



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Contract for the Provision of Making Earth Observation Work (MEOW) for Biodiversity Monitoring and Surveillance Phase 4 Testing Applications in Habitat Condition Assessment

May 2015

Reference- BE0119

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procurement@defra.gsi.gov.uk

SECTION 1 FORM OF CONTRACT

PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “[Authority]”);

AND

- (2) Environment Systems Ltd (registered in England and Wales under number 4628049) whose registered office is Environment Systems Ltd, The Exchange, Fiveways, Temple Street, Llandrindod Wells, Powys, LD1 5HG (the “Contractor”)

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

WHEREAS

- a) The Authority requires the Services set out in the attached Schedule 1- Specification.
- b) Following a competitive tender process, the Authority wishes to appoint the Contractor to provide the Services and the Contractor agrees to provide those Services in accordance with these terms and conditions.
- c) The Authority will enter into the Contract on the basis that it requires the Services for the Initial Contract Period. However, in entering into the Contract, both Parties acknowledge that circumstances may prevent the Authority from fulfilling the funding requirements of the Contract for the Initial Contract Period. In these circumstances, the Parties undertake to discuss the future scope of the Contract before the end of the relevant Project Year.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

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

Section 1:	Form of Contract
Section 2:	Terms and Conditions

Schedule 1:	Specification
Schedule 2:	Pricing Plan
Schedule 3:	Change Control

- 1.2 Execution of the Contract is carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000. The Contract is formed on the date on which both the Authority and the Contractor have communicated acceptance of its terms on the Authority’s electronic contract management system (“**Bravo**”).
- 1.3 The Contract starts on 31/05/15 (the “**Commencement Date**”) and end on 31/01/2016 (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Authority may extend the term of the Contract (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

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A GENERAL PROVISIONS

A1 Definitions and Interpretation

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

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

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

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

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

“Authority Data” means

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

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

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

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

“Biological Materials” means any material (including, without limitation, plants, animals, microbes or viruses) of biological origin which contains genetic information capable of reproduction and/or material derived from the same that is collected or produced through the Contract.

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

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

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

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

“Commercially Sensitive Information” means the information listed in Schedule 4 (Not used):

- (a) which is provided by the Contractor to the Authority in confidence for the period (None provided); and/or
- (b) that constitutes a trade secret.

“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 and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

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

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

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

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

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

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

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

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

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

“Conventions” means any and all of: i) the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture, including any Protocols and other additions or amendments from time to time; ii) any guidelines adopted by the parties to the same (including, without limitation, the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization); and iii) any national legal or regulatory requirements made in pursuance of the provisions of the same in any territory.

“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.

“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 2004 and as extended to national insurance contributions 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” means the Data Protection Act 1998 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.

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

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

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

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

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

“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 national insurance contributions;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

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

“HMRC” means HM Revenue & Customs.

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

“Income” means any revenues received by the Contractor (including, without limitation, the sale or disposal of products or services, royalties, payments for licences or options and stage payments) irrespective of whether such payment is in money or other consideration, arising from the use or exploitation of the Results or any part of the Results.

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

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

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

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

“Key Biological Materials” means Biological Materials held by or on behalf of the Contractor that are agreed by the Contractor, the Authority and (if relevant) the appropriate independent scientific advisory body (in each case acting reasonably) to be of national or international importance.

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

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

“Law” means 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

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

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

- (a) a substantial portion of the Contract; or

(b) any of the obligations set out in clauses A6, B16, D1, E1, E2, E3, E4, E7, E8 or E11.

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i. a relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

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

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

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - i. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - ii. under legislation or common law concerning fraudulent acts; or
 - iii. the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Project Year” means each period of 12 months during the Contract Period beginning with the Commencement Date.

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

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

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

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

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

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

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

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

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

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

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

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

- a) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services.

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

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

“Services” means the services set out in Schedule 1 (including any modified or alternative services and, if the context so requires, includes Goods).

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

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

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

“Sub-Contractor” means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services and/or goods are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and “Sub-Contract” shall be construed accordingly.

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

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

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

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software.

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

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

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

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

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

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

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

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (h) references to the Contract are references to the Contract as amended from time to time; and
- (i) if there are no Co-funders, references to the Co-funders shall have no meaning or effect.

A2 The Authority’s Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any

other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.

A3 Contractor's Status

- A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

A4 Notices and Communications

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

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

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

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

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

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

- (a) For the Authority:

Contact Name: [REDACTED]

Address: Biodiversity and Ecosystems Evidence Team, Zone 1/14, Temple Quay House, Temple Quay, Bristol, BS1 6EB; and

Email: [REDACTED]

- (b) For the Contractor:

Contact Name: [REDACTED]

Address: Environment Systems Ltd, 11 Cefn Llan Science Park, Aberystwyth, SY23 3AH; and

Email: [REDACTED]

A5 Mistakes in Information

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

A6 Conflicts of Interest

- A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause 6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B. THE SERVICES

B1 Specification

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

B2 Samples

- B2.1 If requested by the Authority, the Contractor shall provide the Authority with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.
- B2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.
- B2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contractor's obligations under the Contract.

B3 Delivery

- B3.1 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. If the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- B3.2 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.
- B3.3 Any access to the Premises and any labour and equipment that may be provided by the Authority in connection with delivery shall be provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.
- B3.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and its Sub-Contractors shall at all times comply with the security requirements of the Authority.
- B3.5 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B3.6 The Authority is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice to the Contractor to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.

- B3.7 Unless expressly agreed to the contrary, the Authority shall not accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.
- B3.8 The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice. The Contractor shall provide free of charge all such facilities as the Authority may reasonably require for such inspection and examination. In this clause B3, Services include planning or preliminary work in connection with the supply of the Services.
- B3.9 If reasonably requested to do so by the Authority, the Contractor shall co-ordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.
- B3.10 Timely supply of the Services is of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date. If the Contractor fails materially to deliver the Services within the time promised or specified in the Specification, the Authority is released from any obligation to accept and pay for the Services and may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

B4 Risk and Ownership

- B4.1 Subject to clauses B3.5 and B3.6, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Failure to meet Requirements)), pass to the Authority at the time of delivery.
- B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority at the time of delivery (or payment, if earlier).

B5 Non-Delivery

- B5.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- B5.2 If the Authority has been informed in writing of the despatch of the Goods and, having been placed in transit, the Goods are not delivered to the Authority on the due date for delivery, the Authority shall, within 10 Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor to deliver substitute Goods free of charge within the timescales specified by the Authority or terminate the Contract in accordance with clause B3.10.

B6 Labelling and Packaging

- B6.1 The Contractor shall ensure that the Goods are labelled and packaged in accordance with the Contract.
- B6.2 The Contractor shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003. The container in which the Goods are held shall be labelled with the Contractor's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- B6.3 The Contractor is responsible for the removal and disposal of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.
- B6.4 If no period for collection and disposal is specified by the Authority, the Contractor shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Authority shall be entitled to dispose of any packaging materials which have not been collected by the Contractor within those 10 Working Days or such other period specified by the

Authority for collection. The Contractor shall be responsible for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.

B6.5 The Contractor shall:

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

B7 Training

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

B8 Provision and Removal of Equipment

- B8.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B8.2 The Contractor shall not deliver any Equipment to or begin any work on the Premises without obtaining Approval.
- B8.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B8.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B8.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B8.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B8.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and

- (b) replace such item with a suitable substitute item of Equipment.

B8.8 Within 20 Working Days of the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.

B9 Goods Delivery

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

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

B9.2 The Contractor shall ensure the Goods:

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

B10 Service Delivery

B10.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B10.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.

B10.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:

- (a) accept the installation; or
- (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.

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

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

B10.6 During the Contract Period, the Contractor shall:

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

B11 Key Personnel

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

B11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.

B11.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B11.4 The Authority shall not unreasonably withhold its agreement under clauses B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B11.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

B12 Contractor's Staff

B12.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

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

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

B12.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B12.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B12.2 shall be final.

B12.4 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

B13 Inspection of Premises

- B13.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

B14 Licence to Occupy Premises

- B14.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.
- B14.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B14.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay.
- B14.4 The Contractor shall (and shall ensure that any Staff on the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority's Premises as determined by the Authority.
- B14.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

B15 Property

- B15.1 All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B15.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- B15.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B15.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B15.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B16 Biological Materials

- B16.1 The Contractor shall ensure that any Biological Materials collected by or on behalf of the Contractor in the course of performance of the Services are:
- (a) collected and used in accordance with the Conventions, where relevant;
 - (b) made available to the Authority (or such other person as the Authority may specify) whenever and wherever and in whatever format the Authority may reasonably require for any purpose (including, without limitation, handover on termination of the Services); and
 - (c) stored for whatever period is reasonably required by the Authority (or, in the absence of any such requirement, an appropriate period in all the circumstances taking into account the nature of the relevant Biological Materials) following termination of the Contract.
- B16.2 The Contractor recognises and acknowledges for the purposes of clause B16.1 (c) that Key Biological Materials in its possession are likely to require long term maintenance and shall put in place appropriate procedures for ensuring that relevant samples are selected for this purpose where applicable.
- B16.3 The Contractor shall identify any requirements of the Conventions (including, without limitation, benefit-sharing requirements arising from use of Biological Materials) which may apply in connection with the Services. The Contractor shall comply with any such requirements and inform the Authority of the same. This clause B16.3 shall be without prejudice to the generality of clause B10.1.
- B16.4 Failure to comply with any obligation in clause B16 shall amount to a Material Breach for the purpose of clause H2 (Termination on Default). For the avoidance of doubt, where no Biological Materials are, or are to be, collected by or on behalf of the Contractor in the course of performance of the Contract all references to Biological Materials in this clause B16 or elsewhere in the Contract shall have no effect.

B17 Offers of Employment

- B17.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

B18 Employment Provisions

- B18.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
 - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B18.1(a);
 - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B18.1(a), their job titles and qualifications;
 - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B18.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Contractor shall give the Authority updated TUPE Information.

- B18.3 Each time the Contractor supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Contractor.
- B18.4 The Authority may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B18.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Authority and the Crown (both for themselves and any Replacement Contractor) against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B18.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date TUPE Information.
- B18.7 This clause B18 applies during the Contract Period and indefinitely thereafter.
- B18.8 The Contractor undertakes to the Authority that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or

- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

C PAYMENT

C1 Price

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

C2 Payment and VAT

- C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.
- C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- C2.5 Valid Invoices shall include:
 - (a) the Contractor's full name, address and title of the Contract;
 - (b) (if Goods are included in the Specification) the name and quantity of the Goods delivered including batch numbers;
 - (c) the Purchase Order numberand, if requested by the Authority:
 - (d) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
 - (e) the name of the individuals to whom the timesheet relates and hourly rates for each;
 - (f) identification of which individuals are Contractor's staff and which are Sub-Contractors;
 - (g) the address of the Premises and the date on which work was undertaken;
 - (h) the time spent working on the Premises by the individuals concerned;
 - (i) details of the type of work undertaken by the individuals concerned;
 - (j) details of plant or materials operated and on standby;
 - (k) separate identification of time spent travelling and/or meal or rest breaks; and
 - (l) where appropriate, details of journeys made and distances travelled.
- C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.
- C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.

- C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.
- C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.
- C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.
- C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).
- C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:
- ssd.enquiries@defra.gsi.gov.uk (the Authority's preferred option)
- or**
- Accounts Payable, Shared Services Connected Limited, Lion House, Willowburn Trading Estate, Alnwick, Northumberland, NE66 2PF.
- C2.19 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.
- C2.20 If the Contractor enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a valid invoice.

- C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.
- C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price during Extension

- C4.1 Subject to Schedule 2 and clause F7 (Variation), the Price shall apply for the Initial Contract Period and until the end date of any extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

D. STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Contractor shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 The Contractor shall, during the Contract Period:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.
- D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.
- D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:
- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract.
- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

D2 Discrimination

- D2.1 The Contractor shall:
- (a) perform its obligations under the Contract in accordance with:
 - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;
 - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
 - (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

D3 Rights of Third Parties

D3.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D4 Environmental Requirements

D4.1 The Contractor shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("Environmental Policies") which require the Authority through its procurement and management of suppliers:

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

D4.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

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

unless given written permission by the Authority to do so.

D4.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D4.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D4.3.

D4.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.

D4.6 The Contractor shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under the Contract.

D4.7 The Contractor shall:

- (a) identify any risks 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.

D5 Timber

D5.1 For the purposes of this clause D6, the following terms shall have the following meanings:

- (a) "Timber" means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element (e.g. paper). Timber and wood-derived products supplied or used in performance of the Services that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Services that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry.
- (b) "Legal and Sustainable" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available from the Authority on request and from the CPET website). The edition current on the day the Contract is awarded shall apply.
- (c) "FLEGT" means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber.
- (d) "FLEGT-licensed" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by a bilateral Voluntary Partnership Agreement ("VPA") between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government. This may also include any timber that has been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been signed but the FLEGT licensing system is not fully operational. Evidence from a country that has not signed up to a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met will also be acceptable. CPET will produce further guidance on FLEGT-licensed or equivalent timber in due course.
- (e) "Recycled" means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source.
- (f) "Short-rotation coppice" means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under

agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy.

(g) "CPET" means the UK Government's Central Point of Expertise on Timber.

D5.2 All Timber supplied or used by the Contractor in providing the Services (including all Timber supplied or used by Sub-Contractors) shall comply with Schedule 1 and shall originate from a forest source where management of the forest has full regard for:

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

D5.3 If requested by the Authority and not already provided in its Tender, the Contractor shall give the Authority evidence that the Timber supplied or used in providing the Services complies with the requirements of Schedule 1 and with the requirements of the Social Criteria.

D5.4 The Authority may at any time during the Contract Period and for 6 years after final delivery under the Contract require the Contractor to produce the evidence required for the Authority's inspection within 14 days of the Authority's written request.

D5.5 The Contractor shall maintain records of all Timber delivered to and accepted by the Authority for 6 years from final delivery under the Contract.

D5.6 The Authority shall decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber complies with Schedule 1 and complies with the requirements of the Social Criteria. If the Authority is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will: (a) verify the forest source of the timber or wood; and (b) assess whether the source meets the relevant criteria.

D5.7 In the Contract, "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time) or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time) or equivalent.

D5.8 The Authority may reject Timber that does not comply with Schedule 1 or with the Social Criteria. If the Authority rejects any Timber the Contractor shall supply alternative Timber which does comply at no additional cost to the Authority and without causing delay to delivery of the Services.

D6 Health and Safety

D6.1 The Contractor shall perform its obligations under the Contract in accordance with:

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

D6.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall

instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

E PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 For the purposes of clauses E1 and 2, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meanings prescribed in the DPA.
- E1.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.3 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.4 To the extent that Authority Data is held and/or Processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.5 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- E1.6 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.7 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.8 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.9 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E2 Data Protection Act

- E2.1 The Contractor shall (and shall ensure that all its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- E2.2 Notwithstanding the general obligation in clause E2.1, if the Contractor is Processing Personal Data as a Data Processor for the Authority the Contractor shall:
- (a) Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority;
 - (b) comply with all applicable Laws;

- (c) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under the Contract or as is required by Law or any Regulatory Body;
- (d) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (e) take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;
- (f) not transfer the Personal Data to any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without Approval;
- (h) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E2;
- (i) ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- (j) not disclose Personal Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon the Authority;
- (k) notify the Authority (within 5 Working Days) if it receives:
 - i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the DPA;
- (l) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - i) providing the Authority with full details of the complaint or request;
 - ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - iv) providing the Authority with any information requested by the Authority
- (m) permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E10 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- (n) provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and
- (o) not Process Personal Data outside the European Economic Area without Approval and, if the Authority consents to a transfer, to comply with:

- i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
- (ii) any reasonable instructions notified to it by the Authority.

E2.3 The Contractor shall comply at all times with the DPA and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

E2.4 The provision of this clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E3 Official Secrets Acts and Finance Act 1989

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

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

E4 Confidential Information

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

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

E4.3 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

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

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

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

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

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

(e) it is independently developed without access to the other Party's Confidential Information.

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

(a) for the purpose of the examination and certification of the Authority's accounts;

(b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

(c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;

(d) to any consultant, contractor or other person engaged by the Authority

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

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

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

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

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

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

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

E5 Freedom of Information

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

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

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

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

E6 Publicity, Media and Official Enquiries

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

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

E6.3 Notwithstanding clause E6.1 but subject to clause E4 (Confidential Information), the Contractor shall endeavour to make the Results generally available (including in scientific journals where reasonably appropriate) and shall acknowledge in any public statement the financial support of the Authority and the Co-funders. The Contractor shall send details of any proposed publication to the Authority at least 2 weeks prior to the proposed publication and shall notify the Authority immediately if approached by the media about the Services.

E6.4 Subject to clause E4 (Confidential Information) the Authority may disclose, copy and otherwise distribute to the public or use in any way any information arising out of the Services or comprised in any work relating to the Services.

E6.5 Nothing in the Contract shall permit or require the Contractor or the Co-funders to make any disclosure of information which would jeopardise any commercial exploitation of the Results.

E7 Security

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

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

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

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

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

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

E8 Intellectual Property Rights

E8.1 All Intellectual Property Rights in:

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

shall vest in the Authority and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials. This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

E8.3 The Contractor agrees, and shall procure the agreement of the author of any copyright material arising as a result of the Contract or the performance of its obligations under the Contract, that the Authority may publish the IP Materials, in whole or in part, in whatever form the Authority chooses from time to time.

E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority.

E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Authority and the Crown from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:

- (a) items or materials based upon designs supplied by the Authority; or
- (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E8.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.

E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the

Contractor) arising from the performance of the Contractor's obligations under the Contract ("Third Party IP Claim"), provided that the Contractor shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E8.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.5(a) or (b).

E8.9 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.10 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.4 and G2.1(g) (Warranties and Representations)) use its best endeavours to:

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

and if the Contractor is unable to comply with clauses E8.10(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

E8.11 The Contractor grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E9 Commercial Exploitation

E9.1 The Contractor shall:

- (a) ensure that its staff, students and sub-contractors are and will be engaged in relation to the Contract and the Services on terms which do not entitle any of them to any rights in the Results; and
- (b) ensure that it is and remains entitled to transfer free from any encumbrances any title and/or rights necessary to effect the vesting of Intellectual Property Rights required by the Contract.

E9.2 Subject to clauses E9.3 and E9.4 the Contractor will use reasonable endeavours to exploit the Results commercially for its benefit and the benefit of the Authority and the Co-funders.

E9.3 The Contractor shall identify and inform the Authority of any Results which it considers suitable for commercial exploitation. If the Contractor has identified an opportunity for the commercial exploitation of the Results then it shall either apply to the Authority for a licence (with a right to sub-

license as required) as may be necessary, or provide such assistance as is required by the Authority to facilitate a licence being granted by the Authority to a third party.

- E9.4 The Contractor shall identify and inform the Authority of any Results which may be suitable for registration as a patent, copyright, registered design, trade mark or other legal protection and shall use its reasonable endeavours to apply for such protection throughout or in any part of the world in the name of the Authority, and shall maintain such protection in such part of the world as it considers suitable at its own expense.
- E9.5 Subject to clause E9.6 the Income from the commercial exploitation of the Results shall, after deduction of allowable costs as described below, be apportioned between the Parties as follows:
- (a) the Authority and Co-Funders: 10%, to be divided in the proportion of the actual payments made to the Contractor under the Contract by the Authority and Co-Funders respectively; and
 - (b) the Contractor: 90%.
- E9.6 The Income referred to in clause E9.5 shall be payable for the longer of:
- (a) the term of any patent arising from or incorporating any of the Results; and
 - (b) the period in which any Know-How arising from the Results and used in any products or services exploited by the Contractor remains secret and substantial.
- E9.7 The allowable costs for the purposes of clause E9.5 shall be limited to:
- (a) the registration fees for the registering of any rights in relation to such Results;
 - (b) any legal costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and before any appropriate tribunal in any country and any costs ordered by any such tribunal to be paid by the Parties or any of them;
 - (c) any other reasonable cost or expenditure which may be agreed from time to time by the Authority and the Contractor; and
 - (d) subject to Approval, any reasonable marketing, packaging and/or distribution costs, and any relevant experimental development costs including costs of field trials and/or demonstration projects incurred at the Contractor's expense.
- E9.8 The Contractor shall have sole responsibility for making any payments due to Staff under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results, and any such payments shall not be a cost or expenditure liable to be subtracted from any Income pursuant to clause E9.5. Any payments in respect of a share of Income to be made to the Authority and/or the Co-funders by the Contractor shall be made promptly, in such format as the Authority may direct and accompanied by sufficient information to enable the Authority to identify: i) the contract to which such payments relate; and ii) the means (including a full breakdown of allowable costs) by which such payments have been calculated.
- E9.9 If the Contractor does not intend to protect or exploit any Results then the Authority shall be entitled to obtain protection at its own cost and (if clause E8.1 (Intellectual Property Rights) has been amended or varied so that ownership of the Results vests in the Contractor) to have assigned to it at no charge all rights in the relevant Results. The Contractor will not be entitled to any share of the Income generated as the result of the protection or exploitation of the relevant Results obtained by the Authority.
- E9.10 For the avoidance of doubt, clauses E9.5 to E9.9 do not apply to and do not affect any Intellectual Property Rights in existence before the commencement of the Services.

E10 Audit

- E10.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.
- E10.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- E10.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E10.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

E11 Tax Compliance

- E11.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly give the Authority:
 - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- E11.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

- F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- F1.2 The Authority may by notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable

time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:

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

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

F1.4 The issue by the Authority of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.

F1.5 The Contractor hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 18 months from the date of delivery. If the Authority shall within such period or within 25 Working Days thereafter give notice to the Contractor of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.

F1.6 Any Goods rejected or returned by the Authority as described in clause F1.2 shall be returned to the Contractor at the Contractor's risk and expense.

F2 Monitoring of Contract Performance

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

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

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

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

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

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

F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

F3 Reporting

F3.1 Unless otherwise authorised in writing by the Authority, the Contractor shall submit an annual report (the "Annual Report") for each Project Year to the Authority in accordance with this clause F3.

F3.2 The Contractor shall provide one hard copy of the Annual Report and one copy on either computer readable disk or e-mail in the format specified by or agreed with the Authority, no later than 4 weeks after the end of each Project Year, or, for work lasting one year or less, no later than 4 weeks after completion of the Services.

F3.3 The Annual Report shall:

- (a) list the scientific objectives set out in the Specification, indicating where amendments have been agreed;
- (b) indicate in non-scientific terms the scientific progress achieved since the Commencement Date or since the last Annual Report; how this relates to the policy objectives as set out in the relevant current statement of policy rationale and programme objectives relating to research and development issued by the Authority in accordance with the Specification, plus any findings of particular interest;
- (c) indicate whether the scientific objectives in the Specification are appropriate for the remainder of the Contract Period, giving reasons for any changes, together with financial, Staff and time implications;
- (d) list the milestones for the relevant Project Year as set out in the Specification, indicating which milestones have been met and whether the remaining milestones appear realistic (subject to clause F4);
- (e) list any outputs, for example, published papers or presentations and identify any opportunities for exploiting any Intellectual Property Rights or technology transfer arising out of the Services and any action taken to protect and exploit such Intellectual Property Rights; and
- (f) comment briefly on any new scientific opportunities which may arise from the Services.

F3.4 Unless Approved, the Contractor shall submit by the completion date of the Services a final report (the "Final Report") consisting of 2 hard copies and one electronic copy on either computer readable disk or by e-mail in a format specified by the Authority. The Final Report shall include the following:

- (a) the Services' code and title as set out in the Specification; the name of the Contractor; the total costs; and the Commencement Date and date of completion of the Services;
- (b) an executive summary of not more than 2 sides of A4 written in a style understandable to the intelligent non-scientist. This should include the main objectives of the Services; the methods and findings of the research; and any other significant events and options for new work; and
- (c) a scientific report.

F3.5 The scientific report referred to in clause F3.4(c) above shall contain:

- (a) the scientific objectives as set out in the Specification;

- (b) the extent to which the objectives set out in the Specification have been met;
- (c) details of methods used and the Results obtained, including statistical analysis where appropriate;
- (d) a discussion of the Results and their reliability;
- (e) the main implications of the findings;
- (f) possible future work; and
- (g) any action resulting from the research, for example, protection of Intellectual Property Rights and knowledge transfer.

F3.6 Notwithstanding clause E6 (Publicity, Media and Official Enquiries), the Authority may publish the Final Report on a website. When submitting the Final Report to the Authority the Contractor shall indicate any information contained in the Final Report which it considers to be commercially sensitive or which might otherwise merit non-publication and the Authority shall not disclose such information without first having consulted the Contractor (without prejudice to the Authority's discretion as to whether to publish following such consultation).

F3.7 The Authority reserves the right to reject any Annual Report or Final Report submitted by the Contractor which is not, in the reasonable opinion of the Authority, satisfactory, either in form or content, having regard to the provisions of this Schedule. If an Annual Report or Final Report is rejected by the Authority, the Contractor shall remedy any deficiencies identified by the Authority and submit a revised version at no additional cost to the Authority or the Co-funders.

F3.8 The Contractor shall supply any additional reports, including financial reports, in respect of the Services, at such time or times, and in such form, as the Authority may reasonably require. Without prejudice to the generality of the foregoing, the Contractor shall provide to the Authority such information as the Authority may reasonably require regarding commercial exploitation of the Results, including details of any licences granted to third parties in respect of any Intellectual Property Rights in the same. The Contractor shall further keep at its normal place of business detailed accurate and up to date records and accounts showing details of its commercial exploitation of the Results including the sale of products or services which incorporate the Results, Income received, allowable costs deducted and the amount of licensing revenues received by it in respect of the Results in a format sufficient to ascertain that revenue sharing pursuant to the Contract has been properly accounted for and apportioned in accordance with the Contract.

F3.9 The Contractor shall, subject to reasonable notice, attend all meetings specified in the Contract or otherwise arranged by the Authority for the purpose of discussion of the Services.

F4 Remedies for inadequate performance

F4.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

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

F4.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in

respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

- F4.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F4.4 If the Contractor has been notified of a failure in accordance with clause F4.3 the Authority may:
- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
 - (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F4.5 If the Contractor has been notified of a failure in accordance with clause F4.3, it shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
 - (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F4.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- F4.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F4.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

F5 Transfer and Sub-Contracting

- F5.1 Except where clauses F5.5 and F5.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F5.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F5.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E10 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F5.4 If the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.
- F5.5 Notwithstanding clause F5.1, the Contractor may assign to a third party (the "Assignee") the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F5.5 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F5.6 and F5.7.
- F5.6 If the Contractor assigns the right to receive the Price under clause F5.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F5.7 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- F5.8 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F5.9 Subject to clause F5.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F5.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F5.11, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F5.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F5.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause F5 both such bodies being referred to as the "Transferee"):
- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F5.12 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F5.13 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F6 Waiver

- F6.1 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.
- F6.2 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 A4.2 (Notices).
- F6.3 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.

F7 Variation

- F7.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause 7.
- F7.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.
- F7.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
 - (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F7.4 Any Variation will not take effect unless recorded in a CCN and approved in writing by the Authority.
- F7.5 The provisions of clause F7.4 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F8 Severability

- F8.1 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.

F9 Remedies Cumulative

- F9.1 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.

F10 Entire Agreement

F10.1 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.

F11 Counterparts

F11.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clause D1; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed £5,000,000.

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

G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- (d) any compensation or interest paid to a third party by the Authority; and

- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

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

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

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

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

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

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

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

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

G2 Warranties and Representations

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

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;

- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
 - (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those

steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

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

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

H1.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“Change of Control”). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

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

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

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

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or

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

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

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

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

H2 Termination on Default

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

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

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

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

H3 Termination on Notice

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

H4 Termination under the Regulations

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

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

H5 Consequences of Expiry or Termination

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

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

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

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

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

- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E10 (Audit), F10 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 Recovery upon Termination

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
 - (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and Services;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
 - (c) immediately vacate any Authority Premises occupied by the Contractor;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- H7.2 If the Contractor does not comply with clauses H6.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

- H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H9 Exit Management

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

H10 Exit Procedures

- H10.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:
- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price.

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

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

H11 Knowledge Retention

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

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

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

I2 Dispute Resolution

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

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

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless: (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

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

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

- (a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the

structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement in the structured negotiations 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 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 If any arbitration proceedings are commenced pursuant to clause 12.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and

- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1 - SPECIFICATION

This Schedule forms the Services to be provided within this Contract and was submitted by the Contractor in response to the competitive tender for this project and in relation to the Authority project requirements stipulated within the tender documentation.

The Environment Systems Ltd (The Contractor) Supply Chain

The Contractor has put together a team of experts able to address and advise on all aspects of the work. Key team members, all of whom will be Sub-Contractors reporting to the Contractor, include:

Team Projects Ltd is an independent consultancy that specialises in evaluating the impact and supporting the development and implementation of UK environmental policy. The company employs an evidence-led approach, reviewing existing scientific evidence and/or sourcing new information, and work proactively with project stakeholders, science and policy experts.

██████████ from Team Projects will advise the project team on habitat monitoring methods, as well as assist with report writing and consultations with Steering Group members.

Specto-Natura enables its clients to deliver useful, accurate and reliable environmental information from remote sensing / Earth observation (EO). Its expertise allows it to provide input into improved understanding and management of the linkages between the natural dynamics and the complex human use of landscape through the application of remote sensing.

██████████ from Specto-Natura provides consultancy services to the organisation, with a focus on developing or implementing EO data for monitoring land surfaces. ██████████ will advise on remote sensing issues, and the link with CS, LCM and Copernicus.

Bournemouth University Centre for Conservation Ecology and Environmental Change (CCEEC) in the School of Applied Sciences at BU undertakes research into terrestrial and aquatic sciences and has developed excellent relationships with national and international partners. The Centre is able to provide a strong base for consultancy and applied research across a broad range of environmental and ecological disciplines.

██████████ is an environmental remote sensing specialist, who will advise on remote sensing processes and the link with CS and LCM.

Fera Science Ltd provides science-based research, evaluation and policy advice on the impacts of changing pressures on the agricultural environment. This includes research, assessment, and appraisal of the agricultural and environmental impacts of land use policy in the UK, including agri-environment schemes, land use change and impacts on ecosystem services.

██████████ from Fera is an agricultural ecologist and project manager, who will provide expertise on agri-environment scheme impacts and evaluation.

E01- Sustainability

The Contractor recognises that their activities impact upon the environment both through routine internal operations and through activities in the wider community and acknowledge a responsibility for, and a commitment to, protecting the environment at all levels.

The Contractor sustainability policy commits to:

- Promoting environmental management policies and practices throughout the company;
- Increasing awareness of environmental responsibilities among staff;
- Encouraging and facilitating modes of transport by staff which minimises environmental impact;
- Adopting best practice measures to reduce water and energy consumption;
- Minimising landfill waste by encouraging staff to reduce, re-use and recycle;
- Promoting a purchasing policy which will give preference, as far as practicable, to those products and services which cause the least harm to the environment;
- Working with other bodies as appropriate to promote environmental policies;
- Preventing pollution beyond that of the Contractor's normal activities;
- Continual environmental improvement;
- Complying with relevant environmental legislation.

The Contractor has achieved BS8555 certification to Phase 2 and are working to extend this.

The major sustainability impact of this contract will be on travel, principally for meetings. The Contractor's approach to helping the Authority reduce its impacts and improve its sustainable performance in delivering this contract includes:

- Minimising as far as possible carbon emissions through the use of email, telephone conference meetings and limiting travel. All Sub-Contractors for this project are equally aware of the need for these measures and have similar approaches to sustainability. Face-to-face meetings will be limited, with agreement, and routine reporting can be completed by email or conference call.

There will be a requirement in the project for one or more face-to-face expert meetings, but any mileage resulting from this will be minimised as far as possible by using central locations, public transport where possible and shared cars where public transport is not an option.

Any mileage undertaken is routinely logged by the Contractor staff. As part of the mechanism for achieving a more sustainable approach the Contractor is happy to report to Defra on the mileage undertaken to achieve project delivery, and describe the way in which they have sought to minimise this.

There will be no requirement in this project for purchases of equipment or of the need for a supply chain beyond the Sub-Contractor arrangements.

Please see Annex 1 for the full Contractor Environmental Policy.

E02- Equality and Diversity

The Contractor is an equal opportunity employer and is committed to ensuring that the terms and conditions of employment of the employee and potential employee are equitable and non-discriminatory. This means that job applicants and employees will be treated fairly regardless of their sex, marital status, sexual orientation, gender reassignment, race, ethnic origin, disability, religion or religious beliefs.

The Contractor will seek to promote equal opportunities and prevent harassment and bullying by publicising and communicating this policy; by providing appropriate training and guidelines for those with designated responsibilities and by raising awareness through staff development.

Further, the Contractor will continually monitor its policies and practices to ensure that these principles are upheld. It is the employee's right to be treated with dignity and respect, which in turn will be conducive to performance, self-development and career advancement.

Every executive, manager and employee has a responsibility to implement this policy.

In summary the Contractor equality policy covers the following areas:

- Discrimination
- Age
- Sexual Orientation
- Gender Reassignment
- Religion/Religious Beliefs
- Harassment
- Racial harassment
- Sexual harassment
- Bullying
- Victimisation

All employees and job applicants are asked to complete a form providing information regarding their sex, race, ethnic origin and whether they suffer from any disabilities. This form is used solely for the purpose of monitoring the effectiveness of the Contractor's equal opportunities policy and to ensure that it meets its obligations as an equal opportunities employer.

The Contractor has procedures for addressing discriminatory conduct, anti-harassment & bullying and encourages positive action on equal opportunities and ensures all staff and any Sub-Contractors comply appropriately.

For this contract the Sub-Contractors: Team Projects, Specto-Natura, Bournemouth University and Fera Science Ltd all have a similar approach to equality in their businesses.

Please see Annex 2 for the full Contractor Equal Opportunities Policy.

E03- Brief Project Description

There are statutory reporting, policy and operational requirements to carry out habitat surveillance and monitoring. These derive from national and international commitments, legislation and policies which lead the UK to undertake habitat surveillance activities at a range of spatial and temporal scales. They include:

- Convention on Biological Diversity Aichi target indicators,
- EC Habitats Directive, Article 17,
- Biodiversity 2020 and country strategies,
- Water Framework Directive,
- Reporting on Natural Capital- uses of robust habitat data in valuing ecosystem services,
- Agri-environment schemes provide a key delivery mechanism for the conservation and expansion of habitats,
- The government commitment to the European Landscape Convention, delivering climate change resilience and providing information to support the National Pollinator Strategy.
- NERC ACT- at a more local Level, good quality habitat information can help Local Authorities in planning and consideration of impacts of developments on biodiversity.

Achieving favourable habitat condition is an outcome of the Biodiversity 2020, the Countryside Stewardship Scheme and the EU Habitats Directive. Application of EO offers opportunities to reduce costs associated with field survey and to improve the quality, coverage and currency of data. EO methods also offer a wider range of applications in mapping and assessment of ecosystems and ecosystem services.

The Contractor has been at the forefront developing these approaches, particularly those related to the MEOW (Making Earth Observation Work) initiatives for habitat identification and evaluation.

This project constitutes Phase 4 of a wider series of projects addressing the role of EO data in habitat monitoring and surveillance needs in the UK and information exchange with others in the EO & conservation sector. Phase 1 concluded that there is strong evidence that EO and geo-informatic techniques have a role to play in an integrated approach. The Crick Framework was developed as a tool to assess the role of EO in identifying Annex 1 and BAP habitats. Phase 2 addressed gaps in knowledge about the use of EO-based techniques for the surveillance of lowland habitats, accelerating the introduction of EO methods for mapping the extent and condition of these habitats.

Phase 3 explored the potential and efficiencies of a range of uses of EO in informing policy and assisting practical land management decisions, developed a business case demonstrating the potential increased efficiencies and uses deriving from roll out at country or UK level, as well as further technical product development of the use of EO in the uplands.

This current project, Phase 4, looks specifically at the role of EO in assessing habitat condition and change in condition, combining the work of MEOW with a number of other initiatives exploring complementary areas, such as the Countryside Survey Review and the CEH-led project 'Using EO to produce indices of habitat condition and change'. It will focus on grassland habitats, a major element of the Countryside Stewardship. It will consider a number of case studies of areas where detailed ground data on grassland condition and change can be compared with concurrent EO data to see how well EO-derived indices of grassland habitat condition and change compare to validated ground data, using long time-series of data where possible.

The project team involves a multi-disciplinary group of experts from the Contractor and their Sub-Contractors; Team Projects, Specto-Natura, Bournemouth University and FERA Science Ltd. This team brings a wealth of expertise in remote sensing and the use of EO data for habitat condition assessment, as well as experience of grassland field survey and Common Standards Monitoring, stakeholder consultation and national surveillance programmes. The project will work closely with end-users in two test areas, likely to be in the North of England (Yorkshire Dales) and the South of England (Dorset and/or Somerset).

E04- Project Quality Assurance

The Contractor is committed to providing a quality service to all clients and aims to ensure that its services meet the immediate needs of its clients at all times in accordance with contracted requirements, its policies and procedures.

The Contractor confirms it will comply with all relevant codes of practice, as set out in the project specification (within the Authority tender documentation). The Contractor will be fully responsible for work carried out by their project team and the Sub-Contractor Team and provide assurance that their contribution to the project will also be undertaken in accordance with these Codes of Practice. Each organisation is aware of the Authority Codes of Practice requirements.

The Contractor operates a Quality Management System that has gained BS EN ISO 9001:2008 certification (certificate number GB2002898), including aspects specific to the provision of geographic and environmental information consultancy and services.

The Contractor management is committed to:

1. Develop and improve the Quality Management System
2. Continually improve effectiveness of the Quality Management System
3. The enhancement of client satisfaction

For this project the quality of the final delivery will be assured by:

- The use of expert staff who are very experienced in working with EO data of varying types and experienced in making analyses, assessments and evaluations based on such data.
- The following of the codes of practice, in particular the Joint Code of Practice for Research for setting up and running the whole project, the Code of Practice for Official Statistics for collating and sourcing all appropriate data and statistics and the Magenta Book when producing the business case.
- Drawing on the experience and expertise in the SG to ensure there is input and agreement on:
 - timescales for project deliverables and transfer of information arising from the research (e.g. field data / assessment sheets)
 - content of communication plan, including methods for consultation with key stakeholders, timing of SG meetings, final presentation
 - information sources and processes for obtaining data
 - security of all data used
- All outputs will be quality assured before release. Reporting on 'uncertainty' will be an essential element of the work, but this will be identified and incorporated into all reporting where necessary, so that the certainty and reliance with which the outputs and output data can be used can be quantified as far as possible and included in the overall project output.

Data and IT quality management

The Contractor has processes in place for ensuring data and IT quality management. The Contractor business is based on modern technology combined with sound data management.

The company runs a full range of standard office software; in addition to statistical, Geographical Information Systems (GIS) and remote sensing related software (a full list of this is available on request). The infrastructure includes high specification PC's, workstations and servers running a combination of Microsoft Windows and Linux operating systems. The office PC's and servers are configured on a Local Area Network (LAN), with high speed Internet connection to the outside world. This provides full email, Internet and SFTP capabilities and enables the use of secure areas on the Contractor content management website for dissemination of specific information.

In house large scale plotting facilities provide for bespoke or batch plotting on a variety of media up to A0 size. Double-sided colour and mono laser printing facilities are also available.

The Contractor operates an established data storage and back-up policy. All project data created by the Contractor is routinely backed up on secure mirror servers, and within onsite fireproof storage and offsite copies as appropriate. Off-site back up media used includes tape, optical and hard disk. Specific storage and back-up requirements can be met on request.

Geographic Information Practices

The Contractor actively supports the underpinning principles of best practice for data collection, management and analysis; adoption and use of common data and metadata standards, promotion of 'collect once use many times', use of 'fit for purpose' data of suitable scale and nomenclature.

These principles combine well with the Infrastructure for Spatial Information in the European Community (INSPIRE) Directive which entered into force on the 15th May 2007 and recognises the need for;

- Quality geo-referenced information to support understanding of the complexity and interactions between human activities and environmental pressures and impacts.
- Facilities for users to identify and access geographic information from a wide range of sources, from the local level to the global level, in an inter-operable way for a variety of uses.

The Contractor continually monitors and leads on industry developments, including INSPIRE, GEOSS and OpenGIS (Open Geospatial Consortium) standards, specifications and guidelines, to ensure our environmental information practices are at the highest level

E05- Technical Expertise

The Contractor led team has extensive expertise in providing, developing, analysing and applying earth observation (EO) data for environmental monitoring and surveillance purposes. The Contractor understands the role of EO (what it can do, and what it cannot do) in providing data relevant to habitats (especially grassland), land cover, ecosystem services and agricultural production, have worked with these data over many years and have been at the forefront of developing applications from EO technologies.

The Contractor specialises in the use of EO data for the identification and monitoring of land cover and habitats and has completed a number of relevant projects. These include:

- Phase 1 of this project 'Translating Earth Observation techniques into cost effective support for high priority evidence needs for habitats in the UK', delivered in 2010-2011.

The Contractor delivered this desk-review and scoping exercise, involving a workshop presenting results from the project. A key requirement of this project was to establish the effectiveness of a range of EO techniques for the mapping and surveillance of semi-natural habitats based largely on work commissioned or carried out by statutory nature conservation organisations. An evaluative framework was developed and used for this purpose. The systematic and analytical approach adopted by the project team resulted in the project developing an innovative assessment tool: The Crick Framework which assists the assessment of the role of EO in identifying Annex 1 and BAP Priority habitats.

- Phase 2 of this project 'Making Earth Observation work for UK biodiversity conservation', delivered in 2012-13. The work involved:

1. A review of Crick Framework content, expanding and updating this in the light of new knowledge and experience.
2. The implementation and evaluation of a pilot project, focused on lowland habitats in Norfolk,
3. An assessment of habitat condition, taking an EO driven approach - considering what EO is suited to detecting and what would be useful for the assessment of condition

The main focus of the Norfolk pilot was to further develop the Crick Framework using an "object based image analysis" (OBIA) habitat mapping approach. Initial work developed in Wales was applied to Norfolk, a very different biogeographical environment. The OBIA approach incorporates ecological contextual knowledge into EO image classification. It also maps to real world objects, such as field parcels. With knowledge of landscape context applied to image classification, it is possible to create "masks" that successfully delineate areas in which particular habitats are restricted. This allows the user to separately map vegetation assemblages which are spectrally similar but that occur in very different settings (thus avoiding sources of confusion in the image analysis).

- Phase 3 of the project, had three aims, to further explore the potential and efficiencies of a range of uses of EO in informing policy and assisting practical land management decisions, in particular identifying uses of data products and developing a business case that demonstrated the potential increased efficiencies and uses deriving from roll out at country or UK level, further technical product development of the use of EO especially in the uplands (where the previous work focused essentially on lowland landscapes and habitats) and the coordination and information exchange with others in the EO & conservation sector.

The Sub-Contractors: Team projects, Spectro-Natura and Bournemouth University all contributed to the above.

The Contractor has recently completed two projects for the Space for Smarter Government Programme (SSGP), both involving the use of EO data for assessing change, one looking at the potential role of EO data for controlling the new CAP 'greening' rules and the second evaluating the usefulness of SAR data, from Sentinel 1, for mapping the extent of heather burns on the North York Moors.

In Wales the Contractor has used EO data for mapping habitats in detail. This has included the production of an updated Phase 1 habitat map of Wales, delivered from 2006 to 2013 for the then *Countryside Council for Wales*. Previously the original field-surveyed Phase 1 Habitat Survey of Wales represented the primary spatial dataset of semi-natural habitats and the extent of agriculture across Wales. Based on a strong user requirement for up-to-date and accurate habitat data for Wales, an alternative approach to discriminating and mapping habitats was suggested by the Contractor using SPOT-5 and other satellite sensors, with the development of segmentation and classification procedures. Through the development and implementation

of a comprehensive ruleset and a logical set of processes within e-Cognition and other software, a revised Phase 1 map of habitats in Wales has been generated.

The Contractor has also used EO data in other policy areas such as ecosystems services assessments and helping to develop and implement the NEA ecosystems approach more widely. We have used EO data to develop very detailed and specific datasets, such as a gardens dataset, within urban areas, for helping to assess water run-off, pollination and ecological connectivity in urban areas. The Contractor has developed an ecosystem services spatial framework, helping to identify, for woodlands, grasslands and marine areas the links between EO data, contextual data and ecosystem services provision in a transparent and structured way. The Sub-Contractor Team Projects contributed to this project. Around Bristol the Contractor developed a dataset of ploughed land and of river banks stabilised by trees, both from the analysis of EO data in a suitable rule-base, as a contribution to the identification of erosion risk within the Bristol Avon catchment, and the planning of erosion mitigation measures within the catchment. In Scotland the Contractor has developed EO data for targeting grasslands likely to be species-rich, and distinguishing them from improved and semi-improved grasslands, using in particular NDVI values, based on infrared imagery taken at certain critical times of year in the growing season.

The Contractor staff who led and carried out all the remote sensing data analysis in these projects are all part of the proposed team for this current project. Most of these projects involved close liaison and consultation with a range of end-users and other stakeholders in the habitat monitoring and surveillance community and in the wider EO community, with whom we maintain close links across the UK and internationally. The Contractor staff are active members of the Ecosystem Knowledge Exchange Network and have recently been developing techniques for 'citizen science' input to the verification of EO data, through a FP7 funded project called 'COBWEB' (Citizen OBServatory WEB) looking at the role of mobile phone apps in enabling informed citizens to identify and report on issues relevant to environmental monitoring that can be used to supplement and verify EO-based datasets.

Other members of the wider team also have extensive EO experience, specifically in the context of CS2000 and LCM. The Sub-Contractor Specto-Natura has experience of using EO data for specific end-uses such as the UK Countryside Survey and the European Copernicus (formerly GMES). Two representatives from the Sub-Contractor Bournemouth University were key members of the team responsible for the development and production of LCM2000 and LCM2007 and have had involvement in Copernicus. The CS2000 project contained three modules related to EO. Module 7 was the LCM2000 production. Module 8 looked at the use of airborne optical and LiDAR data to support the field survey and to make a link between it and the satellite-based LCM. Module 9 continued the theme of linking the components of CS together by assessing the utility of using the FS to calibrate the LCM2000 to give an updated comprehensive 1 km dataset.

Copernicus (formerly known as Global Monitoring for Environment and Security (GMES)) is the European programme to provide an independent source of EO data and EO-based products and services. Over the last decade a representative from the Sub-Contractor Bournemouth University has been part of all the major land themed projects within Copernicus, beginning with the CEH led FP5 BIOPRESS project which was brought under the GMES banner as the programme began.

The representative from the Sub-Contractor Bournemouth University was part of the general consortium within the HELM project which aimed to improve the compatibility of European, national and sub-national remote sensing-based land monitoring activities by reviewing user requirements, understanding current methods and defining best practices. This project has resulted in better coordination of activities, reduced costs and improved interoperability. The representative is part of EIONET Action Group on Land monitoring in Europe (EAGLE) group, a set of experts working on critical aspects of land cover mapping related to the integration of Member State (MS) activities. The EAGLE group was set up to address the growing need to discuss solutions for a better integration of national mapping activities with European land monitoring initiatives (i.e. CLC) at a technical level and independent from any political or industry preferences. This work has many parallels to the UK Crick framework where the UK Priority Habitats and the EU Annex 1 Habitats have been assessed to see how far they can be mapped by EO.

Since the CS2007 Airborne Application work the other representative from the Sub-Contractor Bournemouth University has maintained a lead role at the international level in the use of airborne optical and LiDAR data for habitat type and condition mapping.

E06- Approach and Methodology

Understanding the requirements

Measuring and monitoring techniques based on the use of EO data have developed rapidly as a means of remotely assessing processes affecting the earth's surface and is already widely used in support of habitat mapping and assessment activities. The Contractor has been at the forefront of helping to develop many of these approaches and those related to the MEOW (Making Earth Observation Work) for habitat identification and evaluation initiatives.

Phase 1 of this work aimed to establish the effectiveness of a range of EO techniques for the mapping and surveillance of semi-natural habitats, developing an innovative evaluative framework, subsequently called the Crick Framework which assists the assessment of the role of EO in identifying Annex 1 and Priority Habitats. Phase 2 involved a review and expansion of the Crick Framework, in the light of new knowledge and experience and the implementation and evaluation of a pilot project, based on Norfolk, focusing on the use of EO data for the assessment of habitat condition. Phase 3 had three aims, to further explore the potential and efficiencies of a range of uses of EO in informing policy and assisting practical land management decisions, in particular identifying uses of data products and developing a business case that demonstrated the potential increased efficiencies and uses deriving from roll out at country or UK level, further technical product development of the use of EO especially in the uplands (where the previous work focussed essentially on lowland landscapes and habitats) and the coordination and information exchange with others in the EO and conservation sector.

The Contractor understands the focus of the project on applications in regard to monitoring for the England Biodiversity Strategy *Biodiversity 2020*. Achieving favourable habitat condition is a key outcome of the Biodiversity 2020, the new Countryside Stewardship Scheme and the EU Habitats Directive. In the past EO data has focussed primarily on assessing habitat extent. Currently habitat condition is assessed through field surveys undertaken by Natural England or contractors. Application of EO offers opportunities to reduce costs associated with field survey and to improve the quality, coverage and currency of data. EO methods also offer a wider range of applications in mapping and assessment of ecosystems and ecosystem services. The Contractor understands that the focus of this project will be grassland habitats, which are a major element of the new Countryside Stewardship scheme and the EU Habitats Directive.

This contract concerns Phase 4 of MEOW, which takes forward the MEOW concept, alongside these other initiatives to examine the usefulness of EO for the assessment of habitat condition and change in condition, using a series of case studies focussing on grassland habitats. A key aspect of the work will be to build on previous experience, add value to ongoing complementary work and move techniques of EO closer towards a practical application for habitat condition and change assessment, accepted and useable throughout the habitat and biodiversity surveillance community.

The work will start in May 2015 and continue until the 31st January 2016.

Overall approach

The Contractor is committed to providing a high quality service to all clients on time, to budget and in accordance with the specification agreed with the customer. This commitment is based on the following factors:

- The Contractor operate ISO 9001:2008 certified quality systems.
- The Contractor is within a dynamic and flexible company which enabling enhanced delivery of the service by competitive pricing, short lines of communication between customer and key staff, a flexible approach to work planning and rapid reaction to change during the course of a contract.
- Contractor staff are of the highest calibre, with great experience of policy, earth observation, habitat mapping and modelling, ecology, ecosystem services, environmental datasets, statistics, GIS and geoinformatics. This will help contribute to achieving high quality delivery, organised on time and to budget.
- The Contractor recognizes the importance of high project quality and innovation – helping to ensure high quality delivery and the best possible experience for the client.

The Contractor and Sub-Contractors have adopted this approach working together in a number of relevant recent projects and are well-placed to carry out this project and provide a wholly independent and transparent approach that will meet all Authority objectives.

Rationale

The Contractor understands the requirement for this contract to extend work and test approaches proposed in recent research work: Using EO to produce indices of habitat condition and change and identify other possible refinements or other methods that would be applicable to grassland condition monitoring. This will be achieved by carrying out a thorough practical test of the findings from that project and develop them further. It will focus on testing and developing new methods of assessment of grassland habitat condition and related ecosystem services and changes in these in England. The project is essentially providing a 'Proof of concept' of habitat assessment and condition monitoring from EO. By testing and clearly explaining the methods used, the measures developed and their relationship to the status of habitats at the site level, the Contractor will provide the Authority and partners with the evidence they need to make informed decisions.

The Contractor understands that the project will be undertaken and coordinated as part of a proposed shared research platform between the Authority and participating partners for observing change in biodiversity and ecosystems. The Contractor is aware of links with the Making Earth Observation Work for Biodiversity suite of projects, and are familiar with both:

- Countryside Survey Review and Using EO to produce indices of habitat condition and change,
- The Countryside Stewardship Monitoring Plan,

Much of the EO interest in the past has been about identifying the extent of grassland habitats. This project is very much about the practical application of EO to habitat condition assessment and change monitoring. The practical experience of the use of EO for assessing and monitoring habitats within the Contractor team is extensive. One of the key policy uses of habitat condition assessment is for monitoring and evaluation of agri-environment schemes. The project team has extensive practical experience of agri-environment monitoring and evaluation requirements.

The Contractor's approach to the requirements of this project is summarised in the remainder of this document. The rationale for this approach is based on the experience of using EO, assessing condition and change of grassland habitats and the wider perspective gained from mapping and quantifying the role of grassland habitats in the provision of ecosystem services.

The Contractor has extensive experience of identifying mapping and assessing the condition of a range of grassland habitats, including both BAP and Annex 1 priority habitats using both EO techniques and more traditional field mapping procedures. Key grassland habitats likely to be of interest to this study and some of the key management issues affecting grassland habitat condition are:

Grassland type	Key issues affecting condition
Chalk/limestone grasslands	Scrub invasion, lack of grazing management
Hay meadows	Cutting management, fertiliser management
Grazing marsh	Grazing management, flood management
Marshy grassland	Grazing management, flood management
Old permanent pastures	Grazing management, flood management

Other grasslands, less likely to be of interest to the project, where change may be slower and less easily identified include:

- Upland acid grassland
- Old or poor semi-improved grassland
- Permanent pasture and species poor neutral grasslands

Whilst the focus of this study will be on the key grassland habitat types, the Contractor will conduct a brief assessment of the applicability of the processes involved to the wider grassland habitat types. Agri-environment management, together with overseeing delivery of protected sites designations, have been key

processes used in the past to protect the conservation interest and improve the management of grassland habitats in the UK.

The Contractor's experience of EO, which does cover the mapping of grassland habitats in England, Wales and Scotland, has lead them to understand that in a UK context there are certain habitat condition measures that are generally identifiable through EO techniques; an outline of some of these relevant to grasslands is given in Table 1 below. There is also a large amount of existing data from habitat surveys and strategic projects, all of this information can usefully be built into a surveillance system

Table 1: Habitat condition measures for some key grassland habitat types

Habitat				Characteristics of good condition			
Name	Description	Source	Extent of Dead material	Extent of bare ground	% of woody cover	Productivity	Presence absence of problem species
Lowland Calcareous Grassland	Lowland calcareous grasslands are developed on shallow lime-rich soils generally overlying limestone rocks, including chalk. These grasslands are now largely found on distinct topographic features such as escarpments or dry valley slopes and sometimes on ancient earthworks in landscapes strongly influenced by the underlying limestone geology. More rarely, remnant examples occur on flatter topography such as in Breckland and on Salisbury Plain. They are typically managed as components of pastoral or mixed farming systems, supporting sheep, cattle or sometimes horses; a few examples are cut for hay.	BAP priority habitat	Good calcareous grasslands have very little dead material so this would be a sign of insufficient management or poor	expect a lot of bare rock in places which would be a good thing, sward in general quite open - be hard to tell it from	Definitely a negative for calcareous grasslands as it's a sign it is scrubbing up	Moderate to high spring (gets away early) when fairly wet, fairly moderate to low in summer moderate most winter	Nettles, gorse, invasive alien all issues
Purple Moor Grass and Rush Pastures	Purple moor grass and rush pastures occur on poorly drained, usually acidic soils in lowland areas of high rainfall in western Europe. Their vegetation, which has a distinct character, consists of various species-rich types of fen meadow and rush pasture. Purple moor grass <i>Molinia caerulea</i> , and rushes, especially sharp-flowered rush <i>Juncus acutiflorus</i> , are usually abundant	BAP priority habitat	Dead material is an intrinsic part of the habitat - not a particular condition feature	Small patches of bare ground less than 50cm in diameter are an intrinsic part of the habitat. Larger areas of bare ground are a negative indicator showing excessive poaching.	A certain amount of woody material is acceptable in fens. Significant amount of gorse scrub would be an adverse sign	Low spring, moderate to high in summer	Nettles, gorse, invasive alien all issues
Upland Calcareous Grassland	Upland calcareous grasslands occur on lime-rich soils situated above the upper limit of	BAP priority habitat	Good calcareous grasslands have very	expect a lot of bare rock in places which would	Definitely a negative for calcareous grasslands	Moderate to high spring	Nettles, gorse, invasive alien all

	agricultural enclosure, both in the sub-montane and montane zones. Most examples occur above 250-300 m altitude, but the habitat is also found within unenclosed moorland at lower elevations, and descends to sea level in north-west Scotland. Upland calcareous grasslands typically occur as components of habitat mosaics, which are generally managed as rough grazing land for domestic livestock. These are relatively rare upland vegetation types which support a wide range of uncommon species. Lowland calcareous grasslands are covered by a separate habitat action plan.		little dead material so this would be a sign of insufficient management or poor	be a good thing, sward in general quite open - be hard to tell it from	as it's a sign it is scrubbing up	(gets away early) when fairly wet, fairly moderate to low in summer moderate most winter	issues
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The Contractor has experience of assessing condition and change in condition. Assessing habitat condition and monitoring change have always been key features of agri-environment monitoring, both to establish a baseline for the schemes and to evaluate whether the schemes are achieving their objectives. In the past, assessments of habitat condition and change in grassland have often been inconclusive with respect to identifying positive change in many of the performance indicators set on habitat quality. It is clear that there are a number of issues stemming from the way grasslands have been both managed on the ground and assessed for the impacts of the schemes that affect key conclusions, such as:

- Grasslands that are in good condition when entering a scheme (and at baseline survey) cannot be expected to get better or improve. Here maintenance of condition is all that can be expected.
- There are few new habitats or re-created habitats to try and assess real change from a lower baseline
- Change, in most practical situations, takes a long time to occur, and only small changes may become obvious during the life of a scheme or monitoring programme.
- There is a normal cycle of change and oscillations in vegetation abundance and biodiversity, based on many external factors, that complicates any longer-term assessment of change. Seasonal change in grassland condition and the difference between wet and dry years can often have more impact than management change in the longer term.

In seeking to identify in this project whether EO data can be used to identify change, a key strategy may be to focus on situations where change is most likely to occur. In grasslands this may include:

- Recreated grassland habitats
- Areas where active positive management has been reintroduced after a period of lack of management.

In other grassland habitats change can be slow, unlikely to show much within a 5 to 10 year programme, and less suitable for a proof of concept study of this type. This project does provide the opportunity to look at longer time-series of data, and more cost-effective methods of assessing change, which may show more revealing change data.

The Contractor has experience in taking account of wider ecosystems approach to mapping change. Grasslands provide a number of ecosystem services, many of which are linked to and influenced by habitat condition and based on a number of premises. The first is that no site, habitat or species exists in isolation. All are interconnected. There is an important distinction between habitats and ecosystems. A habitat

describes a parcel of land with certain vegetation and ecological characteristics. It is part of a wider ecosystem, however, a more complex natural system that impacts upon, and is influenced by individual habitats. For example in biodiversity terms grassland habitats are more valuable and less vulnerable when situated adjoining other semi-natural habitats. Grasslands amid an arable landscape will be less diverse, more vulnerable and less resilient to change. Therefore to formulate a programme for monitoring change, and to interpret any change seen in grassland vegetation it is necessary to view grasslands within the context of the wider ecosystem in which they occur, identifying links, impacts and influences with and from adjoining and associated habitats and other ecosystem services.

Habitat, species and ecosystem resilience are all closely linked to each other, and to the many external factors affecting each. It is difficult, and perhaps confusing to consider each in isolation. In terms of this project the situation of each habitat within the ecosystem needs to be considered in order to fully understand habitat condition and changes in habitat condition that may occur.

The main tasks and deliverables for this project and their linkages are summarised in the diagram below. Identifying clearly all project deliverables is an important first step in ensuring high quality project delivery.

Work plan

The Authority requirement for the project is limited and focussed. Below the principle stages and delivery schedules are set out, with milestones and proposed Steering Group meetings:

	2015								2016
Month:	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
Task 0: Project Initiation	1								
Task 1: Identify data availability									
Task 2: Select case study areas			2						
Task 3: Complete case studies						3			
Task 4: Evaluation of case studies									
Task 5: Conclusions and recommendations									
Task 6: Final report							4		5
Milestones:									
			1	Project Initiation and Inception Plan, late May 2015					
			2	Interim Report 1, late July 2015					
			3	Interim Report 2, late Oct 2015					
			4	Draft Final Report, end Nov 2015					
			5	Final Report and project close, end Jan 2016					

The main tasks in the project will include:

Task 0: Inception

The Contractor assumes a contract start, via a meeting, in May 2015 with the Authority. This meeting will address a number of issues and seek confirmation / agreement on:

- Information sources to be used, initiatives to engage with, processes for obtaining data (e.g. existing monitoring data / site files) and processes to be used;
- The case study area to be used;
- Secretariat support and administrative support for SG meetings
- Collation and security of data
- Content of the communication plan, including methods for consultation with key stakeholders, timing of SG meetings, final presentation.

Following project inception the Contractor will produce a Project Inception Plan. The project manager [REDACTED] will lead the team in project inception.

Task 1: Identify data availability

At Task 1 the Contractor will work with the Authority and partners to identify the range of grassland data available that will be useful to the project.

Based on the project specification the Contractor propose two areas for testing, one in Northern England and one in Southern England. The northern area will be in the Yorkshire Dales where there is a wide range of different grassland types and the southern area in Dorset or Somerset Levels, where downland grassland and wet grasslands subject to flooding predominate respectively.

In a project limited by both time and budget it will be necessary to be both focussed and efficient in any analysis. The Contractor knows both proposed areas well, have worked in each before and understand the local landscape and habitats. The Contractor will consider the effect on the grasslands present in these two areas in the Crick framework tables. The Contractor will work with existing data and not to undertake any additional field survey or on-the-ground validation.

Key grassland data will include detailed information on habitat location and condition, such as:

- Grassland Inventory
- Agri-environment data from recent CSS and earlier ESA schemes
- Local grassland data from local surveys

Ideal data will be:

- Those that the Contractor have concurrent EO data for
- Those that the Contractor have a before and after EO dataset and monitoring record
- Those that have collected the most promising measures of condition reported by CEH

The Contractor will try and find data for a range of grassland types and particularly those where condition has been assessed in detail and where change may be identifiable. The Contractor will compare how consistent data are between the two areas, the length of time series available and whether all data can be available spatially. The concurrency of grassland and EO datasets is important. It will not be possible even one year after the imagery dates to look at conditions such as bare earth as these change very quickly.

The Contractor are aware of a number of ground surveys carried out by Natural England, contractors and partners over the years that may provide useful data for this project. These include:

- A research project in the Dales and Norfolk Broads in the late 1990's that found quite a strong statistical relationship between species richness (from ESA monitoring quadrat data) and NDVI (derived from Landsat for the fields containing the quadrats). This data may still be available. At the least it may be an opportunity to look at change as the previous data may have been collected at a reasonably close time to the date of the imagery used.
- ESA monitoring of lowland grassland (2003-2005): 75 RCA assessments derived using current assessment methodology.
- CEH data: Paper based condition assessments. Most outputs recorded as pass/fail. Species based attribute values could be derived from the RCA quadrat data but still in paper form.
- Sample Survey of Non Statutory Grassland Priority Habitats (2002 -2003): 470 sites (483 separate stands). Recorded presence of all vascular plant species, bryophyte and lichen in each grassland stand with associated DAFOR frequency value. Pass/Failure rates against each attribute and each site are stored alongside overall condition category
- Baseline assessment of grassland options in the HLS Scheme: 130 sites of that provide baseline for assessing the success of HLS grassland management.
- ADAS Upland Sample Survey (2008-2010): A sample survey was carried out of around 60 upland calcareous grassland sites split into 4 categories: in-SSSI and not in agri-environment scheme agreement, not SSSI and not in agri-environment agreement, in SSSI and in agri-environment scheme agreement, not an SSSI and in an agri-environment scheme agreement.
- Sample Survey of Non Statutory Lowland Heathlands: A random sample of English non-SSSI lowland heathland stands, both inside and outside of agri-environment agreements, was surveyed during 2005 and 2006 to provide baseline information on condition.
- An Assessment of Habitat Condition of Coastal and Floodplain Grazing Marsh within Agri-Environment Schemes (2004/2005): The project aimed to provide an evidence base for the condition of a representative sample of Coastal and Floodplain Grazing Marsh sites under agri-environment management, to inform reporting on this habitat under the Biodiversity Action Plan. A range of condition attributes were recorded based on a protocol for rapid condition assessment of wet

grassland and grazing marsh developed previously by the RSPB. This included sward composition and structure. Data was additionally collected on the condition of ditches within the sites.

- Evaluation of Arable Reversion Agreements (MA01015) 2004-2005: The objective of this project was to characterise the outcomes of a sample of 'mature' arable reversion agreements within the ESA and Countryside Stewardship schemes; to identify the extent to which they had succeeded in creating valuable grassland swards typical of their locality; their contribution to landscape enhancement and the protection afforded to the historic environment. Condition assessments were undertaken for each field using a Rapid Condition Assessment type methodology.

Many of these surveys have gathered attribute-type condition. These are the type of attributes used in NE's current condition monitoring approach called Integrated Site Assessment. It is used for SSSIs and for land in Environmental Stewardship (HLS – maybe where there is priority habitat present) - thresholds are a very important element of the technique (i.e. as in the old CSM technique for SSSIs).

Within the areas the Contractor have proposed, the following data may be useful:

HLS data, incl. in Culm of Devon, the Craven Limestone & Wharfedale/Littondale, as well as perhaps the Dorset Downs. The HLS data may be in the whole-agreement mapping of broad and priority habitats (i.e. done to CS methodology). Some of the recent long-term plot resurveys e.g. Pennine Dales (especially Teesdale, where the Contractor has excellent recent data from the North Pennines AONB Haytime project), and some wet grassland areas where some of the better coverage included parts of the Somerset Levels and Avon Valley.

Looking at data that is a bit older and provides a longer time series, but with effective levels of coverage, some of the work done 12 years or so ago on the ecological characterisation of ESAs might be useful – this is again primarily agreement mapping within specific ESAs using CS methodology.

The data generally consists of three types:

- Detailed plot data, typically 3-5 plots describing the community in a given parcel
- CSM type data giving an overview of vegetation and its condition at parcel level based on observations at a series of stops
- Mapping of broad and priority habitats for specific projects

In a project for Natural England (the Contractor- Team Projects, 2011) comparisons were made of independently conducted Common Standards Monitoring (CSM) assessments on a number of SSSIs to establish whether there were factors that ecologists find difficult to assess consistently during CSM and whether this was leading to differing outcomes in the favourable status of SSSIs. The main findings were that for grassland sites:

- The extent of the vegetation of interest (i.e. the reason for site designation) was often not recorded during CSM assessments and therefore changes in extent cannot be effectively monitored for these sites.
- Positive and negative species attributes and the scrub cover were the most commonly assessed attributes and those most commonly contributing to the failure of sites to reach favourable condition. (i.e. scrub is a common and important condition attribute that EO approaches can help with)
- Where the large grass (*Juncus*, *Deschampsia*, *Carex*) and coarse grasses attributes were assessed these also contributed to site failures (i.e. again they are important in determining status for sites where they are present).
- Differences by surveyors in estimates of scrub cover and bracken contributed to differing outcomes in terms of overall assessment of site status (i.e. surveyors find this really difficult to estimate consistently in the field).
- The practical implications of these findings are that support to field survey in estimating the extent and changes in extent of encroaching species such as scrub, bracken and coarse grasses will be of value.

The Contractor will agree with the Authority and partners the precise data to be used. Key staff to consult will be local agri-environment project officers who will know the farms within their areas and perhaps the local authority ecological staff who will know the best areas of each grassland type within their areas.

This may be a time-consuming task, teasing out suitable sites and wider areas with suitable grassland and concurrent EO data, but it is a vital requirement to enable case study areas to be chosen and the project to fulfil its requirements.

██████████ will lead this Task, supported by key members of the project team. The Sub-Contractor FERA Science Ltd have experience of agri-environment schemes in both proposed testing areas and will help with data identification.

Task 2: Select case study areas

Within each test area the Contractor will select specific case study areas. These will be at a farm level, identifying specific farms, and specific fields within those farms, with the best data, and time series of data, for analysis.

A range of imagery will be sourced concurrent with the most suitable grassland ground survey data. The imagery requirement will include aerial photography – corrected as per MOEW 3 extension processes. Satellite data is likely to require WorldView2 for detailed site scale mapping and SPOT or RapidEye for wider scale mapping. In general this will be more readily available than the grassland data. A lot of imagery will be already available, but because the Contractor will not know in advance the precise study areas they have included a small budget for imagery, which can be used to ensure that the imagery is as concurrent as possible to the grassland survey dates.

The Contractor will only be considering the subsets of grasslands within the sites of interest and those already identified by MEOW as establishing a mask for analysis.

The Contractor suggest a project meeting or workshop in each broad test area, with local partner organisations, to help finalise the data requirements and availability and choose the precise case study areas to be used.

██████████ will lead this Task, supported by key members of the project team.

Task 3: Complete case studies

The proof of concept for the use of EO for habitat condition and change assessment will focus specifically on:

- Whether indices of habitat condition, derived from EO, can be shown to match and mirror the condition of each habitat patch as determined from field survey
- Whether change in habitat condition as described from field survey can be shown from the EO-derived indices

Key indices to be addressed will include those NDVI indices outlined in the specification. A key question is whether it possible to use a vegetation index (NVDI, SAVI or EVI) to monitor changes jointly in productivity (amount of life material), extent of woody cover (tree, shrub, dwarf shrub), bare ground and dead material or is other data sources or condition specific approaches to enhance the monitoring needed?

The methodology is to focus on multi-spectral imagery. The Contractor is not initially proposing to use LiDAR for detailed analysis, but will discuss this with the Authority at project initiation and are aware of some projects that have made use of this, including:

- Monitoring small-scale surface flooding to support condition assessment. A method has already been established and tested under a project using ERS-1 & ERS-2 radar data funded by the Authority. Sentinel data has a very similar format. Therefore not an area that needs a new data and field campaign, though with increased data available from Sentinel-1 the multi-temporal product developed for detecting heather burning may be suitable for detecting / tracking changes in the extent of surface flooding over time.
- Grassland management: again radar has been assessed for its suitability for discriminating between pastures and meadows and shown to have a potential role based on quite a limited set of multi-temporal radar. It can also provide information on the timing of grassland cutting. Again the heather burning approach developed in the SSGP3 project would be good for detecting / tracking change. This would sit alongside any other work that is done in the Dales quite well and avoid having to spend time on radar analysis.

Pan sharpening will be considered, to meet and pinpoint detailed features. Precision is important but limited by spectral resolution – the Contractor propose testing WV2 on some of the SAC/SSSI's with very detailed monitoring information available.

The Contractor needs to consider the aerial photography and whether the MEOW3 approach to correcting these to produce an NDVI will be a critical step for detailed monitoring suggest this is an important consideration for the monitoring?

From the list of case study sites, some will be used for calibration and others for validation. Those for validation will be used to 'train' on and test usefulness at a detailed scale, and for estimating and validating errors, those for calibration will be used to test usefulness at a wider regional scale.

The calibration sites need to be different to the validation sites and will depend on the range of sites that are judged suitable. The Contractor will try to have concurrent data for at least two sites of at least two sorts of grassland and will discuss and agree this when we have examined all the data available. Panoramic photos from each site if available will provide seasonal validation. The Contractor is aware that the ECN – Moorhouse site may have some of the best field data for validation, if the grassland habitats are suitable.

Another project has already shown that a single EO variable (i.e. Vegetation Index) can be relevant for a bundle of condition measures associated to grassland habitats (i.e. productivity, extent of woody cover (tree, shrub, dwarf shrub), bare ground and dead material). In addition, the delivery of two of these condition measures (i.e. woody cover and bare ground) is expected to be very feasible. There is potential for an approach that would incorporate all four condition measures and this should be investigated.

To set alongside this the Contractor also know that the VI values are also affected by variables which are not of interest: e.g. soil type and moisture, leaf phenological cycle which is determined by time and influenced by the weather and the local climate, the management, sensor view angle.

For this reason a simple approach is preferred that will try and eliminate unnecessary variables. The Contractor project team will complete the case studies, with advice from other team members of the methodology and approach needed.

Task 4: Evaluation of case studies

The evaluation will assess:

- An evaluation of whether EO-derived indices of habitat condition can be shown to match the results of detailed field analyses
- An evaluation of whether EO-derived indices of habitat change can be shown to match the results of detailed field analyses
- An extension of the Crick Framework to include data on habitat condition and change assessment.
- An evaluation of whether the analysis can be scaled up from the farm level to a regional or wider scale.
- Developing an understanding of what works well and what does not work so well and why

Field data for calibration and validation – field data for validation is likely to be other EO and already surveyed because we will be comparing most of it with older data.

Key questions that will be addressed in the evaluation will include:

- Is the choice of EO data proposed adequate?
- Could an approach in line with the method developed by the Forestry Commission for forest monitoring work?
- Will a first broad brush method be sensitive enough to detect changes in condition?
- Can the broad brush method be made more sensitive by adding other EO data layers to the Contractor's first EO data choice? Is the extra sensitivity gained worth the extra effort involved in adding more EO data layers?
- For the broad brush approach, what is an acceptable balance between omission and commission errors? Too many commission errors will result in too much effort devoted unnecessarily in the subsequent more detailed analysis to check and attribute the change in condition. Too many omission errors will result in too many habitats undergoing change not being identified.
- For the broad brush approach, what is a suitable revisit time? Can this be achieved across the UK taking into account the expected cloud cover?
- Are we able to monitor the attributes of condition that we know are having the greatest influence on overall habitat condition in either in a positive or negative way?

- Can the subsequent more detailed local analysis be designed to monitor several habitats and/or condition measures jointly?
- For the detailed local analysis, what is a suitable revisit time and do all the habitats and/or condition measures have to be monitored at the same temporal frequency?
- For both the broad brush approach and the detailed local analysis, how do we calibrate? What is the most cost-efficient approach for calibration?
- Error or consistency in estimates:
- How accurate/consistent do the condition measures estimates have to be to enable adequate monitoring?
- What is the most cost-efficient approach for validation? How should we sample? How should accuracy/consistency be calculated? How precise do the accuracy estimates have to be?
- What are the main sources of error? How can sources of error be reduced?

The Contractor will use the Crick framework table to populate the condition monitoring information of where and how the approaches can work for the different grassland types. This will identify:

- Which EO parameters is the most reliable and effective
- What is the most useful information and how is it derived how does it relate to grassland growth and annual cycles – what is real change and what is seasonal variation
- A description of the successful techniques and how much they can be automated and how any manual interpretation could be evaluated
- What field or other calibration data might be needed
- An assessment of value for money for the successful features
- What can be shown over a regional area for rapid risk type assessment

Assess how these types of grassland condition measures could work with CS survey – this would include how the data could gain from CS survey data on phenology/seasonality and soil type information as well as how this data could help provide more detail and value to CS.

A third project workshop will occur at this stage of the project to put forward, discuss and agree on the results and conclusions coming from the project. This will be held at a central location, involving staff and partners from both test areas as well as all key advisers and experts within the project team.

The whole project team will contribute to the evaluation of the case studies, led by [REDACTED]

Task 5: Conclusions and recommendations

At Task 5 the Contractor will bring together all the information to provide conclusions and recommendations on the practicality of using EO for assessing habitat condition and change in condition, encompassed within the final project report.

Task 6: Reporting and milestones

At Task 6 the Contractor will provide reports at agreed milestones during the project. This will include:

Milestone 1: Inception plan that includes a knowledge exchange plan

Milestone 2: Interim report 1 after selection of case study areas, end July 2015

Milestone 3: Interim report 2 after completion of case studies, end October 2015

Milestone 4: Draft final report, end November 2015, with teleconf.

Milestone 5: Final report and project delivery, end January 2016. Final Steering Group (SG) meeting

The interim report will follow the same format as the final report, but will report on progress up to the interim point.

The draft end of project report will include:

- Policy relevance and background;
- Detailed methods, assumptions and caveats;
- Results
- Discussion;
- Conclusions and future work;

- References, glossary, list of abbreviations
- Briefing Note-Requirements and feasibility of using EO techniques for increased efficiency in grassland habitat condition monitoring, targeting field survey and application in agri environment monitoring
- Data– to include imagery purchased and any datasets created during the project.
- GIS layers of the output maps that capture the detailed production of each object.
- An Executive Summary (no more than 2 sides A4) in the format provided in EVID 4 format, at <http://www.defra.gov.uk/forms/2011/06/27/evid4-evidence-final/>.
- The report will be a maximum of 50 pages.

The Contractor will also provide a stand-alone short, non-technical summary, 4 A4 sides of project and key notes for the GCN Task Force and Policy Makers.

On project completion the Contractor will also provide:

- A short (2 pages max) document with questions and answers about the project and its results- this is for communications teams so must be in simple language.
- The Contractor may also submit their findings for publication in a peer reviewed journal, subject to approval from the Steering Group.
- The draft final report will be submitted not less than eight weeks before the end of the project for comments from the Steering Group. The near final report will be subject to peer review (to be agreed by the Steering Group as the project progresses) and the contractor will be invited to make any changes before sign off by the Steering Group.
- A subsequent final report will be required to present the results obtained from the project; the format of the presentation of this report will be agreed between the Authority project manager and project leader. The Authority will have the opportunity to comment on draft Final Reports.

The Contractor will provide regular progress reports in between project milestones - at appropriate intervals, by email or with accompanying short papers.

Risks

The Contractor will compile a log of risks as part of project inception. At this stage, the risks considered most important to assess are those relating to:

- The availability of good existing grassland survey validation data over a sufficient time-series
- The availability of good existing EO data, concurrent with the survey data and over a sufficient time-series
- Loss of key staff over the life of the project

The Contractor will discuss and agree an approach to these risks with the Authority at project inception to ensure successful delivery of the project.

Clarification

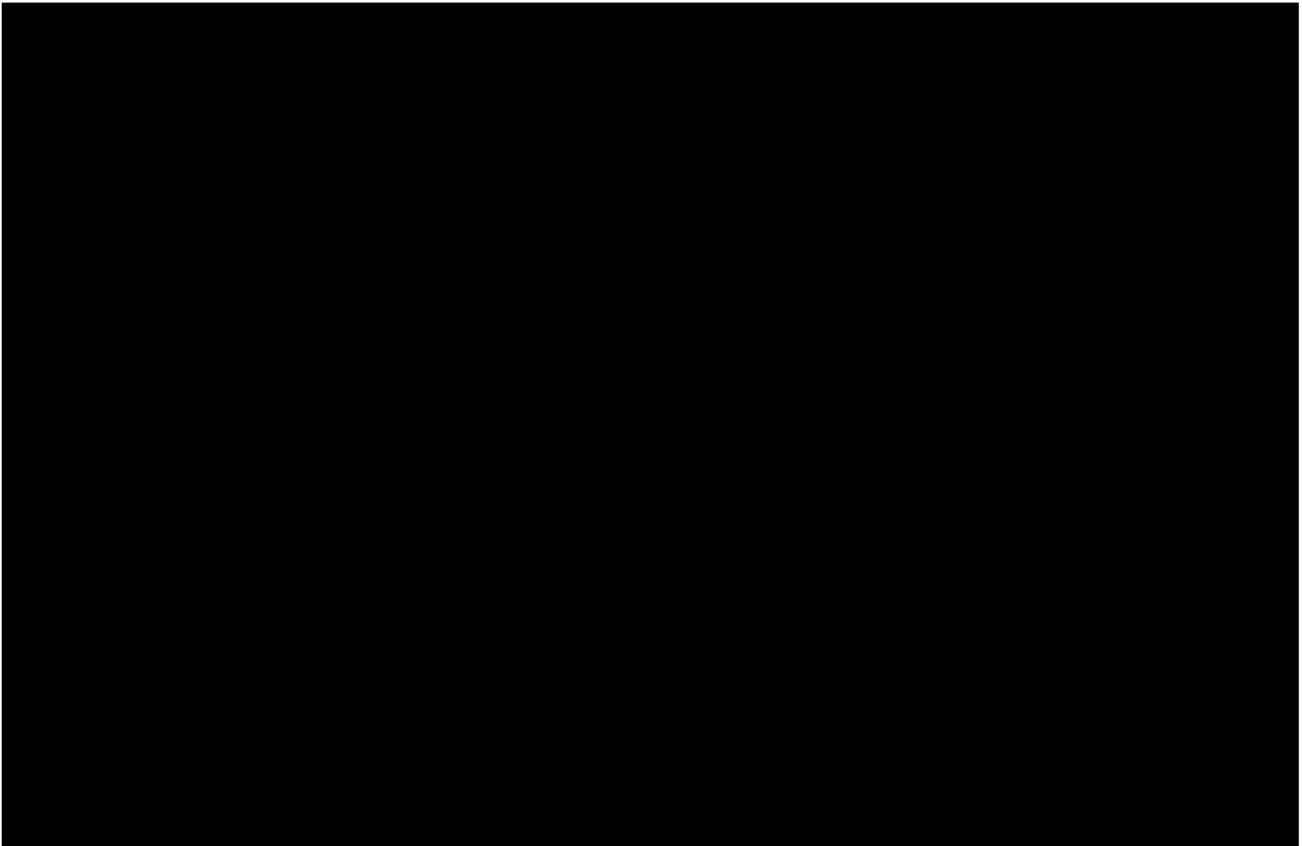
The aim of the project is to provide a proof of concept for a system to utilise EO data for the assessment of habitat condition and habitat change. If, within the project, a system can be identified that is scientifically robust and operationally credible, then cost-effectiveness will be assessed by considering the broad costs of the solution, alongside identifying strategic, practical and cross-cutting benefits to the Authority.

The team proposed has considerable expertise in cost-benefit assessment, having worked together on other similar cost benefit assessments of the use of EO for habitat monitoring.

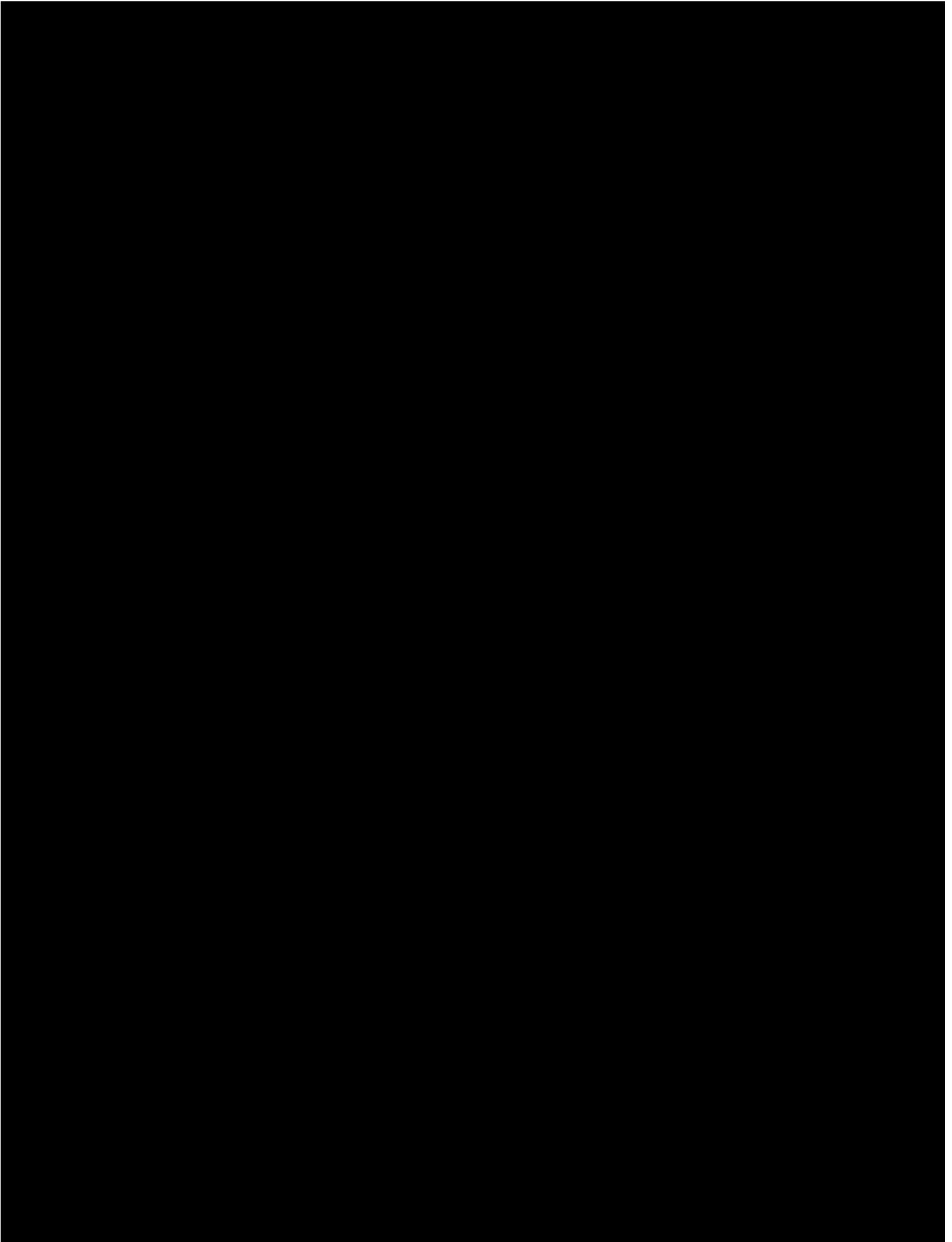
The costs of a possible solution will relate to acquiring/purchasing EO data and the resources required for both interpreting that data and integrating it into existing monitoring and reporting systems (i.e. staff costs). Benefits to the Authority will relate to potential reduced operating costs (especially of field survey), improved effectiveness of habitat data collection and timeliness of reporting, and potentially better environmental outcomes.

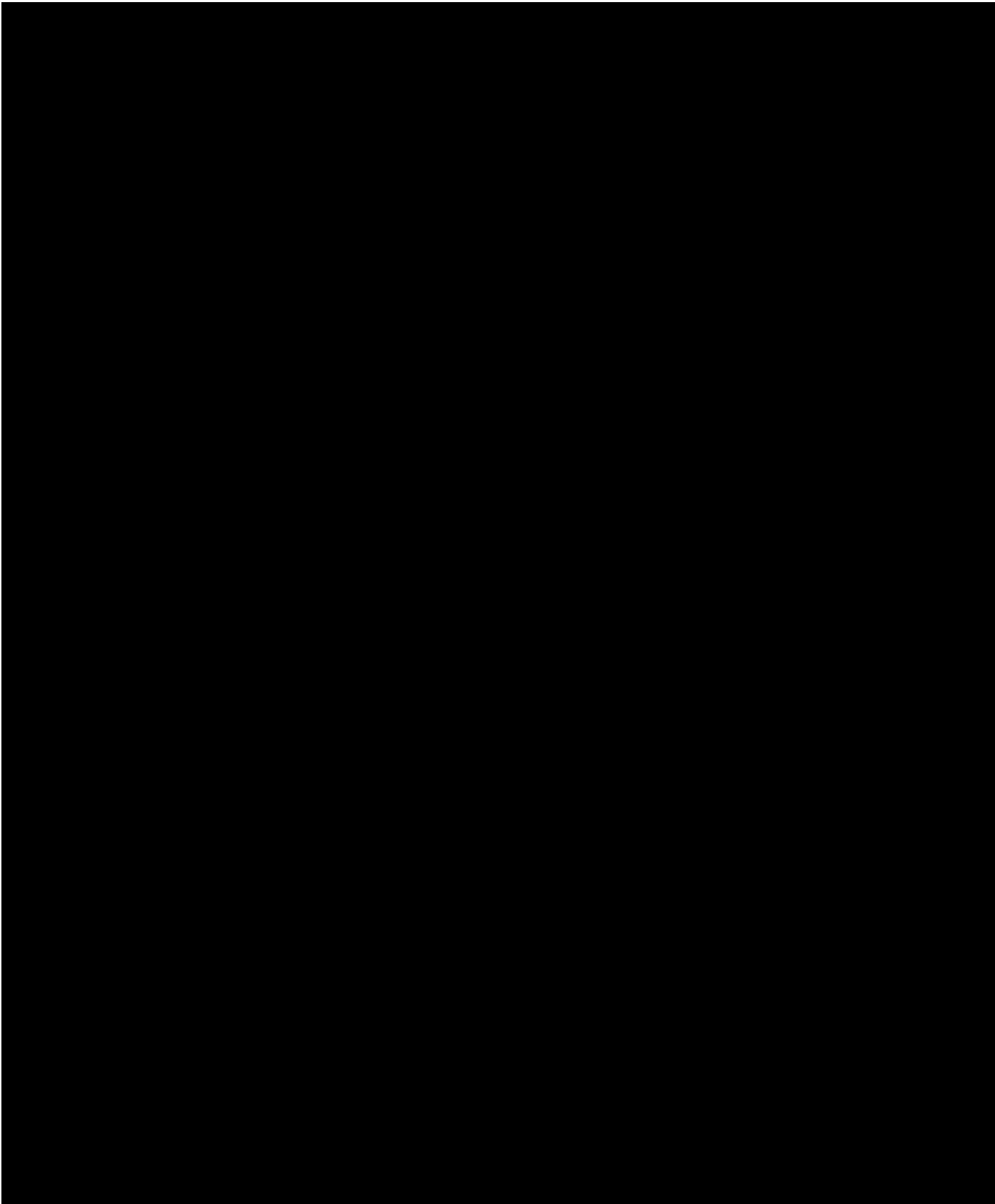
Within the limited project budget, costs and benefits will not be monetised, but confined to broad assessments of the importance of the cost or benefit when compared to current best practice, and an indication of the likely level of monetary value.

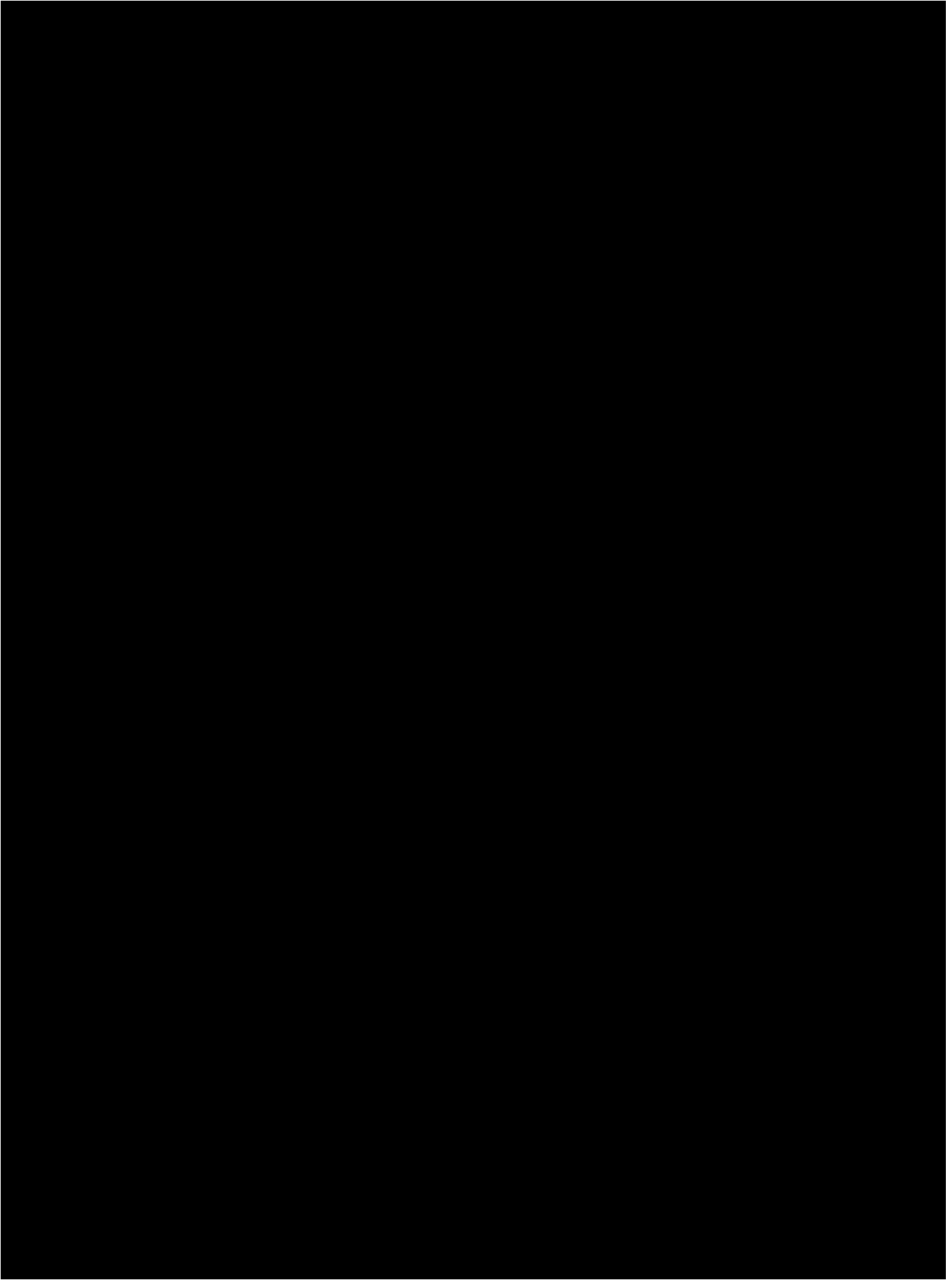
Days allocated from the Project Team per person per work package

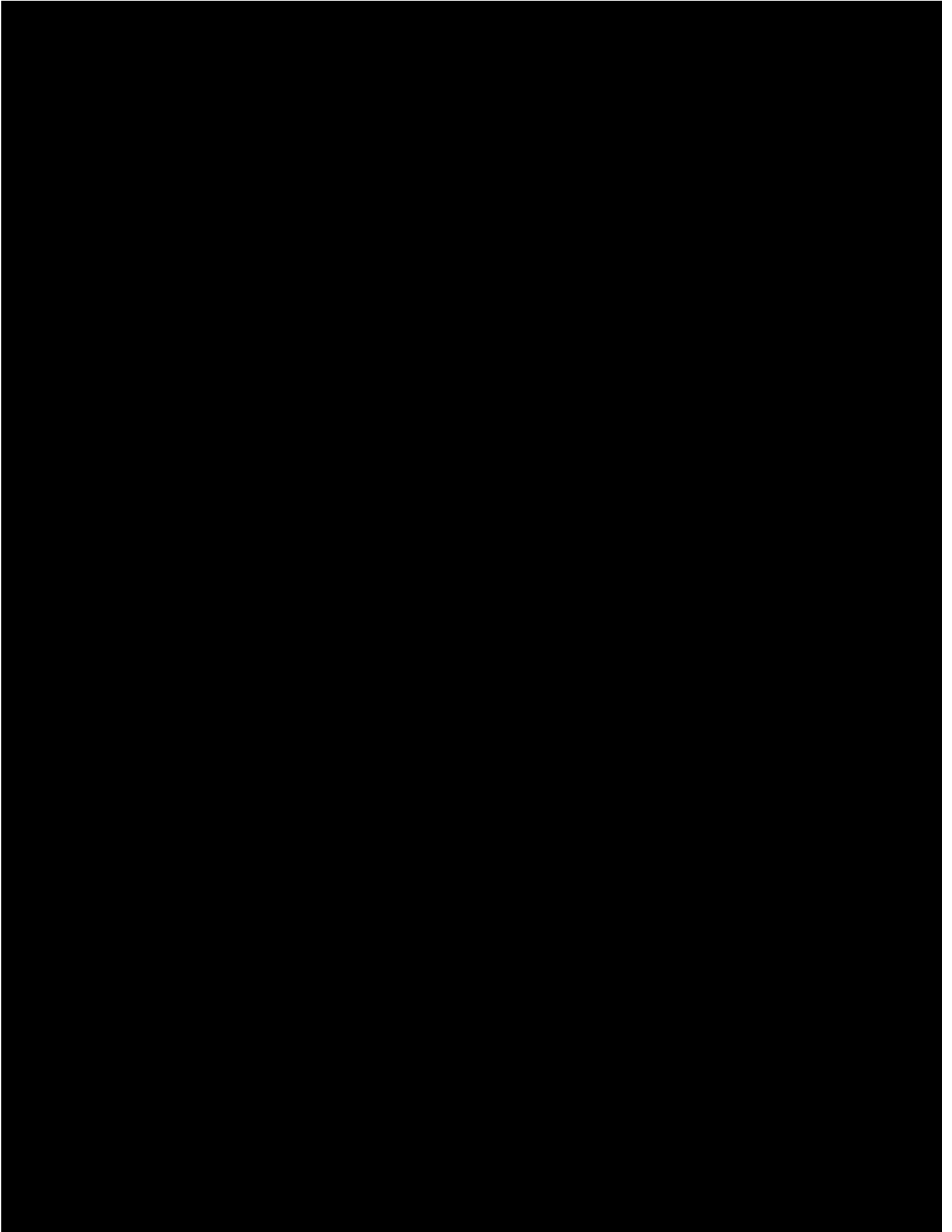


E07- Proposed Team











E09- Knowledge Exchange

Knowledge exchange and communication planning in this project are important for ensuring that:

- The needs of end users are fully understood and translated into a methodological approach that will deliver the evidence they need.
- Key stakeholders can provide guidance throughout the project, especially at two stages; firstly, when the methodology and case studies are being developed and secondly, when initial findings are available and require interpretation and potentially follow up.
- Useful datasets are not overlooked and the most appropriate data, including ground survey data, is sought. The value the data can bring, as well as any limitations it may have need to be fully understood.
- Scientific findings from the project are correctly communicated to end users and interested parties in the research community, particularly stakeholders involved with the proposed shared research platform for observing change in biodiversity and ecosystems.
- The work takes account of relevant previous studies and there is well-reasoned and demonstrable continuity from the findings recent relevant reports.

Brief Communications Plan

The Communication Plan defines parties with an interest in the project and the methods of communication between them and the project. As well as ensuring that project outputs reach stakeholders and that consultation is properly conducted, communication planning can assist in dealing with project risks. Key elements of the full plan which will be produced at project inception include:

- Identification and grouping of stakeholder contacts demonstrating their involvement and the ways they will engage with the project (an initial assessment is provide in the table below)
- Ways the Contractor intend to disseminate information about the project (see examples in table below)
- Identification of lines of communication for the project manager for the Contractor and the Authority;
- Routes and procedures for exception reports or communication regarding project issues.

Communication with the Project Officer: The project manager for the Contractor will be in regular contact with the Authority Project Officer providing updates of progress on no less than a monthly basis by email.

Communications with the Project Steering Group (SG): The Contractor values the input of SG members and has planned meetings at points in the project where input from the SG as a whole would be most valuable. Interim reports, documents and supporting material will be provided in advance of SG meetings. Ad hoc support and input from SG members with specialist skills and knowledge can be very valuable. SG members may be able to assist with identifying key contacts with good knowledge of ground-based supporting data and contribute to planned workshops.

It is the company policy of the Contractor to ensure that the Authority will be notified in the event of a problem or issue that may affect project delivery. It is the responsibility of the project manager for the Contractor to deal with any customer complaints speedily, courteously and efficiently. The Contractor will accept responsibility for issues that are part of their delivery, in order to ensure the smooth delivery of a project. An issue that cannot be resolved by the project manager for the Contractor will be raised to the Project Director for the Contractor for resolution. In the event of an unresolved issue a Director of the Contractor not otherwise involved with the project will look at the issue and liaise with Authority senior management in order to seek a resolution.

Outputs will be communicated effectively with stakeholders. The report will be succinct and structured and written in a way that suits the needs of key staff in organisations that may be considering investing in the EO approaches developed.

The Contractor will seek means of publicising the findings of the research (e.g. conferences, peer-reviewed journals and sector-specific journals) and will take responsibility for ensuring both the quality of the work as well as the presentation of the material. The Contractor will ensure that the Authority is notified of the intention for publication (including oral presentations) of its funded research and is notified to the Authority project manager for approval at least two weeks before publication.

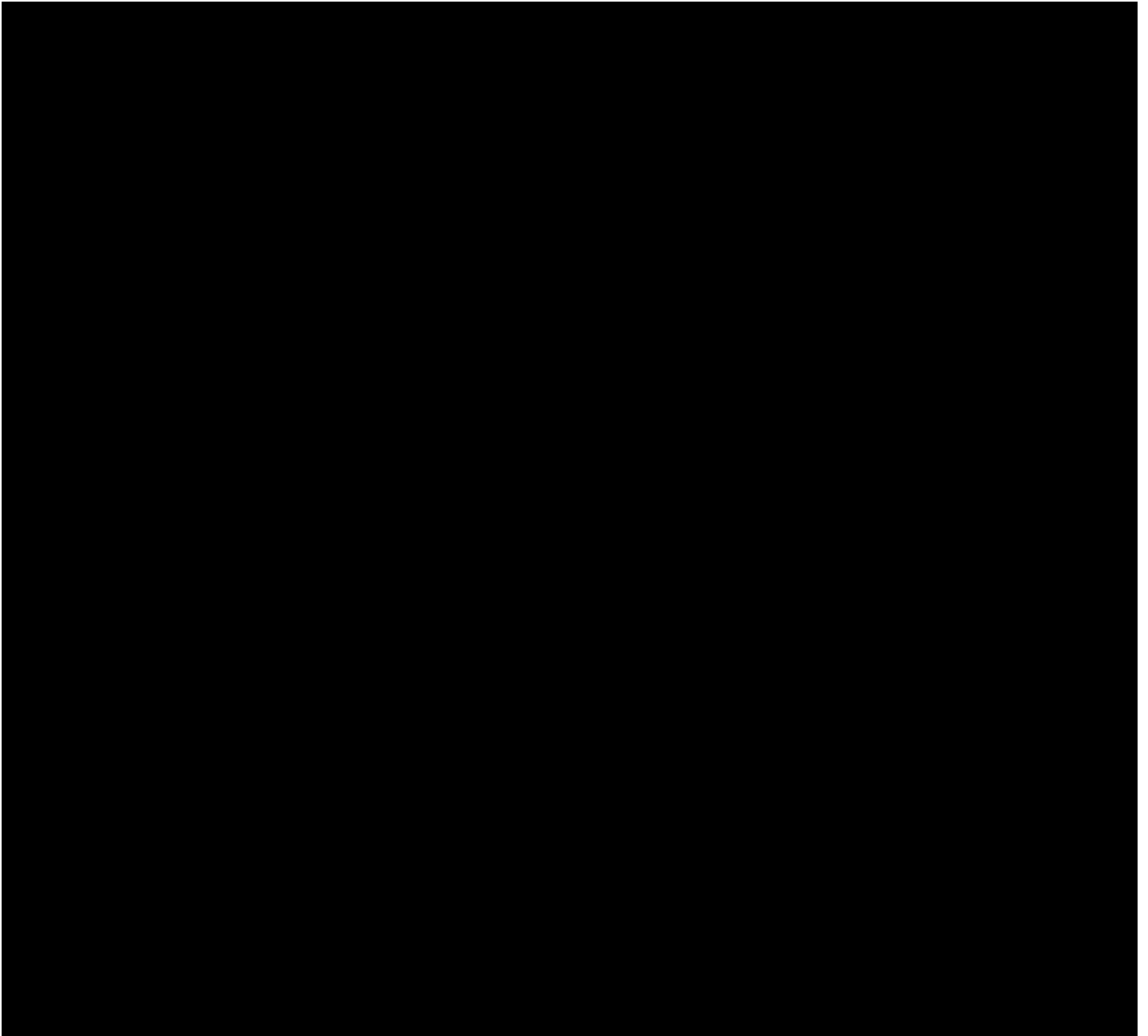
The Contractor will discuss the management and performance of the contract with a view to informing each other of any strengths and weaknesses exposed.

The key audiences for the outputs of the project and their specific interest and knowledge exchange procedures have been identified below:

Audience for outputs:		Expected project outputs of relevance.	How they will be produced	How results will be used to influence policies and applications	How useful in long-term
Category	Specific audience(s) and their uses of interest				
<u>End users</u> national scale	Natural England specialists (e.g. Habitat Directive reporting, agri-environment monitoring, protected sites monitoring, evidence team).	Reports Indices / maps / rule bases / GIS data	Working closely with Steering Group. 2 Workshops involving national specialists. Telephone calls, correspondence.	By demonstrating and clearly explaining the available evidence to show the success, or otherwise, of the measures that will be developed and tested enabling Natural England to make informed decisions.	Potentially integral to the organisational approach to condition assessment dependent on findings
<u>End user:</u> national scale	Defra, JNCC & other country conservation agencies (Scotland, Wales and Northern Ireland).	Report	Correspondence as necessary. Involvement of some of this end user group in the SG and workshop(s).	By demonstrating and clearly explaining the available evidence to show the success, or otherwise, of the measures that will be developed and tested enabling organisations to make informed decisions.	Would depend upon level of interest and project findings. Will shape development of the strategic framework for surveillance and monitoring
<u>End user</u> local scale	Natural England and local site managers (e.g. from Dorset CC and their Local Records Centre, YDNPA).	Workshop report, site maps, data.	Workshops	Local feedback will help determine project approach and appropriate use of data outputs	Will depend upon findings potential site management tools.
<u>Research providers</u>	Organisations participating in the proposed research platform for observing change in biodiversity and ecosystems.	Report (but also scope to bring in scientific thinking and approaches and from activities of these projects).	Through participation in platform activities. Liaison.	Through knowledge exchange	Mutually beneficial to all parties in long-term.
<u>Facilitating organisations</u>	National dataset managers. LRCs, projects with local datasets. Imagery providers.	Maps and data		The way outputs are managed will be considered in the project	Will depend upon findings.

SCHEDULE 2 – PRICING PLAN

1. The Authority will pay to the Contractor no more than the fixed sum of: **£57,371** (Ex VAT).
2. Subject to any Variation agreed in accordance with the terms of this Contract as set out in Clause F7, the amounts in paragraph 1 above shall remain firm throughout the duration of the Contract.
3. In the event that the Contract is varied, the total amount in paragraph 1 may be adjusted as agreed in writing, between the Authority and the Contractor.
4. The payment arrangements shall be as follows:



SCHEDULE 3 - CHANGE CONTROL

To be completed if there is an agreed variation to the Contract in accordance with the terms of this Contract as set out in Clause F7

Contract Change Note

Contract Change Note Number	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

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

IT IS AGREED as follows

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

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

- Save as herein amended all other terms of the Original Contract shall remain effective.
- This Change Control Notice shall take effect from the date on which both the Authority and the Contractor have communicated acceptance of its terms via Bravo.

Annex 1- Environmental Policy for the Contractor

The Contractor is an environmental consultancy working at the forefront of geographic intelligence gathering. The Contractor delivers insights, assessments and monitoring of ecosystems, biodiversity and the effects of climate change to inform policy making. The work is delivered by staff from the head office.

The Contractor recognises that activities impact upon the environment both through routine internal operations and through activities in the wider community and acknowledge a responsibility for, and a commitment to, protecting the environment at all levels. The Contractor is committed to:

- Promoting environmental management policies and practices throughout the company;
- Increasing awareness of environmental responsibilities among staff;
- Encouraging and facilitating modes of transport by staff which minimises environmental impact;
- Adopting best practice measures to reduce water and energy consumption;
- Minimising landfill waste by encouraging staff to reduce, re-use and recycle;
- Promoting a purchasing policy which will give preference, as far as practicable, to those products and services which cause the least harm to the environment;
- Working with other bodies as appropriate to promote environmental policies;
- Preventing pollution beyond that of normal activities;
- Continual environmental improvement;
- Comply with relevant environmental legislation.

The Contractor will regularly review activities and management system to ensure it remains up-to-date and effective.

Annex 2- Equal Opportunities Policy for the Contractor

EQUAL OPPORTUNITIES AND ANTI-HARASSMENT & BULLYING POLICY

This policy document applies to your employment at Environment Systems Limited, 11 Cefn Llan Science Park, Aberystwyth, SY23 3AH, (the "Organisation") and all other Organisation sites that you may be asked to work at from time to time.

For any policy to be effective it must be applied throughout the Organisation, this policy therefore applies to all staff regardless of position or seniority.

1. Policy Statement

1.1 Environment Systems is an equal opportunity employer and is committed to ensuring that the terms and conditions of employment of the employee and potential employee are equitable and non-discriminatory. This means that job applicants and employees will be treated fairly regardless of their sex, marital status, sexual orientation, gender reassignment, race, ethnic origin, disability, religion or religious beliefs.

1.2 Environment Systems will seek to promote equal opportunities and prevent harassment and bullying by publicising and communicating this policy; by providing appropriate training and guidelines for those with designated responsibilities and by raising awareness through staff development.

1.3 Further, Environment Systems will continually monitor its policies and practices to ensure that these principles are upheld. It is the employee's right to be treated with dignity and respect, which in turn will be conducive to performance, self-development and career advancement. Every executive, manager and employee has a responsibility to implement this policy.

2. Definitions

2.1 Discrimination

For the purposes of this policy, direct discrimination means treating people less favourably than others on the grounds of their age, sex, marital status, sexual orientation, gender reassignment, race, disability, religion or religious beliefs, or pregnancy and maternity. Indirect discrimination means treating people less favourably by applying a provision, criterion or practice, which disadvantages such persons. Indirect discrimination applies to age, race, religion or religious beliefs, marital status, sexual orientation, disability and gender reassignment.

2.2 Age

Discrimination based upon age includes direct or indirect discrimination against a person due to either their youth or their more advanced years – whether a person is considered “too young” or “too old” and the direct or indirect discrimination they receive as a result of this. Discrimination can occur in recruitment, selection, promotion, training, pay, benefits and other conditions. It can also occur in dismissal, redundancy and retirement or selection for these. The exception to this is age discrimination for operational reasons, where discrimination is objectively justified, for example where a person is required to be within a certain age range in order to perform their role efficiently and safely. Any objectively justified discrimination must be both proportionate and designed to achieve a legitimate aim.

2.3 Sexual Orientation

For the purposes of this policy, sexual orientation means sexual orientation for a person of the same sex, different sex or for persons of both sexes. It does not include sexual practices or preferences. Discrimination can occur based on a perception of a person's sexual orientation, even if that perception is wrong. It can also include discrimination against a person by reason of the sexual orientation of someone they associate with.

2.4 Gender Reassignment

For the purposes of this policy, gender reassignment means a desire to be known or to become a person of a gender different to that to which they were born. It applies to someone who has started or completed a process to change his or her gender

2.5 Religion/Religious Beliefs

For the purposes of this policy, religion or religious beliefs is defined as any religion, religious belief or similar philosophical belief. It does not include philosophical or political beliefs unless that belief is similar to a religious belief. Discrimination can occur based on a perception of a person's religion or beliefs even if that perception is wrong. It can also include discrimination against a person by reason of the religion or religious beliefs of someone they associate with. Discrimination can occur even if the people involved are of the same

religion or religious belief. It can also include someone who is discriminated against because they do not have a religion.

2.6 Harassment

For the purposes of this policy harassment is defined as any hostile unwanted, unreasonable and/or offensive behaviour, which adversely affects a person's dignity, self-confidence and well-being and creates a hostile environment and which leads to that person feeling intimidated, degraded or humiliated. Harassment does not apply in respect of the categories of pregnancy and maternity or marital status.

2.7 Racial harassment

For the purposes of this policy racial harassment is defined as any action, conduct, comment, gesture or behaviour that is offensive, embarrassing, insulting or intimidating. It may include derogatory remarks, quips, jokes, innuendoes, taunts or physical abuse which is racially derogatory and potentially offensive and relates to a person's race, religion or ethnic origins.

2.8 Sexual harassment

For the purposes of this policy sexual harassment is defined as:

- a. Any action, conduct, comment, gesture or physical contact of a sexual nature that is unwelcome and might reasonably be seen by an employee or prospective employee as placing an implicit or explicit condition on employment.
- b. Any persistent, unwelcome action, conduct, comment, gesture or physical contact of a sexual nature that is likely to cause offence, embarrassment or humiliation to an employee or creates an offensive working environment.

2.9 Bullying

For the purposes of this policy bullying is defined as repeated treatment with the purpose of controlling individuals or making them insecure in their roles or treatment that has that effect.

2.10 Victimisation

For the purposes of this policy, victimisation is defined as treating persons less favourably because of something they have done under or in connection with asserting their rights under any employment legislation or regulations. However, this does not apply if the employee has made or supported a false complaint.

3. Monitoring

All employees and job applicants will be asked to complete a form providing information regarding their sex, race, ethnic origin and whether they suffer from any disabilities. This form will be used solely for the purpose of monitoring the effectiveness of Environment Systems equal opportunities policy and to ensure that Environment Systems meets its obligations as an equal opportunities employer.

4. Procedure For Discriminatory Conduct

4.1 Any member of staff may use Environment Systems grievance procedure to complain about discriminatory conduct. The complaint will be thoroughly investigated and considered based on the facts of the investigation. No individual will be penalised for raising such a grievance unless it is untrue and made in bad faith. If the matter relates to harassment or bullying of any kind the anti-harassment and bullying procedure set out below should be followed.

4.2 Any employee who discriminates against any other employee on the grounds of sex, marital status, sexual orientation, gender reassignment, race, ethnic origin, disability, religion or religious beliefs, will be subject to Environment Systems disciplinary procedure as set out in the grievance and disciplinary policy. In serious cases where such behaviour has been deemed to constitute gross misconduct it will result in summary dismissal in the absence of mitigating circumstances. This statement should be read in conjunction with the anti-harassment and bullying procedure set out below at clause 6.

5. Positive Action On Equal Opportunities

5.1 Environment Systems will regularly monitor the composition of the workforce and of job applicants. Should inequalities become apparent positive action will be taken to redress the balance including such measures as:

- a. Advertising jobs in ethnic or female interest publications as appropriate.
- b. Encouraging under-represented groups to apply for suitable posts or undergo training.
- c. Making contact with disabled people via the local job centre.

- d. Considering whether any reasonable adjustment can be made to work premises or the working arrangements to accommodate a disabled employee or job applicant.
- e. Introducing assertiveness training.

6. Anti-Harassment & Bullying Procedure

6.1 As well as its commitment to equal opportunities, Environment Systems is committed to providing a work environment for employees, which is free from harassment or bullying on the grounds of sex, marital status, sexual orientation, gender reassignment, race, ethnic origin, disability, religion or religious beliefs. This may include embarrassment, intimidation, threats or discrimination.

6.2 Reasonable measures will be taken to ensure that no employee is subject to harassment or bullying. In recognition of these principles Environment Systems will also not condone any conduct, which may be construed as sexual harassment.

6.3 Any complaints of harassment or bullying should be made to the Operations Director. The matter will be dealt with in a discreet and confidential manner and appropriate action will be taken. It is the duty of all employees and in particular management and supervisors, to ensure that the anti-harassment & bullying policy is implemented. Harassment or bullying will be taken to have occurred if a reasonable individual would or ought to have known that the behaviour was unwelcome or offensive.

6.4 Harassment and bullying are disciplinary offences that may in the most serious cases lead to dismissal. Individuals should be aware that in some circumstances they may be held personally liable for acts that are unlawful.

6.5 Incidents of sexual or racial harassment can be taken to amount to gross misconduct, which will be dealt with under Environment Systems disciplinary policy and may lead to summary dismissal. Less serious infringements may lead to an apology from the harasser, letter of reprimand, suspension or relocation of the harasser.

6.6 In dealing with reports of harassment or bullying the following principles will apply:

- a. All reports will be taken seriously, treated in confidence and investigated by trained staff who are independent of the situation.
- b. All complaints will be progressed and dealt with according to the Environment Systems grievance and disciplinary procedure.
- c. Where Environment Systems has reason to believe that there is a risk to the personal safety of the complainant or of another person, or that a criminal offence has been committed, Environment Systems may take legal advice and/or inform the police before proceeding with any internal action.
- d. The victimisation or harassment of a complainant or the respondent, or any witnesses will be regarded as a disciplinary offence.
- e. Malicious complaints will be regarded as a disciplinary offence.