Natural England shall give a notice of arbitration to the Habitat Delivery Body (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 Natural England under clause I2.7(a) or if the

person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

# SCHEDULE 1 – RISKS AND DEPENDENCIES

As part of the tendering process potential habitat delivery bodies will be asked to draw up a suggested register of risks and dependencies affecting the performance of this Contract, together with means and responsibilities for those matters. That register, as amended by Natural England, will be incorporated into this Contract as its Schedule 1, and it may be amended by Natural England, or by the agreement of the Parties, during the term of the Contract.

**Risk Register included in response to E01 at Schedule 11**

Schedule 1 – Risks and Dependencies: version 1 dated 13 <sup>th</sup> November 2019
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# SCHEDULE 2 – TEMPLATE WORK PACKAGE ORDER

<b>WORK PACKAGE ORDER</b>  <b>Governed by a Contract between Natural England and name of Habitat Delivery Body, date of Contract</b>	
From: Natural England	To: name “the Habitat Delivery Body”
Natural England’s representative for the purposes of this Work Package Order:  Name, contact details	The Habitat Delivery Body’s representative for the purposes of this Work Package Order:  Name, contact details
<b>Background</b>  This works package, if fulfilled as required by the Contract and Natural England’s ongoing advice, has been assessed by Natural England as being appropriate to compensate for harm to great crested newts caused by proposed development within the area covered by the Contract.  It is a requirement of the Contract that the works set out in this works package must be completed in full accordance with the terms and conditions of the Contract and its Schedules as from time to time varied in accordance with the Contract.  The matters set out in this works package supplement but do not displace the terms and conditions of the Contract. In the event of conflict between the terms and conditions of the Contract and the matters set out in this works package, the terms and conditions of the Contract shall prevail.	

**Notes for completion of a Work Package Order**

*A Work Package Order may cover the following kinds of work, plus other matters associated with the provision of compensatory habitat for great crested newts:*

- *Identification of and liaison with landowners willing to have new great crested newt habitat created on their land;*
- *The digging of new ponds;*
- *The restoration of existing ponds;*
- *Monitoring of ponds;*
- *Maintenance of ponds;*
- *Provision of information to Natural England concerning the above.*

***The works, their Price, timing and measures of success should be clearly set out. The following headings are indicative and may be altered to suit the circumstances of an individual Works Package.***

**WORK PACKAGE****Work:****Timing:****Milestones:****Measures of success:****Total Price:****VAT on total Price:****Payment profile (including VAT) on staged payments**

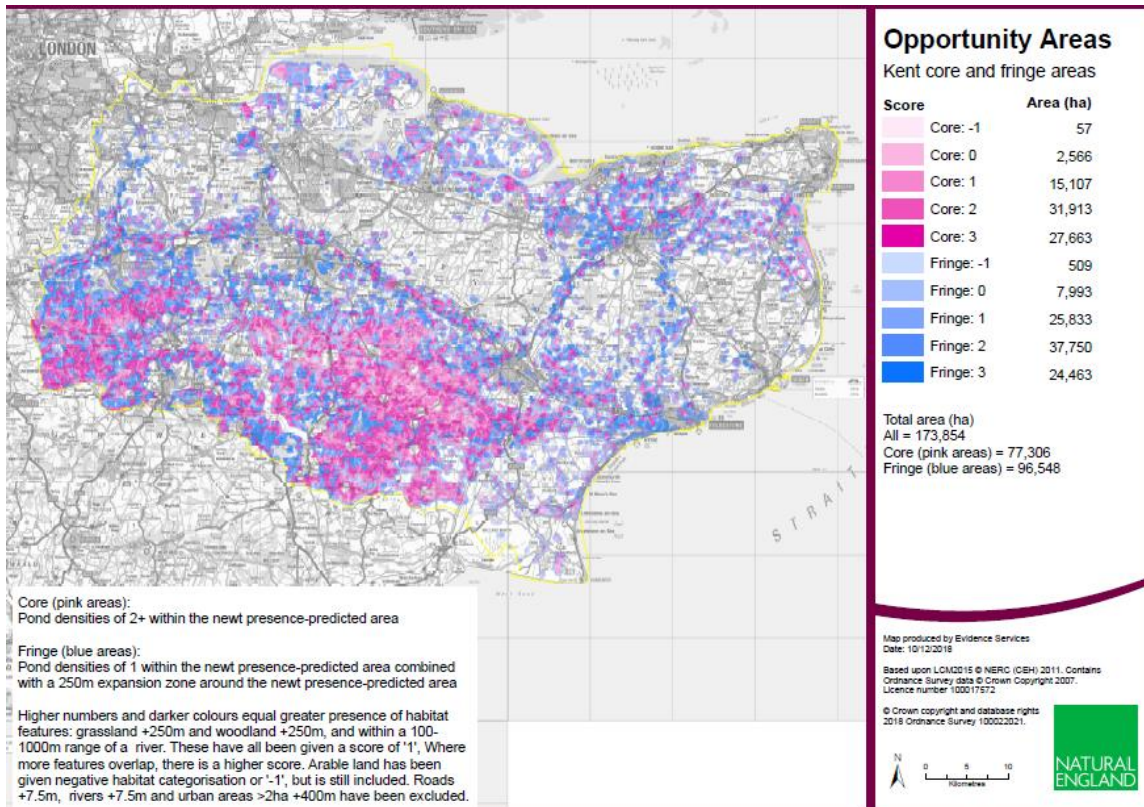
<p>Signed on behalf of Natural England</p> <p>Duly authorised</p>	<p>Signed on behalf of the Habitat Delivery Body</p> <p>Duly authorised</p>
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<p>Schedule 2 – Template Work Package Order: version 1 dated 13<sup>th</sup> November 2019</p>
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# SCHEDULE 3A – STRATEGIC OPPORTUNITY AREA MAP

THE FOLLOWING IS AN *EXAMPLE*.

## Core and Fringe SOA Map



All area specific maps will be provided by Natural England.

Schedule 3A – Strategic Opportunity Area map: version 1 dated 13<sup>th</sup> November 2019



# SCHEDULE 3B - GENERAL POND CREATION, RESTORATION, MAINTENANCE, INSPECTION SPECIFICATIONS

## Delivering habitat compensation through pond creation and restoration

Optimal habitat can be delivered through a combination of creating new ponds and restoring existing ponds. Only ponds which are currently unsuitable for great crested newts (GCNs) are eligible for restoration under District Level Licensing. Pond creation/restoration will be targeted within Strategic Opportunity Areas (SOAs) which will maximise their potential for colonisation by GCNs.

### Characteristics of ponds suitable to support GCN

GCNs prefer small to medium sized breeding ponds, with smaller ponds especially used where they occur in clusters. Breeding ponds should support aquatic vegetation for egg-laying, but there should be open, less vegetated areas within the pond to allow adult males to display in clear view of females. In addition, ponds that lack significant shade on the southern margin are preferred.

Ponds will be created/ restored to achieve the following characteristics:

- Surface area between 100m<sup>2</sup> and 1000m<sup>2</sup>;
- Maximum central depth of 1m to 3.5m;
- Bank gradients of 1:10, or ideally 1:20;
- A range of depths across the pond;
- Occasional drying out is not a problem, however the pond must hold water throughout at least one summer in every three years;
- Substantial cover of submerged and marginal vegetation (about 66% submerged plant cover and 25% to 50% emergent/floating vegetation cover);
- Areas of open water to facilitate courtship behaviour;
- Located in areas of good quality terrestrial habitat;
- Terrestrial buffer zone of *at least* 3m around each pond (see below);
- Diverse populations of invertebrates;
- Ponds in clusters (within 250m generally), rather than in isolation;
- Absence of shading on the south side;
- Absence of fish;
- Absence or low density of waterfowl;

- Good water quality, with negligible run-off from agriculture and roads.

## **Buffer zones**

Terrestrial buffer zones of *at least* three metres are required around both created and restored ponds. In addition, suitable habitat and connectivity features such as hedgerows or rough grassland must be present within close proximity (approx.50m) to ponds. The buffer must be expanded where there is a risk of nutrient run-off and/ or where a larger buffer would provide habitat features lacking in the wider landscape. Where not directly adjacent to sufficient areas of suitable terrestrial habitat, an additional grassland margin (ideally at least 10m) should be allowed to establish around the pond. A mosaic of habitats should be allowed to develop within the buffer around ponds, including a proportion of scrub and diverse grassland with tall grasses. Buffer zones will:

- Ensure suitable terrestrial habitat surrounds every pond (to increase the suitability of each pond for GCNs and encourage colonisation);
- Buffer and reduce nutrient run-off to each pond (an important consideration, especially where ponds are sited within arable farmland);
- Be expected to contain at least two GCN hibernacula comprising combinations of piles of uncontaminated rubble, rocks, logs and pond arisings that include plenty of fissures within the sediment. Such features must be created following appropriate guidelines, for example the Great Crested Newt Mitigation Guidelines (English Nature, 2001).

Buffer zones must be fenced if ponds are in areas subject to:

- Heavy grazing (to avoid the impacts of uncontrolled grazing or poaching by cattle);
- Public access or likely impacts by dogs; or
- Potential encroachment from agricultural practises (fencing demarcates each pond to avoid cultivation up to pond banks).

The Habitat Delivery Body will make an evidence-based decision on whether to fence the buffer zone subsequent to discussing the aforementioned with the landowner. This will consider both current land use and also potential for future change in use which may impact requirements.

## **Where to create or restore ponds**

Ponds must be located where they can be quickly colonised by GCN and with good connective features to enable this. Ponds must be located within 250m of each other, or of an existing pond, with no barriers to prevent GCN dispersing between the ponds. Barriers can include major roads, rivers, canals, or built up areas without gardens/green space. Creation and restoration of ponds must be targeted within SOAs, and a review of existing GCN records can inform the targeting of ponds in close proximity to known populations.

Ponds must be created/ restored within areas of existing good quality terrestrial habitat e.g. woodlands, hedgerows, scrub or tall grassland. High levels of human or animal disturbance, agricultural or road run-off and significant shading from surrounding trees must be avoided. Light grazing can be beneficial, as it can prevent trees and dense emergent vegetation invading and shading the pond. However, grazing must be closely monitored to prevent overgrazing of surrounding terrestrial habitat, livestock stirring up sediments, increasing nutrient loads, preventing macrophyte growth and disturbing breeding GCN. Public access is best avoided, as it increases the risk of introduction of unwanted species, in particular fish which are a significant threat. Areas

which flood should also be avoided as this risks the introduction of fish to the pond.

Ponds will be created/ restored in close proximity to existing ponds and will therefore be colonized quickly by aquatic vegetation. Plants or any other species should not be introduced to ponds as this risks the arrival of invasive species. Non-native plants and fish must not be introduced to ponds and use of ponds by wildfowl must not be encouraged.

Only in exceptional circumstance will ponds be created or restored on protected sites such as SSSI, SAC, SPA, or on Local Wildlife Sites. Pond creation/restoration on or near to such designated sites has the potential to negatively impact upon them may be subject to a Habitats Regulations Assessment (HRA).

The SOAs identified for delivery of compensation ponds exclude and buffer all European sites: SACs and Ramsar sites are buffered by 100m and SPAs are buffered by 500m. These buffers demarcate the zones of influence for the protected sites. No pond compensation works will occur on these protected sites, or within their buffers, unless in exceptional circumstance (see above).

### **Creating new ponds**

Pond creation should be undertaken in areas where ground conditions are suitable to hold water and where ponds will not receive nutrient run-off. Ponds filled by rain or ground water are preferable and test holes may be used to determine the potential of a site to hold water. Ponds should be designed to have gently sloping sides, an irregular shape and a range of depths.

Excavation of spoil may be undertaken via use of a tracked 360 excavator or similar and the base and sides of the pond should be left with a rough surface following excavation. The (clean) spoil arising from digging new ponds can be left on site as non-compacted mounds or banks and form part of the buffer zones. It is recommended to use this material with other materials such as clean rubble to create shelter/ hibernation sites for GCN, with cracks, fissures and, in time, small mammal burrows and a habitat mosaic. Topsoil must not be added to, or placed at the edge of ponds or their banks to avoid compromising water quality.

Where ponds are created in areas with public access, a sloping profile which avoids any sudden changes in depth is recommended. However, it is advisable to prevent or constrain public access to ponds.

Pond creation can be undertaken at any time of year subject to other timing constraints, for example those required to minimise impacts on protected species. Optimal timing for pond creation is between July and the end of January, and preferably between August and October. Disturbance by heavy machinery can be minimised by avoiding wet periods and works during dry or freezing conditions may help to minimise disturbance.

Pond creation works must not be undertaken in areas which support invasive non-native plant species. Works must avoid impacting protected habitats and species, or those listed under Section 41 of the NERC Act 2006 (Priority species & habitats).

### **Restoring existing ponds**

#### **Selecting ponds for restoration**

Overgrown and silted-up ponds that are no longer suitable for GCN are eligible to be restored. Ponds eligible for restoration must:

- NOT currently be suitable to support GCN;

- Be either overgrown with scrub and trees, or;
- Be entirely dominated by plants such as reedmace *Typha latifolia* and common reed *Phragmites australis* with no or minimal water;
- Have a base of thick black anaerobic sediment covered by no or minimal water;
- Be located close to existing suitable terrestrial habitat;
- NOT be fed by pipes and ditches that drain arable fields. In this respect spring-fed ponds with no inflows, or ponds fed by ditches that drain non-improved meadow land or woodland are ideal;
- NOT support highly valuable trees or protected/ priority habitats or species;
- NOT support invasive non-native species.

Silted-up ponds may no longer be obvious and may be entirely dominated by scrub or trees growing within and around them. Those with black anaerobic sediment may be covered by a layer of leaf litter and dead tree branches. A thorough investigation of a pond is necessary before restoration so that any works avoid the destruction of valuable trees and interesting plant communities. For example, a pond with mature oak or elm trees on its south side is highly unsuitable for restoration. Where it is suitable to fell trees, a check to ensure they are not subject to a tree preservation order should be made. The overall strategic aim in selecting ponds to restore is to have a landscape of ponds that are at different successional stages including open ponds with few trees and lots of aquatic plants, some more overgrown ponds and some ponds in-between. Thus not all ponds should be restored within a landscape.

### Undertaking restoration works

The optimal timing for pond restoration is between the *start of September and the end of January* as this period avoids the breeding seasons for amphibians and scrub nesting birds. September and October are the ideal pond restoration months due to low water levels and dry ground conditions that allow ease of working. Ponds restored earlier in the autumn also benefit from subsequent rain over the winter, which re-fills the pond. Another consideration with regards to the timing of restoration works is to minimise impact on surrounding farmland. Close and thorough liaison with the landowner and farmer will ensure works are undertaken at the most appropriate time. Key considerations for different stages of the pond restoration process are given below:

- **Tree and scrub removal** - Ideally trees and scrub should be cleared from the south and west sides of a pond with some tree and scrub cover left to the north and east. This mimics old pond management practices and allows a newly restored pond to receive sunlight, thus stimulating the growth of aquatic plants. Exceptions should be made to this rule, however, where the north side of a pond is an existing hedge, or where this approach would damage existing high-quality habitats. Mature oaks and other valuable trees and important plants should not be removed. Do not pull out tree stumps that are embedded in the slopes that make up the banks of the pond. This destroys the banks and exposes subsoil. Do not remove all trees and scrub from the pond. In particular it is desirable to leave some patches of scrub such as bramble which provides good cover and foraging habitat next to ponds. The use of herbicides to control aquatic plants and bankside vegetation will only be allowed in exceptional circumstances and with prior approval.
- **Tree and scrub disposal** - Piles of brash and larger cut wood pieces should be kept in separate piles. Brash piles afford good over-wintering habitat for amphibians and will rot down in a few years and can be left in close proximity to the pond. Logs can also be used

to make on-site amphibian hibernacula.

- **Sediment removal** - removal of sediment from a pond is necessary if the pond bed is dominated by poorly decomposed leaves making it inhospitable to aquatic plants. Sediment can be removed using a tracked 360 excavator or similar. To have a major beneficial effect, aim to remove sediment from at least 1/3 to 2/3 of the pond's area. Avoid removal of underlying clay and do not cut deeper into the bed or banks of the pond or change the natural dimensions of the pond. Note that many ponds are very old and so need to be treated as valuable historic features. It is good practice to contact your local Historic Monuments officer prior to restoration to check for any known archaeological interest at your pond site. Excavated surfaces should be left rough which improves plant colonisation. If silt layers rich in plant debris and/or water snails are revealed this is often a good time to stop as it means that old seedbanks have been located – the seeds of many aquatic plant species will still be alive and can often bring important species back into the ponds, especially stoneworts and pondweeds.
- **Sediment disposal** - The ideal place to put the sediment is on a nearby field where it can be subsequently spread. Dredgings and spoil must not be used to fill in or level adjacent wet areas or be placed on top of any areas of archaeological or ecological importance such as agri-environment margins, or wildflower-rich areas. Before disposing of silt excavated from ponds please refer to 'Waste exemption: U10 spreading waste to benefit agricultural land' on the [www.gov.uk](http://www.gov.uk) website.

*Note:* For further guidance on the restoration of lowland farmland ponds based on University College London research please refer to the 'Restoring Norfolk Ponds' guidance leaflet on the Norfolk Ponds Project website. In addition, to help judge whether a pond is suitable for restoration, please refer to the 'Restoring Ponds decision tree' on the *Freshwater Habitats Trust's Flagship Ponds* website.

### **Other considerations for pond restoration/creation works**

Pond creation/ restoration must avoid damage to existing priority habitats/ species. Existing habitats should be enhanced and not replaced by the creation of new ponds and impacts may be reduced by locating ponds within large single species stands or uniform habitats.

Habitat creation or enhancement for GCN does not override other environmental legislation, and due care must be exercised in order to avoid breaching legislation or impacting protected or priority species and habitats during works. This may mean using reasonable avoidance measures, sensitive working practices or re-designing the scheme. Further advice as to the likely presence/ absence of protected or priority species and mitigation/ licencing requirements should be sought if required.

Works which may result in adverse impacts on archaeological sites, historic features or designated landscapes must not be undertaken without prior consultation with a relevant specialist.

Careful consideration should be given to ensure run-off of silt or other pollutants does not occur as a result of the proposed works, including from any spoil deposits.

Be aware that permissions from various bodies may be required before ponds can be created, for example:

- Environment Agency – please consult if the site is within close proximity to a main river, drain or floodplain, and/or if a waste transfer note (licence) is needed to remove spoil from the site.
- Natural England and/ or Rural payments Agency – It is possible for a pond to be sited on

land that is in an Agri-Environment Scheme (Countryside Stewardship or Environmental Stewardship Schemes) or on land within the Basic Payment Scheme. However, it remains the responsibility of the Agreement holder to check what effect, if any, pond creation/restoration may have on their schemes.

Do not allow land under an environmental agreement to be levelled, infilled, used for the storage or dumping of materials or used by motor vehicles or machinery (except where necessary for the management of the land), if this is likely to cause long-term damage from rutting or compaction of the soil, or otherwise damage areas being managed under the scheme.

A check may also be required in relation to Basic Payment Scheme claims and ineligible areas.

- Planning authorities – enquire with the local planning authority as planning permission may be required for new ponds.
- AONB's – Areas of Outstanding Natural Beauty and landscape character should be considered with further consultation undertaken if required.
- Utility providers - An inspection for the presence of overhead and buried services such as cables or pipelines should be undertaken to ensure these are not be impacted as part of the proposed works. A further check with the relevant providers should be undertaken if required.

### Further information

For further advice on pond creation and restoration, please refer to:

- The website of the UCL Pond Restoration Research Group - <https://www.geog.ucl.ac.uk/research/research-centres/pond-restoration-research>
- Froglife's GCN Conservation Handbook – [http://www.froglife.org/wp-content/uploads/2013/06/GCN-Conservation-Handbook\\_compressed.pdf](http://www.froglife.org/wp-content/uploads/2013/06/GCN-Conservation-Handbook_compressed.pdf). In particular Table 1 Pond restoration and construction: some common factors to consider may be useful to review when planning pond works.
- ARC's Amphibian Habitat Management Handbook – <https://www.arc-trust.org/habitat-management-handbooks>
- Pond creation toolkit - <https://freshwaterhabitats.org.uk/projects/million-ponds/pond-creation-toolkit/>

### Placing ponds outside of SOAs

The Licensing Strategy document for each area will state that there may be site specific reasons why a habitat delivery body may wish to place a limited number of ponds outside of a SOA. For example, if the habitat delivery body is able to create a series of stepping stones that tie into the defined SOAs or if range/distribution can be maintained in an urban area without any risk to connectivity. No more than 10% of the total compensation ponds will be placed outside of an SOA. The following criteria must be followed to place habitat outside an SOA:

- The compensation pond must be within 250m of a core area to aid colonisation in the 1<sup>st</sup> year or 500m for colonisation within 3 years, or;
- The compensation pond must be within 250m of an existing pond in a fringe area to aid colonisation in the 1<sup>st</sup> year or 500m for colonisation within 3 years, or;
- The pond must be within 250m of another compensation pond (as above), and;
- The compensation pond must be well connected by suitable dispersal habitat to existing ponds in core/ fringe areas (for example grassland, hedgerows or woodland). There must be no barriers to dispersal such as large roads or rivers. There must be a reasonable confidence that

connectivity can be maintained over a 25 year period, and;

- Compensation ponds must be situated in at least 'moderate' terrestrial habitat (as defined in the Habitat Suitability Index).

The rules above will ensure that compensation ponds placed outside SOAs will have the same benefits as placing them within the fringe SOA.

Schedule 3B – General Pond Creation, recreation, inspection, maintenance specifications:

Version 1.1 dated August 2019.

# SCHEDULE 4 – MONITORING SPECIFICATION

## PART 1: GENERAL

- 1.1 This Schedule outlines the actions needed to monitor compensation ponds associated with District Level Licensing (DLL) for great crested newts (GCN).
- 1.2 Developers will pay a financial contribution to enter into the DLL scheme, which includes a monitoring indemnity fund that covers a 25 year period. This fund ensures that DLL will be able to provide an ongoing assessment of pond occupancy, as well as habitat connectivity and suitability of compensation ponds for GCN.
- 1.3 The Habitat Delivery Body is responsible for ensuring adherence to monitoring guidelines under a District Level Site-based Licence.
- 1.4 Every compensation pond will be subject to four eDNA HSI surveys over consecutive years from time of creation and /or restoration.
- 1.5 Over 25 years, every compensation pond will undergo three management visits that will include an HSI survey and egg search to assess the suitability of the pond and whether there is evidence of breeding.
- 1.6 Population counts will need to be conducted at a subset of compensation and non DLL associated (i.e. control) ponds to determine GCN population trends within compensation and unmanaged habitat.
- 1.7 Monitoring data will be captured and reported to Natural England (NE) when it becomes available via the Pond Tracker or an approved data capturing template.
- 1.8 The monitoring of DLL compensation ponds will enable Natural England to adaptively manage the scheme and ensure it is delivering the proposed benefits for GCN.

## PART 2: HABITAT DELIVERY BODY RESPONSIBILITIES

- 2.1 Successful monitoring of DLL compensation ponds will require input from the Habitat Delivery Body, Appropriately Trained Person(s) (can be associated with the Habitat Delivery body or third party contractors) and an eDNA kit and analysis laboratory supplier.

Key responsibilities are listed below:



Supplier	Responsibility
Habitat Delivery Body	<ul style="list-style-type: none"> <li>Obtain access permissions from land owners prior to any survey or management and maintenance visit to compensation ponds<sup>1</sup></li> <li>Provide an initial contract briefing session for all Appropriately Trained Person(s), to ensure consistency in data collection, and to clarify data recording and biosecurity procedures</li> <li>Procure a sufficient number of eDNA kits to enable compensation ponds to be monitored. The eDNA kits must conform with the standard detailed in WC1067 Appendix D<sup>2</sup>. eDNA kits must be obtained from a laboratory supplier who currently partakes in the FAPAS GCN eDNA proficiency test</li> <li>Supply eDNA kits to Appropriately Trained Person(s) and return thereof</li> <li>Collate eDNA and HSI survey data and report results back to Natural England through the Pond Tracker or other approved data recording sheets that have been supplied by Natural England</li> </ul>
Appropriately Trained Person(s) <sup>3</sup>	<ul style="list-style-type: none"> <li>Undertake eDNA pond sample using the supplied kits in accordance with WC1067 Appendix 5</li> <li>Store eDNA samples in accordance with the specification detailed in WC1067 Appendix D, step 9</li> <li>Undertake chemical analysis of water quality (including phosphate-phosphorus and nitrate-nitrogen using equipment owned prior to this Contract or on-site rapid test kits</li> <li>Conduct field survey for each pond (and any neighbouring ponds that are accessible) to measure the physical attributes required for GCN Habitat Suitability Indices as per instructions in Oldham et al. 2000<sup>4</sup> and the Amphibian and Reptile Groups of the United Kingdom Advice Note 5<sup>5</sup>. Neighbouring ponds include ponds that fall under the same landownership and visibly form part of the same pond cluster (ie are within 250 metres of the original survey pond).</li> <li>Record field data on the Pond Habitat Survey Recording Form (to be supplied by Natural England ahead of surveys)</li> <li>Adhere to biosecurity procedures detailed in Amphibian and Reptile Groups of the United Kingdom Advice Note 4<sup>6</sup></li> </ul>
eDNA Kit Supplier	<ul style="list-style-type: none"> <li>Supply of eDNA kits</li> <li>Analyse eDNA samples and report results to the Habitat Delivery Body</li> </ul>

### PART 3: PROGRAMME OF WORK REQUIRED

<sup>1</sup> The Habitat Delivery Body will have previously obtained access permission from all landowners for pond habitat works. However, additional permissions should be sought prior to any survey work or management and maintenance visit.

<sup>2</sup> Biggs J, Ewald N, Valentini A, Gaboriaud C, Griffiths RA, Foster J, Wilkinson J, Arnett A, Williams P and Dunn F 2014. Analytical and methodological development for improved surveillance of the Great Crested Newt. Appendix 5. Technical advice note for field and laboratory sampling of great crested newt (*Triturus cristatus*) environmental DNA. Freshwater Habitats Trust, Oxford.

<sup>3</sup> Can be associated with the Habitat delivery Body or a third party contractor, at the Habitat Delivery Body's expense.

<sup>4</sup> Oldham R.S., Keeble J., Swan M.J.S. & Jeffcote M. (2000). Evaluating the suitability of habitat for the Great Crested Newt (*Triturus cristatus*). Herpetological Journal 10(4), 143-155.

<sup>5</sup> ARG UK (2010). ARG UK Advice Note 5: Great Crested Newt Habitat Suitability Index. Amphibian and Reptile Groups of the United Kingdom. Publication date: May 2010.

<sup>6</sup> ARG UK (2017). ARG UK Advice Note 4: Amphibian Disease Precautions: A Guide for UK Fieldworkers. Amphibian and Reptile Groups of the United Kingdom.

### **3.1 Methods**

- 3.1.1. It is expected that the Habitat Delivery Body will contact all landowners in advance of visiting the compensation pond locations and ascertain whether permission is conditional upon the Habitat Delivery Body/Appropriately Trained Person(s) making contact beforehand to introduce themselves, or be accompanied on site. The Habitat Delivery Body will be expected to ensure that condition is met.
- 3.1.2 All ponds created or restored through DLL will be subject to four eDNA and HSI surveys over consecutive years from time of creation and /or restoration. eDNA surveys will follow the standardised methodology set out in WC1067 Appendix 5 to determine GCN pond occupancy.
- 3.1.3 HSI information will be collected for newly created or restored compensation ponds, as well as any neighbouring ponds on the same site. The HSI is scored between 0 and 1 and represents aquatic habitat suitability based on ten important habitat attributes, which are used to indicate the likelihood of GCN occupancy of a particular pond. For determining the HSI, the methodology outlined in Oldham et al. 2000 should be used. For determining the terrestrial habitat suitability score, the approach outlined in the Amphibian and Reptile Groups of the United Kingdom Advice Note 5 should be used.
- 3.1.4 If a pond is visited and found to be dry then it will be subject to HSI survey and evidence must also be presented as to why it could not be surveyed.
- 3.1.5 Each pond will undergo three management visits that will include an HSI survey and egg search to assess the suitability of the pond and whether there is evidence of breeding.
- 3.1.6 Population size class assessments will be conducted over 2 consecutive years across a subset of compensation and control ponds (i.e. extant ponds not associated with DLL that are located near to development and compensation sites). Population size class assessments should follow the guidance contained in Natural England's Great crested newts: surveys and mitigation for development projects document<sup>7</sup>.
- 3.1.7 All field visits are to adhere to high standards of biosecurity detailed in the Amphibian and Reptile Groups of the United Kingdom Advice Note 4. This includes sterilising all equipment and clothing after each visit to minimise any risks of transmitting disease or spreading invasive non-native species.

### **3.2 Outputs**

- 3.2.1 For each compensation and neighbouring pond, including ponds found to be dry, the physical attributes required for GCN HSI must be measured. HSI data will be recorded on the Pond Habitat Survey Recording Form (to be supplied by Natural England ahead of surveys) or an equivalent form that has been checked by Natural England prior to field

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<sup>7</sup> Natural England (2015). Great crested newts: surveys and mitigation for development projects. Standing advice for local planning authorities who need to assess the impacts of development on great crested newts. Available: <https://www.gov.uk/guidance/great-crested-newts-surveys-and-mitigation-for-development-projects#population-monitoring>.

surveys. The Habitat Survey recording form will contain information such as, but not limited to:

- Location (4 figure and 10 figure OS grid reference)
- Unique Pond ID
- Pond area
- Desiccation
- Water quality
- Percentage Shade
- Number of waterfowl
- Fish presence
- Number of other ponds within 1 km<sup>2</sup>
- Terrestrial habitat
- Percentage macrophyte cover
- Overall HSI per pond

3.2.2 For each compensation pond that has undergone an eDNA survey, results must be reported via the pond tracker<sup>8</sup>. The information captured on the Pond Tracker will comprise information such as, but not limited to:

- eDNA kit provider
- eDNA kit number
- Unique Pond ID
- Ecological Surveyor
- Inhibition Detected
- Degradation Detected
- eDNA Score
- whether GCN were present, absent or if the survey was inconclusive
- Positive Control
- Negative Control

3.2.3 To provide a date-stamped photographic digital record of each pond, including those found to be dry, with a unique identifier, showing the pond and surrounding habitat.

### **3.3 Data Format and Supply**

3.3.1 All data and associated evidence from monitoring activities will be supplied to Natural England in electronic format through the Pond Tracker spreadsheet or to a Natural England Point of Contact for a particular area. Photographic records are to be supplied digitally, at a resolution between 2MP-10MP and in either JPEG, PNG or TIF formats. For photos, the following file naming format should be followed:

- 10 digit GS reference
- date surveyed
- surveyor name

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<sup>8</sup> Note, this information will be supplied to the Habitat delivery Body by the Laboratory supplier of eDNA kits and analysis.

- pond ID
- dry pond (if applicable)

3.3.2 Before data is returned back to Natural England, the Habitat delivery Body must undertake a quality control process. The following checks should be conducted:

- All data is in the format that has been requested. This will be specified in the pond tracker or a supplied data reporting template
- Ensure there are no missing survey values. If missing values do occur, their occurrence should be highlighted and explained to Natural England before submission
- Anomalous data points have been checked and verified
- No duplicate unique pond IDs
- No duplicate eDNA kit numbers
- All OS grid references are complete to 10 figures as well as 4 figures
- All OS Grid references fall within the survey area boundary
- Date of survey falls within the approved survey window

#### PART 4: MONITORING TIMETABLE

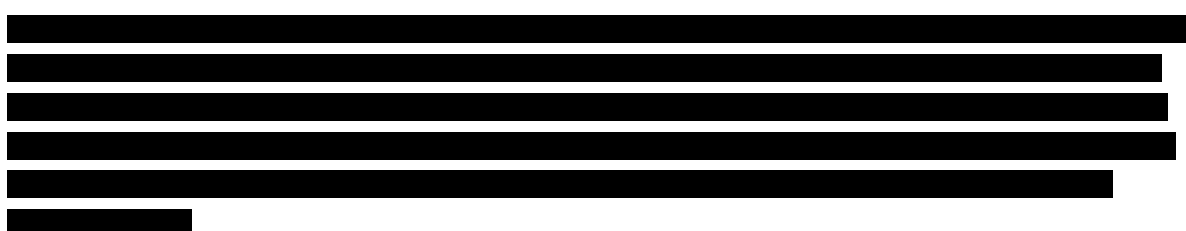
4.1



4.2



4.3



4.4

All monitoring data must be supplied to Natural England by the Habitat Delivery Body as soon as it becomes available and has undergone a quality control process.

# SCHEDULE 5A – LANDOWNER’S PRIVACY NOTICE

<b>Who is collecting my data?</b>
<p>The data controller is Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX. You can contact the Natural England Data Protection Manager at: Natural England, County Hall, Spetchley Road, Worcester, WR5 2NP; <a href="mailto:foi@naturalengland.org.uk">foi@naturalengland.org.uk</a>.</p> <p>Any questions about how we are using your personal data and your associated rights should be sent to the above contact. The Data Protection Officer responsible for monitoring that Natural England is meeting the requirements of the legislation is: Defra group Data Protection Officer, Department for Environment, Food and Rural Affairs, SW Quarter, 2<sup>nd</sup> floor, Seacole Block, 2 Marsham Street, London SW1P 4DF. <a href="mailto:DefraGroupDataProtectionOfficer@defra.gsi.gov.uk">DefraGroupDataProtectionOfficer@defra.gsi.gov.uk</a>.</p>
<b>What of my data is being collected and how is it used? What is the legal basis for the processing?</b>
<p>The data collected by Natural England includes, your name and contact details or those of your agent, customer type, and the nature and location of relevant land. This data is used by us for administering a Great Crested Newt licensing scheme in your area (“the Scheme”). This is done with habitat delivery bodies and landowners like yourself who agree to create, restore, manage and monitor pond habitat for Great Crested Newts.</p> <p>Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. That task is to deliver the Scheme and to create, restore, manage and monitor pond habitat for Great Crested Newts in the area of the Scheme.</p>
<b>Who will my data be shared with?</b>
<p>Your personal data may be shared by us with habitat delivery bodies or contractors delivering the Scheme, and with local biodiversity record centres.</p> <p>We will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.</p>
<b>If you are relying on my consent to process my data, can I withdraw my consent?</b>
No, because the processing is not based on consent.
<b>How long will my data be held for?</b>
Natural England will keep your personal data for as long as you are the owner of the land on which pond habitat for great crested newts has been created or restored plus 7 years, or for 32 years, whichever is the shorter.
<b>What will happen if I don’t provide the data?</b>
You will not be able to be involved in the Scheme to create, restore, manage and monitor pond habitat for great crested newts.

<b>Will my data be used for automated decision-making or profiling?</b>
The information you provide is not connected with individual decision making (making a decision solely by automated means without any human involvement) or profiling (automated processing of personal data to evaluate certain things about an individual).
<b>Will my data be transferred outside of the EEA? If it will, how will it be protected?</b>
The data you provide will not be transferred outside the European Economic Area.
<b>What are my rights?</b>
A list of your rights under the General Data Protection Regulation, the Data Protection Act 2018 (DPA 2018), is accessible at: <a href="https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/">https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/</a>
<b>How do I complain?</b>
You have the right to lodge a complaint with the ICO (supervisory authority) at any time. Should you wish to exercise that right full details are available at: <a href="https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/">https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/</a>
<b>Natural England's Personal Information Charter</b>
Details of our Personal Information Charter can be found at: <a href="https://www.gov.uk/government/organisations/natural-england/about/personal-information-charter">https://www.gov.uk/government/organisations/natural-england/about/personal-information-charter</a> .

Schedule 5A – Landowner's Privacy Notice: version 1 dated July 2019.

# SCHEDULE 5B – LANDOWNER’S LETTER

Habitat Delivery Body’s logo  
and address



Dear << name of landowner >>

Natural England has devised and is collecting funds for a scheme to create and improve pond habitat for Great Crested Newts in << area >> and has selected << name of Habitat Delivery Body >> to start this work. You, as a landowner, have presented us with the opportunity to restore and/or create ponds on your land. We are very grateful to you for this.

Once created, and in order to ensure good value for money, these ponds will require future monitoring and maintenance. We would therefore be grateful for your agreement that for the next 25 years we (or another specialist habitat management body appointed by Natural England) may have periodic access to the ponds created on your land. The terms of this would be as follows:

- Visits are expected to be infrequent – less than annual;
- Most visits will be for monitoring purposes and will be brief;
- In order to reduce shading and keep ponds in optimum condition for Great Crested Newts scrub growth on the southern sides of ponds may need to be cut back, perhaps every 6 to 8 years. Natural England will arrange and pay for this;
- You, or any subsequent owner of the land, would be informed prior to all access and any works;
- All reasonable efforts would be made to avoid causing disturbance or inconvenience.

Additionally, we would be grateful for your agreement to take simple measures to protect the habitat quality of the ponds for Great Crested Newts, as follows:

- Do not stock with fish (which eat invertebrates and young newts);
- Leave a three metre buffer zone around pond, inside which grazing is no more than light and there is little disturbance;
- Avoid excessive grazing of pond vegetation by livestock;
- Avoid poaching of pond sides and frequent entry of grazing animals into ponds;
- Do not plant trees or create shade on the southern sides of ponds;
- Do not introduce non-native plants;
- Do not link the pond with other water bodies or water sources such as streams, ditches or drains;
- Protect the pond from agricultural runoff and chemical spray-drift;
- Do not encourage wildfowl to use the pond, eg by feeding-in or providing duck houses.

If you cease to be the owner or occupier of any land on which pond habitat has been created under this scheme it would be greatly appreciated if you could let us know about this and help us to make contact with the new owner or occupier.

We would be grateful if you could acknowledge receipt of this letter by signing a copy and returning it to us.

Thank you very much for your contribution to the conservation of Great Crested Newts.

Yours faithfully

Landowner Name .....

Signature.....Date.....

Schedule 5B – Landowner’s Letter: version 2 dated October 2019.
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# SCHEDULE 6 – POND CREATION / RECREATION CHECKLIST

## Notes:

This checklist is to be used in conjunction with the pond specification to ensure ponds are suitable for use as compensation via the District Level Licensing scheme.

One checklist is to be completed per pond created and / or restored. Checklists must be retained for reporting purposes and, where relevant, information transferred to the Pond Tracker.

Sections 1, 2 and 3 of this checklist must be provided to Natural England within 5 working days of creation/ restoration works having been completed. Section 4 must be provided within 5 working days following completion of the 3 month check. Checklists are to be uploaded to Huddle unless otherwise advised. File names must be the Unique Pond ID e.g. A1-001.

This checklist may be subject to future revision.

## Section 1: Site Information

Unique Pond ID	
Grid Reference (10 figure)	
Site Address	
Land Owner Name	
Landowner address (if different to site address)	
Landowner phone number	
Landowner e-mail address	
Landowner agreement reference number	
Date landowner agreement signed	

<p>Pond to be created or restored?</p> <p><b>Note:</b> Only ponds in poor condition, that are no longer suitable for GCN, are eligible to be restored under DLL. In order to be eligible, ponds must:</p> <ul style="list-style-type: none"> <li>• Not currently be suitable for GCN;</li> <li>• Be dry for all or most of the year due to silting up; or</li> <li>• Have a base of thick, black, anaerobic sediment with just a few inches of water.</li> </ul>	
<p>Date by which pond can be created/ restored.</p>	

## Section 2: Site Suitability

<p>Date of pre-works site visit</p>	
<p>Site visit undertaken by (name and habitat delivery body).</p>	
<p>Proposed pond area (m<sup>2</sup>) – Ponds must be between 100m<sup>2</sup> &amp; 1000m<sup>2</sup></p>	
<p>Proposed pond depth (m) – Ponds must be between 1m-3.5m deep</p>	
<p>Width of buffer zone to be provided around pond.</p> <p><b>Note:</b> Terrestrial buffer zones of at least 3m will be required around both created and restored ponds. Wider buffer zones will be required where the surrounding terrestrial habitat is sub-optimal or ponds are at risk of nutrient run-off.</p>	
<p>Is fencing of the buffer zone required to prevent uncontrolled grazing/ poaching by livestock, public/ dog access or encroachment of agricultural practises? If yes, please state length.</p>	
<p>Terrestrial habitat types within 50m.</p>	

Note - ponds must be located within 50m of good quality terrestrial habitat e.g. woodland, hedgerows or dense scrub.	
Distance (m) to nearest pond	
Description of proposed works	
Are there any site specific considerations required during construction/ restoration? For example access considerations, machinery requirements, location for disposal of spoil etc.	
Suitable timing for works, including any timing constraints	
GCN likely to be present within the site or surrounding area during works?	
Is the site located within or in close proximity to a designated site, for example a SSSI, AONB or Local Wildlife Site?	

	Yes	No
Is the site located within a core or fringe Strategic Opportunity Area (SOA)? If 'Yes' state whether core or fringe SOA.		
Is the site located outside of or greater than 100m away from a Special Area of Conservation (SAC) or Ramsar site, or 500m away from a Special Protection Area (SPA)?		
If no to the above, has a Habitat Regulations Assessment (HRA) and Appropriate Assessment (AA) taking into account the generic		

mitigation principles been undertaken?		
Is the geology/ soil type suitable for pond creation? (i.e. is a pond likely to hold water?)		
Can the works be undertaken without negatively impacting on protected and/ or priority species and/ or habitats?		
<p>If no, list the protected/ notable species and/ or habitats</p> <p><b>Note:</b> works must only proceed where:</p> <ul style="list-style-type: none"> <li>a) Any potential impacts can be avoided by carrying out works under a detailed method statement; OR</li> <li>b) A licence/ consent is granted from the relevant authority to allow the works to legally proceed (where impacts cannot be avoided). In this scenario a detailed mitigation strategy must be devised to avoid, mitigate and compensate where necessary the potential impacts.</li> </ul>		
Is the site and surrounding area free of invasive non-native plant species?		
Is the site free of potential sources of colonisation by fish?		
Are other waterbodies in the surrounding area free of significant negative impacts as a result of waterfowl?		
Is the habitat and associated land management within 50m of the proposed pond suitable for GCN? (for example low-intensity grazed grassland, scrub, woodland)?		
Is there good habitat connectivity between the site and surrounding landscape and ponds?		
Can works be undertaken without causing run-off of silt or pollutants?		
Is the site free of constraints associated with		

underground/ overhead services? Further advice from relevant providers must be sought if required.		
Can works be undertaken without adversely impacting on archaeological sites, historic features or designated landscapes? Further advice from a relevant specialist must be sought if required.		

**If 'No' to any of the above, the site may not be suitable for pond restoration/ creation and further consideration/ justification regarding its suitability will be required.**

<p>If any consents are required prior to pond creation/ restoration (e.g. from Natural England, Environment Agency, Local Planning Authority), please provide the details and reference numbers where applicable.</p> <p><b>Note:</b> all relevant consents must be in place before works progress</p>	
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Photographs of site prior to works (two photographs representative of the site conditions, one of which must include the entire pond/ area proposed for the pond).

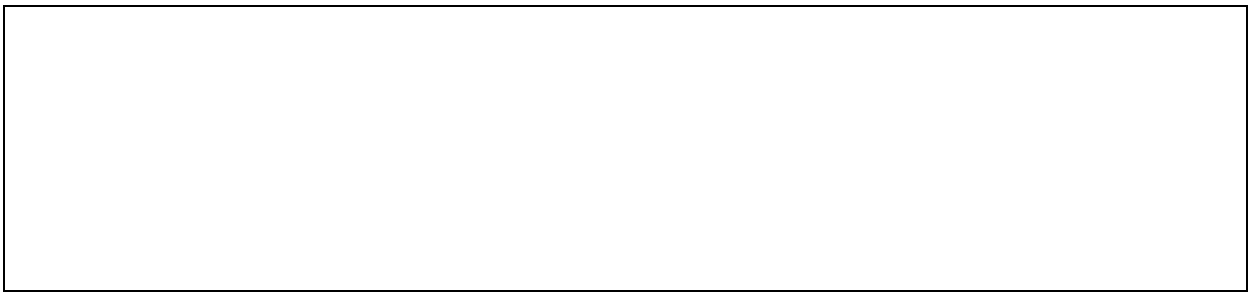
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List of supporting documents associated with this checklist e.g. site location plan, HRA assessment	
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#### Section 4: Works Undertaken

Date pond restoration/ creation completed	
Pond area (m <sup>2</sup> )	
Maximum pond depth (m)	
Has the pond been created/ restored in accordance with the required Pond Specification, including fencing if required?	

Photographs of pond immediately following completion of works, at least one of which must show the entire pond.
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#### Section 4: Condition of pond at 3 month post creation/ restoration check

**Note:** The 3 month check is to be undertaken between 2 and 3 months following completion of restoration/ creation works.

Unique Pond ID	
Date of site visit	
Site visit undertaken by	
HSI Assessment undertaken and data uploaded to Pond Tracker?	
Percentage of pond perimeter Accessible	
Amphibian Species Recorded	

	Yes	No
Is the pond holding water or does it have the ability to hold water?		
If present, does the water quality appear to be good and not adversely impacted by pollution?		
Is the pond free of potential future threats to water quality?		
Is the pond and surrounding area free of invasive plant species?		
Is the pond free of fish?		
Is the pond free of significant impacts as a result of waterfowl?		
Are the surrounding habitats and management operations suitable		



for GCN?		
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**If 'No' to any of the above, the pond is not considered suitable. Please identify this to Natural England as soon as possible, and within 5 working days of completion of the 3 month check.**

Photographs of pond three months post creation/ restoration (two photographs, at least one of which must show the entire pond).

Schedule 6 – Pond Creation/Recreation Checklist: V1.4 June 2019

## SCHEDULE 7 – DATA PROCESSING

1. This Schedule shall be completed by Natural England, who may take account of the view of the Habitat Delivery Body, however the final decision as to the content of this Schedule shall be with Natural England at its absolute discretion.
2. Natural England's Data Protection Manager are can be contacted at Natural England, County Hall, Spetchley Road, Worcester, WR5 2NP.
3. The Habitat Delivery Body shall comply with any further written instructions with respect to processing by Natural England.
4. 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, Natural England is the Controller and the Habitat Delivery Body is the Processor in accordance with Clause E2.1.
Subject matter of the processing	The subject matter is data concerning the Project and (a) provided by Natural England to the Habitat Delivery body, or (b) data received by the Habitat Delivery body in the course of the performance of this Contract.
Duration of the processing	The Contract Period plus any further period during which the provisions of Clause H8 apply.
Nature and purposes of the processing	<p>Data provided by Natural England will include, but not be limited to, computerised mapping data, information about Natural England's points of contact, and information about the implementation of district level licensing for great crested newts within the Area. This data will be stored in electronic form on a shared drive to which only relevant officers of the Habitat Delivery Body will have access, subject to password protection.</p> <p>Data received by the Habitat Delivery body will include, but not be limited to: the identities and other details of landowners on whose land pond creation, recreation, monitoring and maintainance activities will or may take place; reports of site visits and contacts with such landowners; reports of site work undertaken; the details of individuals and companies engaged by the Habitat Delivery Body in the course of the performance of this Contract, including standard HR information. This data will be stored in password protected spreadsheet form on a shared drive to which only relevant offices of the Habitat Delivery Body will have access, subject to password protection.</p> <p>None of the above data may be shared or disseminated by the Habitat Delivery Body in any way (save to Natural England)</p>

	<p>without the express consent of Natural England.</p> <p>The purpose for which the above data is held is the fulfilment of the Project, which is a matter in the public interest and in relation to which Natural England has statutory duties.</p>
Type of Personal Data	Information will include names, addresses, telephone numbers, email addresses, the addresses of landholdings
Categories of Data Subject	Landowners. Employees. Contractors.
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data.</p>	<p>Data held by Natural England will be retained for 32 years from the Commencement Date and will then be dealt with in accordance with the law applicable at that time. Data held by the Habitat Delivery Body shall be held for a period of 6 years from the end of the Term of this Contract and shall thereafter be destroyed.</p>

Schedule 7 – Data Processing version dated July 2019.

# SCHEDULE 8 - CHANGE CONTROL

## [CONTRACT / FRAMEWORK AGREEMENT] CHANGE NOTE

<b>Contract Change Note Number</b>	
<b>Contract Reference Number and Title</b>	
<b>Variation Title</b>	
<b>Number of Pages</b>	

Whereas the [Contractor] and the Authority entered into a [Contract/Framework Agreement] for the provision of [contract title] dated [dd/mm/yyyy] (the "Original Contract/Framework Agreement") and now wish to amend the Original [Contract/Framework Agreement].

It is agreed as follows:

1. With effect from [dd/mm/yyyy] the Original [Contract/Framework Agreement] shall be amended as set out in this Contract/Framework Change Note:

<b>Change Requestor / Originator</b>	
<b>Summary of Change</b>	
<b>Reason for Change</b>	
<b>Revised Contract Price</b>	Original Contract Value      £
	Previous Contract Changes      £
	Contract Change Note [x]      £
	New Contract Value      £
<b>Revised Payment Schedule</b>	
<b>Revised Specification (see Annex A)</b>	
<b>Revised Contract Period</b>	
<b>Change in Contract Manager(s)</b>	
<b>Other Changes</b>	

2. Save as herein amended all other terms and conditions of the Original [Contract/Framework Agreement] shall remain in full force and effect.

Execution of the Contract Change Note is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The revised Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").

Schedule 8 – Change Control: version dated August 2019

# SCHEDULE 9 – CONTRACT MANAGEMENT AND KEY PERFORMANCE INDICATORS

## General matters

- 1 In order to ensure that the Contract delivers the intended outputs on time and to budget, the following will be required:
  - a) An inception telecall prior to the issue of the first Work Package Order.
  - b) The Habitat Delivery Body and Natural England will review and agree the project risks register and associated mitigations in order that this can be incorporated as Schedule 1 of the Contract.
  - c) Key staff from the Habitat Delivery Body will require training prior to commencing work on the first Work Package Order. This will be delivered using online technologies augmented by on site demonstrations.
- 2 The Habitat Delivery Body shall nominate a Contract Manager. The Contract Manager shall be either the person named at clause A4.4 or shall report to that person. The Contract Manager shall be responsible for the overall delivery and quality of the Services and shall also:
  - a) Develop and maintain a good working relationship with the Natural England Contract Manager (who shall either be the person named at clause A4.4 or shall report to that person).
  - b) Where appropriate and on request, attend an annual Lot-level contract review meeting, and ensure prompt implementation of any actions agreed with the Natural England Contract Manager during these meetings. This maybe a face to face or telephone meeting.
  - c) Maintain oversight of performance against Key Performance Indicators.
  - d) Maintain a documented internal quality assurance process for monitoring the quality of Services delivered.
- 3 On completion of the works required by the Habitat Delivery Body's first Work Package Order, Natural England will audit the quality of ponds delivered through analysis of information contained within the pond tracker. Subsequent Work Package Orders will only be issued once this analysis has been completed and feedback given to the Habitat Delivery Body.
- 4 Key risks and mitigation measures as set out at Schedule 1 will be assessed by the Habitat Delivery Body on a regular basis and their status reported to the Natural England Contract manager at agreed review dates.
- 5 The Habitat Delivery Body will provide updates directly to Natural England to an agreed timeframe on progress of Project requirements including a review of the key risks to delivery and ongoing quality control of outputs.
- 6 At the end of the Contract a final teleconference or meeting will be held to review lessons

learnt.

## **Relations between Natural England and the Habitat Delivery Body**

- 7 The Habitat Delivery Body and Natural England shall:
- a) make sincere efforts to understand each other's obligations, goals, expectations, duties and objectives in respect of the Contract;
  - b) work at all times within a spirit of co-operation to ensure the delivery of the Services to the standards stipulated;
  - c) resolve differences that may arise by discussion and negotiation, wherever possible;
  - d) communicate clearly and effectively, and in a timely manner, on all matters relating to the Contract; and
  - e) give an early warning to the other party of:
    - i. any mistake, discrepancy or omission that they become aware of, and offer fair and reasonable solutions, where practicable; and
    - ii. any matter that they become aware of that could affect the achievement of any objective, obligation, or the like contained in the framework agreement.
- 8 Furthermore, the Habitat Delivery Body shall:
- a) act with the utmost good faith towards, and at all times co-operate with, Natural England;
  - b) comply with all Natural England's reasonable requirements in relation to the Services.
- 9 In addition to the inception and final meetings referred to at paragraphs 1 and 6 of this Schedule Meetings between the Habitat Delivery Body and Natural England will be organized by the Natural England Contract Manager and attended by the Habitat Delivery Body's Contract Manager and any other contractor or project staff (as agreed between the Parties' Contract Managers). Meetings may be face-to-face or via teleconference. Topics will be discussed at a high level, and may include (but are not limited to):
- Progress against overall Contract management
  - Performance against Key Performance Indicators
  - Quality assurance processes and deliverer performance
  - Issues arising during the delivery of commissioned activity
  - Improvement plans
  - Cost effectiveness
  - Reporting requirements
  - Procurement and payment issues
  - Conflicts of interest
  - Risk management.

## **Relations with other Habitat Delivery Bodies**

- 10 Where the Habitat Delivery Body is not the sole body delivering Services in relation to the Project within the Area to Natural England the Habitat Delivery Body shall cooperate in full with both Natural England and such other body in relation to any matter or site in which both bodies are concerned.

## Key Performance Indicators and consequences of 'red' and 'amber' scores

11 The Habitat Delivery Body's performance of the Services will be evaluated by Natural England on the following basis:

Lot	KPI	What is required to make this measurable	KPI Measurement	KPI Rating		
1 – Habitat Delivery	KPI 1.1 – Service credit L1.1	Pond creation/restoration completed as per work order	Ordered Ponds creation/restoration Delivered to specification within agreed timescales	<98% of completed pond creation/restoration completed to specification and to agreed timescale and cost	98% of completed pond creation/restoration completed to specification and to agreed timescale and cost	100% of completed pond creation/restoration to specification and to agreed timescale and cost
	KPI 1.2 –	Pond Habitat Creation Tracking and data Management Completed as required	Pond tracker filled in, agreement forms and checklist provide to NE within agreed timescales	Outputs sent to NE Framework Manager no longer than 2 (two) working days after the agreed deadline for each order for each area.  98% of reports contain all information	Outputs sent to NE Framework Manager no longer than 1 (one) working days after the agreed deadline.  99% of reports contain all information	Outputs sent to NE Framework Manager within the agreed deadline.  100% of reports contain all information
2 - Pond HSI survey, eDNA and Water Quality Sampling	KPI 2.1 – Pond Survey and Sampling  Service credit L2.1	Annual Pond Survey and Sampling work plan	Ponds surveyed and sampling undertaken to specification within agreed timescales	Survey and Sampling requirement not achieved (i.e. shortfall >3 ponds)	Survey and Sampling requirement not achieved (ie shortfall of <3 ponds)	Survey and Sampling requirement achieved



	<b>KPI 2.3 – Sample &amp; Survey Data Return  Service credit L2.3</b>	All pond samples and survey outputs to be added to the pond tracker within agreed timescales	All pond survey samples and reports completed and updated to pond tracker within agreed timescale	<95% of pond samples and survey outputs successfully delivered to Natural England via pond tracker within agreed timescale.	95% of pond samples and survey outputs successfully delivered to Natural England via pond tracker within agreed timescale.	100% of pond samples and survey outputs successfully delivered to Natural England via pond tracker within agreed timescale.
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12. See clause C3.1. Unless there is written clearance by the Authority any “red” or “amber” scores will result in a reduction in value of the subsequent monthly payment sent to the Authority that the score was awarded. The applicable deductions, resulting from performances in “amber” and “red” in the KPI table are:

- a). An “amber” score in delivery of two consecutive orders or required deliverables shall result in a 5% reduction of the total value of that order. If an amber score is awarded for more than two consecutive orders or required deliverables, a further 10% reduction of each order will occur for each consecutive order or required deliverables scoring an amber.
- b). A “red” score shall result in a 10% reduction of that order scoring red. A further 10% reduction of each order will occur for each consecutive order or required deliverables scoring red.

13. The measurement of KPIs will be aligned to the commencement of orders raised under the Framework Agreement by the NE Framework Manager and the suppliers will cooperate fully and in a timely manner in reporting the measurables described in the above KPI table to the NE Framework Manager.

The use of service credits is governed by the following principles:

- Service credits sit within the wider service management approach being pursued by the Supplier and the Authority.
- Achieving the KPI within the next quarter and payment of any outstanding service credits renders that service failure resolved.
- Natural England has full and complete discretion on whether to claim all, part or none of a service credit to which it is due.
- Service credits claimed will reflect in the final invoice to Natural England i.e. reducing the agreed contract cost. Service failure in any KPI for any of the six months in any rolling 12 month period during the life of the contract constitutes a service failure in its own right and may lead to breach of contract for non-performance.

14. The use of a service credit regime accompanied by a proactive approach to correcting failures and addressing their cause improves the relationship and enables a partnership rather than a confrontational style of working. Its focus is on managing and improving service. It is NOT about taking cost out of the service to Natural England.





# SCHEDULE 10 – NATURAL ENGLAND'S TENDERING SPECIFICATION

## Project background

- 1.1 Great crested newts (*Triturus cristatus*; GCN) are fully protected under European and domestic legislation and the Habitats Directive places an obligation on the UK to achieve their Favourable Conservation Status (FCS, as defined by Article 2 of the Habitats Directive). Although declining overall, GCN are still widespread and relatively common in some areas in which developments are planned, including in disturbed and urban environments. The Habitats Directive makes it an offence to capture, kill, injure or disturb GCN or to damage key elements of their habitats. The Habitats Directive provides for the derogation from these prohibitions for specified reasons and providing certain conditions are met. Those derogations are transposed into the domestic legislation by way of a licensing regime. As a result, GCN may cause delays in developments and require considerable survey, mitigation or compensation work.
- 1.2 District Level licensing is an alternative to the site by site great crested newt (GCN) licensing process which has been used for development up till now. It involves district wide survey of the distribution of GCN and assessment of impacts on GCN from all planned development in the district over the whole local plan period. GCN records and other environmental data are used to map zones which indicate where there are highest risks to the local conservation status of GCN and where GCN pose highest risks to development.
- 1.3 District licensing depends upon the creation of a large number of new ponds for great crested newts and the restoration of existing ponds that are currently not suitable for use by great crested newts. Strategic Opportunity Areas (SOA) have been identified where GCN habitat would be best created or restored to provide strategic net gain; pond compensation will be focused within these SOAs.
- 1.4 Developers will pay a financial contribution to enter into the DLL scheme which includes the cost of creating compensatory habitat (listed under Bravo attachments) and also a monitoring indemnity fund that covers a 25 year period. This fund ensures that DLL will be able to provide an ongoing assessment of pond occupancy, as well as habitat connectivity and suitability of compensation ponds for GCN.
- 1.5 Details of the 25 year monitoring timetable is described in Part 4, Schedule 4 of Terms and Conditions attached.

## The aim of this tender and the programme of work required

- 1.6 The aim of this tender is to:
  - Deliver pond creation and restoration funded directly through Natural England during autumn and winter 2019/2020.
  - Secure habitat delivery bodies through which pond creation, restoration, monitoring and management advice can be commissioned beyond 2019/2020. This will be funded via developer contributions raised through district licensing schemes.
- 1.7 The habitat delivery body will have the opportunity to deliver monitoring and maintenance of Great Crested Newt pond habitats over 25 years and beyond as required by District Licensing schemes. They would ideally have experience of working in partnership with

Local Authorities, NGOs and Landowners. Natural England would particularly welcome applications from organisations that have charitable objectives and/or the conservation of nature core to their ethos.

- 1.8** Successful tenderers will be offered a 3 year framework contract to be a habitat delivery body against which Natural England can raise orders for work packages on an annual basis.
- 1.9** The programme of works for 2019/2020 aims to create and restore pond habitats for Great Crested Newts to enable the launch of Natural England led approaches to District Level Licensing for GCN. District level licensing schemes operate at Local Planning Authority level.
- 1.10** The tender comprises of two lots covering multiple areas. Suppliers will make it clear which areas (or districts) and lots they are bidding for.

**1.11 Summary of tender lots**

**Lot 1 - Engagement, Advice and Pond Restoration/Creation.**

Working with landowners to deliver pond creation and restoration in appropriate locations within SoAs, initially funded directly though Natural England, thereafter through developer payments into district licensing schemes.

There are two key funded elements of this work.

- Engagement and advice regarding the location and management of ponds. The undertaking of necessary checks (ie to ensure no damage to historic features and important habitats) and ensuring compliance with specification as well a check to ensure that new ponds are holding water. In some instances it may involve applying for planning permission.
- Physical works to create and restore (Important Note: For a pond to count as a 'restored pond' it must currently be in a condition whereby it does not provide suitable aquatic habitat for newts).

We recognise that this work can be achieved in a variety of ways (for example suppliers may use contractors or pay landowners undertaking works themselves). Tender applications to be evaluated against:

- Partnership working experience
- Delivery plan including understanding of scheme requirements and strategy for engagement with landowners in target areas
- Ability to deliver on lot 2 or work collaboratively with another supplier
- Skills/Experience
- Costs

**Lot 2 - Pond HSI survey, eDNA and Water Quality Sampling**

This ongoing monitoring work will commence from 2020/2021 following launch of district licensing schemes. Every pond will be subject to Pond HSI survey, eDNA and Water Quality Sampling annually for 4 years from the date at which it is allocated to development as a compensation pond.

Tender applications to be evaluated against:

- Partnership working experience

- Ability to undertake HSI survey, Water Quality and eDNA sampling in line with the specification
- Ability to deliver on lot 1 or work collaboratively with another supplier
- Skills/Experience
- Costs

**1.12** Potential suppliers can tender for either or both lots. The tender evaluation will favour suppliers able to deliver on both Lot 1 and Lot 2 or where it is clear that there is a collaborative partnership between two suppliers to deliver these services.

**IMPORTANT:** Please note that Lot 2 Pond survey and ongoing monitoring will not commence until the scheme is live and will be funded through developer tariffs.

**1.13** The districts where we are seeking to secure Habitat Delivery Bodies are listed in the table below.

Pond Creation/Restoration Area	Districts	Strategic Opportunity Area Map available (See Note below)	Approximate Number of Ponds Sought for creation/restoration in 2019/2020
Somerset	Somerset West and Taunton - Sedgemoor District - Mendip District- South Somerset District	YES	16
North Somerset	North Somerset	YES	6
South Gloucestershire	South Gloucestershire	YES	8
Swindon and Wiltshire	Swindon Borough - Wiltshire	YES	30
Shropshire	Shropshire	YES	30
Lancashire	Blackpool - Chorley District - Lancaster District - Preston District – Ribble Valley District – South Ribble District – Wyre District	YES	20
Northamptonshire	Corby District – Daventry District – Kettering District – Northampton District –Wellingborough District – South Northamptonshire District – East Northamptonshire District	YES	24
Yorkshire (South and East)	East Riding of Yorkshire – Doncaster District – Rotherham District - City of Kingston upon Hull – Sheffield City	YES	10
Yorkshire (North East)	Craven District - Harrogate District - Richmondshire District - Leeds	Interim	10
Yorkshire (North West)	Scarborough District - Hambleton District – York - Selby - Ryedale District	Interim	
Worcestershire	Malvern Hills District - Wychavon District - Bromsgrove District - Worcester District - Wyre Forest - Redditch	Interim	18
Hampshire	East Hampshire District - Eastleigh District - Winchester District - Fareham District - Hart District - Test Valley District	Interim	20
Leicestershire and Rutland	Charnwood Borough Council - Melton Borough Council - North West Leicestershire District - Blaby District - Hinckley and Bosworth District - City of Leicester – Harborough - Oadby & Wigston - Rutland	Interim	35
Cambridgeshire	Huntingdonshire District - South Cambridgeshire District - Cambridge City - City of Peterborough	Interim	16

Suffolk	Ipswich - Mid Suffolk District - Suffolk Coastal District - Babergh District	Interim	8
Derbyshire	City of Derby – Derbyshire Dales District – Erewash District - South Derbyshire District	Interim	17
Northumbria	Newcastle upon Tyne District - North Tyneside District - Northumberland	Interim	20
Durham	County Durham – Darlington - Hartlepool	Interim	15
Cumbria	Carlisle District - Copeland District - South Lakeland - Eden District	Interim	15

*Note: Strategic Opportunity Area (SOA) maps are target areas for the delivery of new ponds, or the restoration of existing ponds. They are ranked using ecologically important landscape features (e.g. suitable amount of woodland nearby) and split into core and fringe areas to encourage both the expansion of population (i.e. within existing suitable habitat) and distribution (i.e. areas near to existing suitable habitat enabling colonisation). The SOA scores for each region differ due to the difference habitat types, features, and restrictions in each area. SOA core areas described above are based on suitable habitat predicted using a species distribution model.*

*Interim SOA maps have been developed prior to species distribution models being produced. Interim core and fringe SOAs are based on our ecological understanding of great crested newts as well as referencing findings from the ten species distribution models and full SOAs that have been produced in the previous two years. A consistent approach is taken across all interim SOAs whereby the landscape features included are the same (arable density, distance to woodland and woodland density, grassland density, soil pH). Note that protected areas, roads, and rivers are not excluded in the interim SOAs in contrast to the full SOAs. Supplier will be provided with full SOAs as soon as they are available from October 2019.*

SOA Map information can be accessed via the attachments on Bravo.

#### **1.14 Contract**

Suppliers will be commissioned on the basis of a framework contract that will enable orders to be raised for work packages associated with Lots 1 and 2 on an as needed basis. Except for habitat delivery over autumn/winter 2019/2020 the volume of work will depend upon developer uptake of the scheme.

If there are multiple suppliers covering the same area then they might form a delivery panel.

#### **1.15 Outline of Expected Costs**

Natural England is primarily looking for quality outcomes – on this basis 80% of the tender evaluation score will be concerned with the technical elements of the submission. 20% of the evaluation will be concerned with costs and maximising delivery against available budget.

**Lot 1** Two elements as below:

- Engagement and advice - Natural England expect to pay up to £700 per pond (plus VAT where applicable).
- Pond Creation or Restoration - Natural England expects to pay up to £3500 per pond (plus VAT where applicable).

**Lot 2** Pond HSI survey, eDNA and Water Quality Sampling

IMPORTANT: Costs of delivery of Lot 1 and Lot 2 should not exceed associated allocation within the scheme conservation payments (as set out in Breakdown of District Level Licensing Conservation Payment listed under Bravo attachments). The costings used to define the conservation payment have been developed based on detailed research and they reflect average costs of pond creation. Actual costs will depend on a number of factors. For example - whether planning permission is required, whether the landowner can do the works themselves, use of volunteers etc.

#### **1.16 Engagement, Advice and Pond Restoration/Creation – requirements of the tender submission**

Lot 1 applicants will provide Natural England with a concise project plan describing how they will:

- use contacts and networks to seek landowners keen to establish or restore ponds on their holding.
- foster landowner relationships that encourage long term commitment to habitats created.
- ensure that ponds are created and restored in line with the specifications set out a Schedule 3b of the Terms and Conditions and that they are located in appropriate areas (within SOAs) with significant likelihood of colonisation by GCN.
- ensure appropriate checks are undertaken to protect important habitats and historic features and no ponds are created that lie within Natura 2000 sites unless a further assessment pursuant to Regulation 63 of the Habitats Regulations ascertains that such operations will not adversely affect the integrity of any Natura 2000 site.
- apply for planning permission where required.
- ensure that new ponds created are located upon land in diverse ownership so as to avoid over-commitment to a small number of landowners.
- ensure that necessary licenses are held to enable groundworks associated with delivery of the project to commence in situations where there is a high risk of impacting on newts. This may require a suitably experienced person to apply for and be named on the licence to oversee works.
- ensure that landowners are supplied with a Privacy Notice as per **Schedule 5A of the Terms and Conditions**.
- ensure that landowner's agreements as at **Schedule 5B of the Terms and Conditions** are signed and forwarded to Natural England.
- gather the information set out in the Pond Creation/Restoration Checklist at **Schedule 6 of the Terms and Conditions**.
- carry out a rapid assessment of new pond created or restored at two and three months following works to ensure that the pond is holding water and threat there are no obvious sources of pollution. This is to be recorded on the pond tracker.
- engage with the GCN habitat delivery steering group covering the area in which they are working.

- ensure that appropriately trained and/or experienced staff will be undertaking this work.

#### **1.17 Pond HSI survey, eDNA and Water Quality Sampling– requirements of the tender submission**

Lot 2 applicants will provide a brief project plan describing how they will:

- Obtain access permissions from land owners prior to any survey or management and maintenance visit to compensation ponds. This will require liaison with the habitat delivery body (ie the Lot 1 supplier) in areas where there are different suppliers for Lot 1 and Lot 2.
- Foster landowner relationships that encourage long term commitment to habitats created.
- Procure a sufficient number of eDNA kits to enable compensation ponds to be monitored. The eDNA kits must conform with the standard detailed in WC1067 Appendix D. eDNA kits must be obtained from a laboratory supplier who currently partakes in the FAPAS GCN eDNA proficiency testing.
- Collate eDNA and HSI survey data and report results back to Natural England through the Pond Tracker or other approved data recording sheets that have been supplied by Natural England
- Undertake eDNA pond sample using the supplied kits in accordance with WC1067, listed under Bravo attachments.
- Store eDNA samples in accordance with the specification detailed in WC1067, listed under Bravo attachments.
- Undertake chemical analysis of water quality (ie including but not limited to phosphate-phosphorus and nitrate-nitrogen) using equipment owned prior to this contract or on-site rapid test kits.
- Conduct a Habitat Suitability Index survey for each pond (and any neighbouring ponds that are accessible) as per instructions in Oldham et al. 2000 and the Amphibian and Reptile Groups of the United Kingdom Advice Note 5, listed under attachments on Bravo. Neighbouring ponds include ponds that fall under the same land owner permissions and visibly part of the same pond cluster (i.e. are within 250m) of the original survey pond.
- record field data on the Pond Habitat Survey Recording Form (form to be supplied by Natural England ahead of surveys)
- adhere to biosecurity procedures detailed in Amphibian and Reptile Groups of the United Kingdom Advice Note 4, listed under attachments on Bravo.
- ensure that appropriately trained and/or experienced staff will be undertaking this work.
- engage with the GCN habitat delivery steering group covering the area in which they

are working.



**SCHEDULE 11 – HABITAT DELIVERY BODY’S  
TENDER DOCUMENTS**



# SCHEDULE 12A – ORDNANCE SURVEY STANDARD FORM CONTRACTOR LICENCE

## Standard Form Contractor Licence

This Contractor Licence is made this                      day of                      2019

### Between:

(1) Natural England, Job number XXXXXXXXXXXXXXXX  
of Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX (the **Licensor**);

and

(2)

of

(the **Contractor**).

### Background

The Licensor is licensed by Ordnance Survey under the PSMA Member Licence to use Licensed Data for its Licensed Use. This Standard Form Contractor Licence (**Contractor Licence**) is entered into pursuant to the PSMA Member Licence and sets out the terms upon which the Licensor sub-licenses Licensed Data to the Contractor to enable the Contractor to provide Works on the Licensor's behalf.

### 1 Definitions & Interpretation

Expression	Meaning
<b>Data</b>	means any text, graphic, image, audio and/or visual material, software, data, database content or other multimedia content, information and material.
<b>IPR</b>	means intellectual property rights, including copyright, patent, trade mark, design right, database rights, trade secrets, know how, rights of confidence and all other similar rights anywhere in the world whether or not registered and including applications for registrations of any of them.

<b>Licensed Data</b>	means particular Ordnance Survey Data that is both: <ul style="list-style-type: none"> <li>(a) licensed by Ordnance Survey to the Licensor under the PSMA Member Licence; and</li> <li>(b) either: <ul style="list-style-type: none"> <li>(i) provided to the Contractor under Clause 5.1; or</li> <li>(ii) which the Licensor notifies to the Contractor in writing is to be considered as Licensed Data for the purposes of Clause 5.3.</li> </ul> </li> </ul>
<b>Licensed Use</b>	means the Licensor's permitted use of the Licensed Data under the PSMA Member Licence.
<b>Login Details</b>	means the unique identifiers assigned to the Licensor when it entered into the PSMA Member Licence enabling access to the On-Line Ordering Service.
<b>On-Line Ordering Service</b>	means the service accessed by entering the Licensor's Login Details where indicated on Ordnance Survey's Website.
<b>Ordnance Survey</b>	means the Secretary of State for Communities and Local Government, acting through Ordnance Survey, whose principal place of business is at Adanac Drive, Southampton, UK, SO16 0AS.
<b>Ordnance Survey Data</b>	means Data which Ordnance Survey owns (or is covered by its delegation of authority from the Controller of Her Majesty's Stationery Office) or which it licenses from a third party including, without limitation, Licensed Data.
<b>PSMA Member Licence</b>	means the licence between Ordnance Survey and the Licensor which is entitled PSMA Member Licence.
<b>Style Guide</b>	means the then current version of the style guide available on Ordnance Survey's Website including electronic artwork and requirements as to the use of acknowledgements of copyright and database right ownership.
<b>Term</b>	means the period specified in Clause 2.
<b>Third Party Contractor</b>	means a third party engaged and licensed by the Licensor pursuant to Clause 2.6 of the PSMA Member Licence.

**Third Party Works**

means either:

- (a) a tender by a Third Party Contractor to supply goods or services to the Licensor; or
- (b) the actual supply of goods or services to the Licensor by a Third Party Contractor.

**Updates**

means the updates, revisions and modifications to Licensed Data which Ordnance Survey may provide (or provide access to) from time to time.

**Website**

means the website <http://www.ordnancesurvey.co.uk> or such other website as Ordnance Survey determines from time to time.

**Works**

means either:

- (a) a tender by the Contractor to supply goods or services to the Licensor; or
- (b) the actual supply of goods or services to the Licensor by the Contractor.

- 1.1 In this Contractor Licence, unless the context otherwise requires:
  - 1.1.1 words in the singular include the plural and vice versa;
  - 1.1.2 references to: a) a Clause are to a clause of this Contractor Licence; b) a party are to a party to this Contractor Licence; and c) a statute or statutory provision include any amendment, extension or re-enactment of such statute or provision.

## **2 Term**

- 2.1 This Contractor Licence shall commence on the date at the beginning of this Contractor Licence or, in the absence of such date, the date on which the second party in time signs this Contractor Licence, and shall, unless terminated earlier in accordance with Clause 6, expire upon the Contractor completing the provision of the Works.

## **3 Grant of sub-licence**

- 3.1 In consideration of the Contractor providing the Works, the Licenser grants the Contractor, for the Term, a non-exclusive, non-transferrable, revocable sub-licence for Licensed Data, to use the Licensed Data for the Licenser's (and not the Contractor's) Licensed Use solely for the purpose of providing the Works. The Licenser shall notify the Contractor in writing of the terms of the Licenser's Licensed Use prior to or at the same time as the commencement of this Contractor Licence.
- 3.2 Apart from the Contractor, no person, firm or organisation (including without limitation any group company or affiliate) is granted any rights under this Contractor Licence.
- 3.3 This Contractor Licence does not give the Contractor the right to sub-licence, distribute, sell or otherwise make available the Licensed Data to third parties other than:
  - 3.3.1 as permitted by Clauses 5.3 and 5.4, and
  - 3.3.2 where the Contractor is making the Licensed Data available to a third party on behalf of the Licenser pursuant to the Contractor's appointment by the Licenser as a data management services provider and, for the avoidance of doubt, only in accordance with the Licenser's Licensed Use.

## **4 Obligations of Contractor**

- 4.1 The Contractor shall:
  - 4.1.1 not use Licensed Data for any illegal, deceptive, misleading or unethical purpose or otherwise in any manner which may be detrimental to the reputation of Licensed Data or any person;
  - 4.1.2 use its best endeavours to use adequate technological and security measures Ordinance Survey or the Licenser may reasonably recommend from time to time, to ensure that all Licensed Data, Login Details and any other similar information (such as user names and passwords) which the Licenser provides the Contractor and which the Contractor holds or is responsible for are secure from unauthorised use or access;

- 4.1.3 notify the Licensor and/or Ordnance Survey as soon as it suspects any infringement of Ordnance Survey's IPR or any unauthorised use of Login Details and any other similar information (such as user names and passwords) and give the Licensor and Ordnance Survey all reasonably required assistance in pursuing any potential infringement or remedying any unauthorised use; and
- 4.1.4 ensure that acknowledgements of copyright and database right ownership are included in a conspicuous position in all copies of Licensed Data in compliance with the Style Guide.

## **5 Access to Licensed Data**

- 5.1 Nothing in this Contractor Licence shall oblige the Licensor to provide the Contractor with Licensed Data (including any part or Update thereof). If, at the Licensor's discretion, it does provide (or provide access to) such Licensed Data, it shall only provide such Licensed Data necessary for the Contractor to provide the Works and shall do so at a time, frequency and on a medium of the Licensor's choosing.
- 5.2 Prior to or upon the Contractor receiving Licensed Data (whether from the Licensor or a Third Party Contractor pursuant to Clause 5.3), the Licensor will inform the Contractor in writing of the scope of the Licensor's Licensed Use.
- 5.3 The Contractor shall be entitled to supply and receive copies of the Licensed Data in a digital form to and from Third Party Contractors provided that:
  - 5.3.1 both the Contractor and the Third Party Contractor are licensed by the Licensor for the Licensed Data being supplied and/or received;
  - 5.3.2 the Works and the Third Party Works shall each form part of a larger project or related series of works required by the Licensor;
  - 5.3.3 the Contractor uses the copies of the Licensed Data supplied by the Third Party Contractor solely for the purpose of providing the Works to the Licensor as part of the Licensor's Licensed Use;
  - 5.3.4 the use by the Contractor of the Licensed Data supplied by the Third Party Contractor shall be governed by this Contractor Licence;
  - 5.3.5 the Contractor shall not receive any direct or indirect payment, credit or money's worth for the supply of the Licensed Data to a Third Party Contractor; and
  - 5.3.6 the Contractor shall, prior to supplying any Licensed Data to a Third Party Contractor, obtain written confirmation from the Licensor that (a) the Third Party Contractor is licensed by the Licensor for the Licensed Data being supplied, and (b) the Works and the Third Party Works each form part of a larger project or related series of works required by the Licensor.
- 5.4 The Contractor shall be entitled to supply paper copies of the Licensed Data (to which it has access) (referred to in this Clause as 'Paper Copies') to any third party provided that the Contractor ensures that:
  - 5.4.1 such third party is engaged to provide:
    - a) all or part of the Works;
    - b) part of a larger project (which also includes the Works); or

- c) works which, together with the Works, are part of a series of works required by the Licensor;

and uses the Paper Copies solely for the purpose of providing a) b) or c) above to the Licensor for its Licensed Use;

- 5.4.2 the Paper Copies supplied only cover an area that is proportionate to the amount of the Works that the third party is engaged to provide;
- 5.4.3 such third party is not permitted to and shall not copy, sub-license, distribute, sell or otherwise make available the Paper Copies to third parties in any form;
- 5.4.4 the Contractor recovers or procures the destruction of all such Paper Copies immediately upon (a) completion of the works provided by the third party as referred to in Clause 5.4.1 or (b) expiry or termination of this Contractor Licence, whichever is the sooner, and the Contractor shall provide, at the Licensor's request, a sworn statement by a duly authorised person that it has complied with this Clause;
- 5.4.5 the Contractor shall not receive any direct or indirect payment, credit or money's worth for the supply of Paper Copies; and
- 5.4.6 the Paper Copies supplied by the Contractor are clearly marked in accordance with Clause 4.1.4 and contain a statement stipulating that the recipient is permitted to use the Paper Copies solely for the purpose of assisting them with the delivery to the Licensor of the works they are engaged to deliver (as referred to in Clause 5.4.1 above).

## **6 Termination**

- 6.1 Either party may terminate this Contractor Licence with immediate effect at any time by giving notice to the other party in writing.
- 6.2 This Contractor Licence will terminate automatically with immediate effect in the event that the PSMA Member Licence is terminated or expires.

The Licensor will inform the Contractor of such termination as soon as practicable following such termination.

## **7 Effect of Termination or Expiry**

- 7.1 In the event of termination or expiry of this Contractor Licence:
  - 7.1.1 the Contractor shall within 30 days of such termination or expiry destroy (or at Ordnance Survey's or the Licensor's option return) all the Licensed Data in any media which it holds or for which it is responsible (including any Licensed Data embedded in any other material) and provide, at Ordnance Survey's or the Licensor's request, a sworn statement by a duly authorised person that it no longer holds any Licensed Data (or Login Details or similar details) other than in accordance with Clause 7.1.2;
  - 7.1.2 subject to Clauses 7.2 and 7.3, the Contractor may retain Licensed Data in an archive following termination or expiry of this Contractor Licence for the sole purpose of addressing a complaint or challenge from a regulator or other third party regarding the Contractor's use of such Licensed Data during the Term; and

- 7.1.3 the Contractor shall cease to be entitled to use any Login Details provided by Licensor in order to access the On-Line Ordering Service (or passwords or similar details provided in order to access any other on-line ordering service made available from time to time by Ordnance Survey).
- 7.2 The Contractor's rights under Clause 7.1.2 are on condition that:
  - 7.2.1 they do not apply to Licensed Data including third party IPR;
  - 7.2.2 the Contractor shall not disclose Licensed Data retained under Clause 7.1.2 to any regulator or other third party except to the extent necessary for the relevant purpose and in paper or read-only electronic format only;
  - 7.2.3 the Contractor must store such Licensed Data separately from any other Ordnance Survey Data which the Contractor holds;
  - 7.2.4 subject to Clause 11, neither the Licensor nor Ordnance Survey shall have any liability in respect of the Contractor's use of such Licensed Data following termination or expiry of this Contractor Licence; and
  - 7.2.5 should any of the events listed below exist on termination / expiry of the Contractor Licence, no archive rights shall be granted under Clause 7.1.2:
    - a) the Contractor is in breach of the Contractor Licence;
    - b) the Contractor has ceased to carry on business;
    - c) the Contractor is insolvent or threatened with insolvency or has undergone a change of control of its business other than for the purpose of a bona fide internal group restructuring; or
    - d) Ordnance Survey has lost the right to administer Crown copyright and/or Crown database right in respect of Licensed Data.
- 7.3 The Licensor and/or Ordnance Survey may terminate the Contractor's right under Clause 7.1.2 at any time in the event that the Contractor:
  - 7.3.1 uses or discloses the relevant Licensed Data other than strictly in accordance with this Clause 7; or
  - 7.3.2 breaches any surviving term of this Contractor Licence,

in which event the Contractor shall comply with an obligation equivalent to Clause 7.1.1 in respect of such Licensed Data.
- 7.4 Those Clauses intended to survive termination or expiry (including, without limitation, Clauses 1, 4.1.2, 4.1.3, 5.4.4, 6.2, 7, 9, 10, and 11 to 15) shall continue in full force and effect notwithstanding such termination or expiry.

## **8 Variation**

- 8.1 The Licensor shall be entitled to vary this Contractor Licence with immediate effect by giving notice in writing to the Contractor.
- 8.2 If the Contractor is not entitled to use specific Licensed Data as a result of the variation of this Contractor Licence in accordance with Clause 8.1, then this shall be treated as a termination in part in relation to that specific Licensed Data and the Contractor shall comply with an obligation equivalent to Clause 7.1.1 with respect to such Licensed Data.



## **9 Auditing**

- 9.1 Upon Ordnance Survey's or the Licensor's written request, the Contractor shall provide written evidence of compliance with its obligations under this Contractor Licence.
- 9.2 The Contractor shall maintain accurate and complete records of its use of the Licensed Data. Ordnance Survey and/or the Licensor (and their respective representatives) have the right on reasonable notice during business hours to enter the Contractor's premises and to inspect and audit its systems, operations and all supporting documentation to ensure the Contractor's compliance with this Contractor Licence and to take copies of any necessary records. The Contractor shall, at its expense, make appropriate employees and facilities available to provide Ordnance Survey and/or the Licensor with all reasonable assistance to enable such inspection, auditing and copying to take place.
- 9.3 The Contractor will comply with reasonable measures stipulated by Ordnance Survey or the Licensor as a result of any audit.

## **10 Warranties**

- 10.1 The Licensor and Ordnance Survey exclude to the fullest extent permissible by law all express or implied warranties.

## **11 Liabilities**

- 11.1 Nothing in this Contractor Licence shall exclude or limit either party's (or, if applicable, Ordnance Survey's) liability for:
  - 11.1.1 death or personal injury to the extent it results from its negligence, or that of its employees or agents; or
  - 11.1.2 fraud or fraudulent misrepresentation.
- 11.2 The Contractor acknowledges that Ordnance Survey shall have no liability whatsoever in respect of its use of the Licensed Data.
- 11.3 Subject to clause 11.1, the Contractor will indemnify the Licensor against all and any loss, liability, costs (including without limitation legal costs), claims, damages or expenses suffered or incurred by the Licensor or for which the Licensor may become liable arising out of any breach by the Contractor of any of the provisions of this Contractor Licence or the use by the Contractor of the Licensed Data.

## **12 Assignment, subcontracting and sublicensing**

- 12.1 Except as agreed in writing by Ordnance Survey, neither party is entitled to assign, license, transfer or novate any of their rights and/or obligations under this Contractor Licence.

## **13 Waiver**

- 13.1 The waiver on a particular occasion by either party of rights under this Contractor Licence does not imply that other rights will be waived.
- 13.2 No delay in exercising any right under this Contractor Licence shall constitute a waiver of such right.

**14        Contracts (Rights of Third Parties) Act 1999**

14.1        Subject to Clause 14.2, a person who is not a party to this Contractor Licence has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Contractor Licence.

14.2        Ordnance Survey shall be entitled to the benefit of the terms of this Contractor Licence and the rights to enforce such terms under the Contracts (Rights of Third Parties) Act 1999.

**15        Governing Law and Jurisdiction**

15.1        This Contractor Licence is governed by the law of England and Wales and both parties submit to the exclusive jurisdiction of the English courts.

Having read and understood this Contractor Licence, signed for and on behalf of  
**[Licensor]**

Having read and understood this Contractor Licence, signed for and on behalf of  
**[Contractor]**

**Signature** .....

**Signature** .....

**Name** .....

**Name** .....

**Title** .....  
.....

**Title** .....

**Date** .....

**Date** .....

# **SCHEDULE 12B – CRANFIELD UNIVERSITY – NATURAL ENGLAND DATA BASE LICENCE FOR CONTRACTORS**

## Natural England Soils Data Licence for Contractors

### Database Licence Agreement

Client Ref: (PO or Project No)

This is an Agreement between Natural England, whose address is 3rd Floor, Touthill Close, City Road, Peterborough, PE1 1XN, and

(the Client)

Whereby Natural England undertakes to provide the following

(the Service)

Purpose of Use

(the Purpose)

Term of Agreement:

From

until

This Licence Agreement shall be subject to the attached Natural England Licence Terms and Conditions: (30.01.98 NSRI data (if amend 07.01.09) Sub-licence.

SIGNED ..... (job title: GIS Data Manager) Date .....  
duly authorised on behalf of NATURAL ENGLAND

SIGNED ..... (job title.....) Date .....  
duly authorised on behalf of THE CL ENT

© Cranfield University 2019

(30.01.98 NSRI data (if amend 07.01.09) Sub-licence

## **DATA BASE LICENCE**

### **TERMS AND CONDITIONS**

WHEREAS, Licensor has developed and is the keeper of a database hereinafter referred to as "Database" as described in the Agreement attached hereto and WHEREAS, Licensee desires to use the Database within its own organisation

IT IS HEREBY AGREED as follows:-

#### **1. LICENCE**

In consideration of you fulfilling the Purpose, Licensor hereby grants to Licensee a limited non-exclusive non transferable revocable licence to use the Database for internal purposes by the Licensee's direct employees. Licensee shall not and shall not have the right to sell, assign, transfer, rent, lease, sublicense, lend, give or make available to others or otherwise transfer or dispose of the Database in its present form or as converted or modified by Licensee or Licensor, or make the Database available in any manner for use by any subsidiary Establishment of Licensee or by any other person, or firm, or customer. Licensee shall not reverse, decompile, disassemble or otherwise reverse engineer the whole or part of the Database nor modify, adapt or translate the Database in any way nor merge the whole or part of the Database with any other Database. Licensee shall not engage in the development or marketing of a product or system commercially competitive with the Database at any time during the Licence Period.

#### **2. PROPRIETARY RIGHTS AND CONFIDENTIALITY**

The Database is a proprietary product of Licensor and is protected by Copyright law and Licensor reserves all rights of ownership and copyright and all other intellectual property rights in any version of the Database in any format or any medium.

Licensee agrees that, during the term of this Agreement and thereafter, the Database including any versions modified by Licensor or Licensee for use by Licensee and all other material, information and documentation made available to it by Licensor under this Agreement which is not already in the public domain or already lawfully in Licensee's possession are and shall remain the exclusive property of Licensor and are proprietary, and Licensee further agrees during the term of this Agreement and thereafter to maintain in confidence and not to disclose to any person, firm or company and to use its best efforts to prevent and protect the Database and all parts thereof and all such other material, know-how information and documentation from disclosure by its agents or employees to any person, firm or company. Licensee shall use the Database and all information and documentation only for the purpose of this Agreement. Neither the Database nor any parts thereof shall be copied or reproduced by Licensee for any purpose outside the scope of this Agreement, nor shall they be made available for use by Licensee's customers or any other person, firm or company without the prior written consent of Licensor.

Notwithstanding the above, Licensee may only make such copies of the Database as are necessary for back-up purposes. The Licensee agrees to maintain records of the number and location of all copies of the Database, made by them and all copies shall bear the words "© This is copyright material and may not be copied in whole or in part without the express written permission of Cranfield University."

#### **3. TERM**

The duration of this Agreement shall be for the Period stated in the Agreement unless sooner terminated in accordance with the provisions of this Agreement.

#### 4. TERMINATION

- (a) After delivery of the Database Licensee may terminate this Agreement at any time upon sixty (60) days written notice to Licensor.
- (b) In the event that Licensee makes any use of the Database outside the rights granted hereunder or breaches any of the other agreements contained herein, Licensor shall give written notice to Licensee and if such default has not been remedied within thirty (30) days after such notice, Licensor may thereafter terminate this Agreement.
- (c) Licensor shall have the right to terminate this Agreement forthwith without notice if Licensee becomes insolvent, compounds with its creditors, files a petition in bankruptcy, enters into liquidation, has a receiver appointed or has any distress or execution levied against it.
- (d) Upon expiration or termination of this Agreement, the Database shall promptly be deleted from any files of Licensee and the copies taken for back-up purposes promptly be destroyed, Licensee shall make no further use of the Database. Licensee agrees to provide to Licensor written confirmation of the deletion and destruction of all copies.

#### 5. TITLE

Legal title to the Database and any modifications or enhancements thereto made by Licensor shall at all times be vested in Licensor and legal title to reproductions, converted versions or duplications of the Database and any other supporting documentation and information delivered to Licensee shall remain vested in Licensor and shall be returned to Licensor upon termination of this Agreement.

#### 6. RESPONSIBILITY AND LIABILITY

- 6.1 (a) Licensee shall not make nor permit to be made any publication involving use and development of the Database without the prior written consent of the Licensor.
- (b) Licensee agrees and acknowledges that it retains full control over the use of the Database and any modifications or enhancements thereof, and, accordingly, that Licensee shall be solely responsible for any designs, systems, products or any use made of the Database.
- (c) Licensor shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Licence Agreement, the Database, its use or otherwise, except that which is unlawful to exclude.
- (d) Licensor expressly excludes liability for consequential loss or damage which may arise in respect of the Database, its use, the system or in respect of other equipment or property, or for loss of profit, business revenue, loss of contracts, goodwill or anticipated savings.
- (e) Licensor accepts no liability for any design, system or use of any product resulting from the use of the Database and makes no warranty as to its completeness or accuracy nor that the Database is free of defects, error-free or is of a satisfactory quality.
- (f) Notwithstanding the above, nothing herein shall be deemed to restrict or exclude any liability of the Licensor for death or personal injury to the extent only that the same arises as a result of the negligence of Licensor, its employees, servants, agents or authorised representatives.
- (g) In the event that Licensee is not satisfied with the Database during a period of sixty (60) days from delivery, Licensee shall put any complaint in writing to Licensor. If the Licensor considers such complaint is reasonable the Licensor agrees to rectify or replace the Database or remedy any defect, whichever the Licensor deems to be appropriate. Licensor's decision shall be final and conclusive.

- (h) In the event that any limitation or provision contained in this Licence Agreement shall be held to be invalid for any reason and Licensor becomes liable for loss or damage that would otherwise have been lawful to exclude, the Licensor's entire liability whether in contract or in tort and whether or not attributable to negligence, shall be limited to £50,000 whether arising out of or in connection with any damage to property of the Licensee, arising out of or in connection with the defect in the Database or services supplied by the Licensor or any act omission neglect or default (whether or not the same constitutes a fundamental breach of contract) of the Licensor its servants or agents in the performance of this Agreement (including, without limiting the generality of the foregoing, breach of any condition or any warranty whether express or implied by statute common law or otherwise howsoever).
- (i) Licensee shall protect, indemnify, save harmless and defend Licensor from and against any and all liabilities, claims, demands, loss, costs, damages or expenses including legal fees, arising from any claim asserted against Licensor that is in any way associated with Licensee's use of the Database.

**6.2 Licensor gives no further warranty or representation as to the fitness of the Database or any part thereof nor as to its performance. The express warranties given by the Licensor in Clause 6.1 are given to the exclusion of all other warranties and conditions and representations whether express or implied or otherwise.**

## 7. WARRANTY OF RIGHT TO LICENCE

- (a) Licensor hereby warrants that it has the right to license the Database to Licensee. To the best of the Licensor's knowledge and belief the use of the Database and any other information provided to the Licensee does not infringe any third party copyright or any other intellectual property.
- (b) If at any time the Licensor becomes aware that the Database and/or such other information provided hereunder or the use thereof infringes or is likely to infringe any third party right, Licensor shall at its discretion and expense modify, replace or withdraw all or part of the Database and/or such other information so as to avoid the infringement and Licensee shall forthwith correspondingly amend or withdraw any authorisation to others to use the Database and/or such other information or any part thereof.

## 8. NOTICE

Any notice or other communication given hereunder shall be in writing and mailed, if to Licensor, to The Director, National Soil Resources Institute, Cranfield University, Silsoe, Bedford, MK45 4DT and if to Licensee to the Contact named in the Agreement or to such other address as either party shall have previously designated by notice in writing. Such notice or communication shall be deemed delivered when sent by registered post or facsimile transmission and subsequently confirmed in writing.

## 9. ENTIRE AGREEMENT

This Agreement represents the entire Agreement between Licensor and Licensee and shall supersede all representations, agreements, statements and understandings made prior to the date of this Agreement whether oral or in writing other than those representations, agreements, statements and understandings which have been expressly incorporated into this Agreement.

## 10. CONDITIONS EXCLUDED

Except as stated herein all implied terms, conditions, statements or warranties, statutory or otherwise, as to

- (i) the satisfactory quality of the Database or
- (ii) the fitness of the Database for any purpose whatsoever whether made known to the Licensor or not are hereby excluded from the Agreement.

## 11. UNCONTROLLABLE CIRCUMSTANCES

Licensor shall not be responsible for any failure on its part to fulfil any obligations to Licensee caused by events or circumstances outside Licensor's control.

## 12. MODIFICATIONS OF CONDITIONS

The terms and conditions of this agreement shall not be modified except in writing, signed by the parties, each by its duly authorised representatives.

## 13. SUB-LICENCE AGREEMENT

- (a) The Licensor hereby grants the Licensee the right to sub-license all or part of the Database to its sub-contractors upon the terms and conditions as specified herein.
- (b) The Licensee hereby undertakes to be responsible for all acts or omissions of its sub-licensees as though such acts or omissions were made by the Licensee and accordingly Licensee shall indemnify Licensor in respect of all costs damages and expenses incurred as a result of any claims by third parties in tort or otherwise against Licensor arising as a result of negligence or default of any sub-licensee.
- (c) For the avoidance of doubt it is hereby agreed that neither Licensee nor any sub-licensee shall have the right to use the Database otherwise than as expressly licensed to the Licensee hereunder, and without prejudice to the generality of the foregoing the Licensee undertakes and agrees to procure that it sub-licensees undertake not to exploit the Database. Licensee acknowledges that any use by the Licensee or any sub-licensee of the Database in any field other than specified herein shall be a material breach for the purposes of this Agreement.
- (d) The Licensee shall keep proper records and books of account showing the quality and description Databases licensed and such records and books shall be kept separate from any records and books not relating solely to the Licensed Databases and be open at all times to inspection and audit by Licensor or its duly authorised agent or representative who shall be entitled to take copies of or extracts from the same.

## 14. NON-ASSIGNMENT

Save as specified in 13 above the Licensee shall not assign this Agreement or any interest therein without the prior written consent of the Licensor

## 15. NON-WAIVER

Failure to terminate this Agreement following a breach or other failure to comply shall not be deemed to be a waiver of a Party's defences rights or causes of action arising from such or any future breach or non-compliance. Nor shall failure on the part of either Party at the time or from time to time to enforce or to require the strict adherence and performance of any of the terms and conditions affect or impair its right to enforce such terms or conditions in any way.

## 16. HEADINGS AND SEVERABILITY

The clause headings are for convenience only and shall not affect their interpretation. If any part of this Agreement shall be held to be unenforceable to any extent, the remainder of the Agreement shall nevertheless remain in full force and effect.

## 17. SURVIVAL

The provision of the following clauses shall remain binding upon Licensee after the expiry or termination of this Agreement: 2, 5, 6, 10, 13, 14,18



## 18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the jurisdiction of the Courts of England.

# SCHEDULE 12C – CONTRACTOR LICENCE FOR USE OF DATA LICENSED FROM CENTRE FOR ECOLOGY & HYDROLOGY

## CONTRACTOR LICENCE FOR USE OF DATA LICENSED FROM CENTRE FOR ECOLOGY & HYDROLOGY

### PARTIES

(1) [ ], whose principal place of business is at [ ] (“the Licensor”); and

(2) [ ], whose principal place of business is at [ ] (“the Contractor”).

### BACKGROUND

This Contractor Licence relates to data held under licence from the Centre for Ecology & Hydrology by the Licensor under Licence number [nnnn] (a copy of which should be supplied to the Contractor for reference), hereinafter referred to as the Principal Licence.

### IT IS AGREED AS FOLLOWS:

#### PART A: TERMS AND CONDITIONS

##### 1. Definitions

1.1. In this Contractor Licence the following terms have the meanings set out below:

<b>this Contractor Licence</b>	this licence agreement including any relevant parts of the Principal Licence that are referred to;
<b>Derived Data</b>	any collection of information data or images or both which is derived by the Licensor or the Contractor from the Licensed Data in the sense that those parts of the content of the Licensed Data that are contained in it or were directly relied on for its creation, together form a substantial part of the content of the Licensed Data;
<b>the Licensed Data</b>	<b>the datasets or parts thereof described in Part B of this Contractor Licence;</b>
<b><i>Principal Licence</i></b>	the agreement between the Centre For Ecology & Hydrology and the Licensor under which the Licensor holds the Licensed Data;

<b><i>the Term</i></b>	the Term of this Contractor Licence described in Part D below;
<b>Third Party Contractor</b>	<b>a third party licensed by the Licensor under a separate Contractor Licence for use of the Licensed Data in line with clause 3.1.3 of the Principal Licence;</b>
<b>Use</b>	<b>use, copy, extract, adapt, translate, arrange or alter.</b>

**1.2. In this Contractor Licence:**

- i) *references to Clauses are to the clauses of this Contractor Licence;*
- ii) *references to the Parties are to the parties to this Contractor Licence;*
- iii) *headings are used for convenience only and do not affect its interpretation;*
- iv) *where the word “including” is used it will be understood to mean “including without limitation”.*

**2. Grant of Licence**

**2.1. Subject to the terms of this Contractor Licence the Licensor grants to the Contractor a non-exclusive licence for the Term to:**

- i) *Use the Licensed Data for the purpose identified in Part C below;*
- ii) *where no cost to an end-user is associated with a service and only where it is necessary to complete the purpose identified in Part C, make raster images of any Derived Data available on a view only basis, whether by way of the internet or otherwise, subject to inclusion of the required acknowledgements as stated in the relevant Principal Licence Schedules as identified in Part B below. Such Derived Data must be sufficiently different that it cannot act as a direct substitution for the Licensed Data.*

*For the avoidance of doubt any limitations imposed on the Licensor's publication of images under clause 3.2 of the Principal Licence also apply to the Contractor's Use of the Licensed Data;*

- iii) *supply copies of the Licensed Data to Third Party Contractors where such supply does not directly or indirectly involve commercial gain provided that:*
  - a) *the Third Party Contractor is licensed by the Licensor for Use of the Licensed Data;*

*b) the Use that the Third Party Contractor makes of the Licensed Data is limited to such Use as is necessary for the Third Party Contractor to provide goods or services to the Licensor;*

*c) the Contractor shall, prior to supplying the Licensed Data to a Third Party Contractor, obtain written confirmation from the Licensor that the Third Party Contractor is licensed for use of the Licensed Data and that it is the wish of the Licensor that the Contractor should supply the Licensed Data to the Third Party Contractor.*

### **3. The Contractor's obligations**

- 3.1. the Contractor shall ensure that any Use it makes of the Licensed Data does not cause the terms and conditions of the Principal Licence to be breached.
- 3.2. the Contractor shall ensure that any Use it makes of the Licensed Data is restricted to those uses which the Licensor itself is permitted under the Principal Licence.
- 3.3. the Contractor shall ensure that the Licensed Data and or Derived Data are destroyed or returned to the Licensor on or before the date specified in Part D below.
- 3.4. the Contractor shall ensure that the Licensed Data (and copies or derivations thereof) are stored in such a way that they can be accessed and used only in accordance with the terms of this Contractor Licence.
- 3.5. The Contractor must notify the Licensor as soon as reasonably practicable if it becomes aware of any unauthorised use of or access to the Licensed Data or any of its contents and must at its own cost and expense provide all reasonable assistance to the Licensor in the pursuit of any remedy in relation to any such unauthorised use.

### **4. The Licensor's obligations**

- 4.1. the Licensor shall ensure that the Contractor is aware of and understands their obligations under any relevant clauses of the Principal Licence.
- 4.2. the Licensor shall be responsible for supplying the Licensed Data to the Contractor.

### **5. INTELLECTUAL PROPERTY RIGHTS AND PUBLICATION**

- 5.1. Nothing in this Contractor Licence will affect the ownership of any Intellectual Property Rights in the Licensed Data or any of its contents.
- 5.2. The Contractor will not display, distribute, communicate or otherwise make available to the public or to any third party in any form or by any means any statement or publication (including, without limitation, any report, presentation, or poster) in connection with the Licensed Data or any part thereof or any Derived Data, which is likely to bring the Centre

for Ecology & Hydrology or any of its third party licensors into disrepute or to damage the goodwill of the Centre for Ecology & Hydrology or any third party licensors

**6. Termination**

- 6.1. This Contractor Licence will automatically terminate if the Principal Licence between the Centre for Ecology & Hydrology and the Licensor, is terminated or expires.
- 6.2. On termination of the Contractor Licence, the Contractor must destroy all copies of the Licensed Data or Derived Data. As an exception to this obligation, the Contractor may retain one archive copy of the Licensed Data or Derived Data solely for the purpose of documenting the goods and services delivered to the Licensor, to answer technical support questions or to comply with any statutory or regulatory requirement.
- 6.3. Each Contractor will remain responsible and primarily liable to the Licensor for their acts and omissions.
- 6.4. The Licensor may terminate this Contractor Licence with immediate effect (or such notice as the Licensor may specify) by giving written notice to the Licensee.

**7. General**

- 7.1. This Contractor Licence including any relevant parts of the Principal Licence constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Contractor Licence. Each of the Parties acknowledges that in entering into this Contractor Licence, it has not relied on any statements, warranties, representations or undertakings except those expressly set out in this Contractor Licence. Each Party waives any claim for breach of this Contractor Licence, or any right to rescind this Contractor Licence in respect of any representation which is not an express provision of this Contractor Licence. However, this Clause does not exclude any liability which any Party may have to the other (or any right which any Party may have to rescind this Contractor Licence) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Contractor Licence.
- 7.2. This Contractor Licence will be governed by English law and each of the Parties submits to the exclusive jurisdiction of the English courts except that either Party may bring an interim or emergency injunction in any court of competent jurisdiction.
- 7.3. No person other than the Centre for Ecology & Hydrology or the Ordnance Survey who is not a Party to this Contractor Licence has any right to prevent its variation, cancellation or termination, or to enforce any benefit conferred upon them by this Contractor Licence and no term of this Contractor Licence will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a Party other than the Centre for Ecology & Hydrology or the Ordnance Survey who is not a Party to this Contractor Licence save that the Indemnified Parties identified in Clause 6.6 of the Principal Licence may enforce the indemnity against the Licensor subject to the conditions in that Clause

**PART B: THE LICENSED DATA**

Product	Principal Licence Schedule	Description	Details of area supplied	Size of area supplied (km <sup>2</sup> )
LCM2015 Vector GB	1w	The vector data is provided as polygons (land parcels) with each parcel having a list of attributes attached to it. These include its size, source images, Broad Habitat, Target Class, spectral variant and class probabilities.		
LCM2015 25m Raster	1y	The raster data have been derived from the vector dataset on a 25m grid, consisting of 21 Target Classes.		

**PART C: PURPOSE****PART D: TERM OF LICENCE**

Licence start date: +++

Licence end date: +++

**PART E: NUMBER OF LICENSED USERS****PART F: ADDITIONAL TERMS AND CONDITIONS**

**PART G: ADMINISTRATION DETAILS**

Address for delivery (if applicable)

Names, telephone numbers and e-mail addresses of contacts

**SIGNING PAGE**

<b>AGREED</b> by the Parties acting through their authorised signatories	
<b>FOR THE LICENSOR</b>	<b>FOR THE CONTRACTOR</b>
<b>SIGNATURE</b>	<b>SIGNATURE</b>
<b>NAME</b>	<b>NAME</b>
<b>JOB TITLE</b>	<b>JOB TITLE</b>
<b>DATE</b>	<b>DATE</b>