

# ENVIRONMENT AGENCY

## Conditions of Contract - Services

Ref: ECM\_57765

Title: Supply, Installation and Maintenance of Transit Time River Flow Gauges

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## 1. DEFINITIONS

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

1.1.2 Agency The Environment Agency, its successors and assigns.

1.1.3 Agency Property  
All property issued or made available for use by the Agency to the Contractor in connection with the Contract.

1.1.4 The Appendix The Appendix to these Conditions.

1.1.5 The Contract  
These Conditions including the Appendix, any Special Conditions, Specification, Pricing Schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing.

1.1.6 The Contractor  
The person, firm company or body who undertakes to supply the Services to the Agency as defined in the Contract.

1.1.7 Contract Period  
The time period stated in the Appendix or otherwise provided in the Contract, for the performance of the Services.

1.1.8 Contract Price  
The price exclusive of VAT set out in the Contract for which the Contractor has agreed to supply the services.

1.1.9 Contract Supervisor  
Any duly authorised representative of the Agency notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.10 Intellectual Property Rights  
All Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected.

1.1.12 Results  
All things produced in performing the Services including maps, plans, photographs, drawings, tapes, statistical data, experimental results, field data, analysis of results, published and unpublished results and reports, inventions, computer programmes and user documentation.

### 1.1.13 The Resulting Rights

All Intellectual Property Rights in the Results that are originated, conceived, written or made by the Contractor, whether alone or with others in the performance of the Services or otherwise resulting from the Contract.

### 1.1.14 Notice

Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:

- a) fax, or hand delivery to the Contractor's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery;
- b) first class post to the Contractor's registered office. Such Notices are deemed to have been served 48 hours after posting.

### 1.1.15 Permission Express permission given in writing before the act being permitted.

### 1.1.16 Services

All Services detailed in the Specification including any additions or substitutions as may be requested by the Contract Supervisor.

1.2 Except as set out above, the Contract shall be interpreted in accordance with the Interpretation Act 1988.

1.3 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.4 Any reference in these Conditions to a statutory provision will include all subsequent modifications.

1.5 All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

## 2. **PRECEDENCE**

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:

Conditions of Contract including Appendix and any Special Conditions;  
Specification;  
Pricing Schedule;  
Drawings, maps or other diagrams.

## 3. **CONTRACT SUPERVISOR**

The Contractor shall strictly comply with any instruction given by the Contract Supervisor concerning or about, the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction from the Contract Supervisor that is not confirmed in writing within 7 working days.

#### **4. THE SERVICES**

- 4.1 The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract using all skill, care and diligence, and to the satisfaction of the Contract Supervisor.
- 4.2 The Contractor shall only employ in the execution and superintendence of the Contract persons who are suitable and appropriately skilled and experienced. The Contract Supervisor shall be at liberty to object to and require the Contractor to remove any person employed in or about the Contract who is unsuitable, misconducts himself, is incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the Permission of the Contract Supervisor.

#### **5. ASSIGNMENT**

- 5.1 The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.
- 5.2 Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.
- 5.3 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract

#### **6. CONTRACT PERIOD**

The Contractor shall perform the Services within the time stated in the Appendix, subject to any changes arising from Condition 10 (Variations,) and/or Condition 11 (Extensions of time.)

#### **7. PROPERTY**

- 7.1 All property issued by the Agency to the Contractor in connection with the Contract shall remain the property of the Agency, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of the Contract Supervisor.
- 7.2 The Contractor shall keep all Agency Property in safe custody and good condition, set aside and clearly marked as the property of the Agency.
- 7.3 On expiry or earlier termination of the Contract the Contractor shall, if so required, either surrender such property to the Agency or otherwise dispose of it as instructed by the Contract Supervisor.

#### **8. MATERIALS**

- 8.1 The Contractor shall be responsible for establishing his own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct by his Contractors and staff whilst on the Agency's premises.
- 8.2 The Contractor shall not place, or cause to be placed, any orders with Contractors or otherwise incur liabilities in the name of the Agency or any representative of the Agency.

#### **9. SECURITY**

9.1 The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the provision of the Services, belonging to the Contractor, or Contractors staff, or sub-contractors whilst on Agency premises.

9.2 This Condition shall not prejudice the Agency's rights under Condition 15.

## **10. VARIATIONS**

10.1 The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Services to be supplied, by written order to the Contractor.

10.2 The value of any such variation, other than any variation arising out of Condition 10.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Services so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

10.3 Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.

10.4 The Contractor may also propose a variation to the Services but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.

10.5 No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract.

## **11. EXTENSIONS OF TIME**

11.1 Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:

11.1.1 in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time, as in his opinion is reasonable, having regard without limitation, to any other delays or extensions of time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.

11.1.2 in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.

11.2 No extension of time shall be granted where in the opinion of the Agency the Contractor has failed to use best endeavours to avoid or reduce the cause and/or effects of the delay.

11.3 Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 13 and 14.

## **12. DEFAULT**

12.1 The Contractor shall be in default if he:

12.1.1 fails to perform the Contract with due skill, care, diligence and timeliness;

12.1.2 refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor;

12.1.3 is in breach of the Contract.

12.2 Where in the opinion of the Contract Supervisor, the Contractor is in default, the Contract Supervisor may serve a Notice giving at least seven days in which to remedy the default.

12.3 If the Contractor fails to comply with such a Notice the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

## **13 TERMINATION**

The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Contractor:

13.2 fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 12.2.

13.3 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.

## **14 DETERMINATION**

14.1 Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).

14.2 The Agency shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.

14.3 The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated to its satisfaction. The Agency's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

## **15 INDEMNITY**

15.1 Without prejudice to the Agency's remedies for breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any liability, loss, costs, expenses, claims or proceedings in respect of:

15.1.1 death or injury to any person;

15.1.2 loss or damage to any property excluding indirect and consequential loss;

15.1.3 infringement of third party Intellectual Property Rights

which might arise as a direct consequence of the actions or negligence of the Contractor, his staff or agents in the execution of the Contract.

15.2 This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Agency or its staff.

## **16 LIMIT OF CONTRACTOR'S LIABILITY**

16.1 The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be:

16.1.1 the sum stated in the Appendix;

16.1.2 if no sum is stated, the Contract Price or five million pounds whichever is the greater.

## **17 INSURANCE**

17.1 The Contractor shall insure and maintain insurance against liabilities under Condition 15 (Indemnity) in the manner and to the values listed in the Appendix to these Conditions. If no sum is stated, the value insured shall be £5M (five million pounds.)

17.2 If specifically required by the Agency, nominated insurances shall be in the joint names of the Contractor and the Agency.

17.3 The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

## **18 INDUCEMENTS**

The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Corruption Acts 1906 to 1916 in any of his dealings with the Agency.

## **19 MONITORING AND AUDIT**

The Contract Supervisor may inspect and examine the Services being carried out on the Agency's premises, or elsewhere at any reasonable time. Where the Services are being performed on other than the Agency's premises, reasonable notice to inspect shall be given to the Contractor. The Contractor shall give all

such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

## **20 CONTRACT PRICE**

- 20.1 The Contract Price will be paid by the Agency to the Contractor as amended by any Variations ordered under Condition 10 (Variations).
- 20.2 In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

## **21 INVOICING AND PAYMENT**

- 21.1 Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Agency.
- 21.2 If any sum is payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.

## **22 INTELLECTUAL PROPERTY RIGHTS**

- 22.1 All Prior Rights used in connection with the Services shall remain the property of the party introducing them. Details of each party's Prior Rights are set out in the Prior Right Schedule to this contract.
- 22.2 All Results shall be the property of the Agency.
- 22.3 The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications for patents or other registered intellectual property rights shall be filed in the name of the Agency.

Unless otherwise agreed in writing between the Contractor and the Agency, the Contractor hereby:

22.3.1 assigns to the Agency all Resulting Rights

22.3.2 grants the Agency a non-exclusive, non transferable (save for the purposes of sub-licensing, reorganisation or transfer to a successor body, for the purposes of all the successor body's normal business use), irrevocable, royalty free perpetual licence to the Agency in respect of all the Contractor's Prior Rights necessary in order for the Agency to use or exploit the Resulting Rights.

22.4 All Results shall be the property of the Agency

22.5 The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications

for patents or other registered intellectual property rights shall be filed in the name of the Agency.

- 22.6** The Contractor undertakes to the Agency not to use, exploit or deal with any of the Agency's Prior Rights, other than in the performance of the Contract unless the Contractor has first obtained a written licence from the Agency, in specific terms to do so.
- 22.7** The Agency undertakes to the Contractor not to use or exploit the Contractor's Prior Rights, save as provided in Condition 22.3.2 .
- 22.8** The Contractor warrants to the Agency that the performance of the Services, the Contractor's Prior Rights and the Results shall not in any way infringe any intellectual property rights of any third party.
- 22.9** If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Agency may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 13 and 14, Termination and Determination respectively.
- 22.10** The Contractor shall not be liable if such infringement arises from the use of any design, technique or method of working provided by or specified by the Agency.
- 22.11** The Contractor waives in favour of the Agency its rights to object to derogatory treatment of the Results of the Work and the Contractor also agrees that he will not assert or seek to enforce against the Agency and/or any other person, firm or company any of its moral rights as defined in the Copyright Designs and Patents Act 1988 without the prior agreement of the Agency.
- 22.12** The Contractor shall not be liable for any consequential losses, damage or injuries arising from third party misuse of the Results, of which the Contractor is not aware.

## **23 WARRANTY**

The Contractor warrants that the Services supplied by him are fit for the Agency's intended purpose so far as this has been communicated to him, or which he would reasonably be expected to know.

## **24 STATUTORY REQUIREMENTS**

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract, including, but not limited to the giving of all necessary notices and the paying of all fees.

## **25 ENVIRONMENT**

The Contractor shall in all his operations, including purchase of materials goods and services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and be able to provide proof of so doing to the Contract Supervisor on demand.

## **26 PUBLICITY**

The Contractor shall not advertise or publicly announce that he is supplying Services or undertaking work for the Agency without the Permission of the Contract Supervisor.

## **27 LAW**

This Contract shall be governed and construed in accordance with English Law, and subject to the jurisdiction of the courts of England and Wales.

## **28 WAIVER**

- 28.1 No delay, neglect or forbearance by the Agency in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Agency under the Contract.
- 28.2 No waiver by the Agency shall be effective unless made in writing.
- 28.3 No waiver by the Agency of a breach of the Contract shall constitute a waiver of any subsequent breach.

## **29. ENFORCEABILITY**

If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

## **30 DISPUTE RESOLUTION**

- 30.1 All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.
- 30.2 If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).
- 30.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 30.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.
- 30.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.

- 30.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 30.7 Any of the time limits in Conditions 30 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

### **31 GENERAL**

- 31.1 Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.
- 31.2 The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

### **32 FREEDOM OF INFORMATION ACT**

The Environment Agency is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Accordingly, all information submitted to us may need to be disclosed by us in response to a request under the Act or the Regulations. We may also decide to include certain information in the publication scheme which we maintain under the Act or publish the Agreement (but with any information which is exempt from disclosure in accordance with the provisions of the Act or the Regulations or the Agency's Confidential Information redacted), including from time to time agreed changes to the Agreement, to the general public. If you consider that any of the information included in your tender, or any other information that you have submitted or is otherwise in the Agreement, is commercially sensitive, please identify it and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. You should be aware that, even where you have indicated that information is commercially sensitive, we may be required to disclose it under the Act if a request is received. Please also note that the receipt of any material marked 'confidential' or equivalent by the Agency should not be taken to mean that we accept any duty of confidence by virtue of that marking.

### **33 Special condition – Staff Transfer**

- 33.1 This Contract envisages that subsequent to the commencement of this Contract, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part, or otherwise) resulting in a transfer of the Services in whole or in part ("**Service Transfer**"). If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations ("**Relevant Transfer**") then, in such event, the Contractor or a Replacement Contractor would inherit liabilities in respect of the Transferring Employees and the provisions of this Special Condition 33 shall apply.
- 33.2 The definitions and rules of interpretation in this Agreement apply in this special condition together with the following definitions:

**“Contractor's Final Staff List”** means the list of all the Contractor's Personnel engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date.

**“Contractor's Personnel”** means all employees, staff, other workers, agents and consultants of the Contractor and of any sub-contractors who are engaged in the provision of the Services from time to time

**“Contractor's Provisional Staff List”** means a list prepared and updated by the Contractor of all the Contractor's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

**“Data Protection Legislation”** means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**“Employment Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as subsequently amended or updated

**“Incumbent Employees”** means those employees whose contracts of employment transfers to the Contractor from the Incumbent Supplier as at the commencement date of this Contract pursuant to the Employment Regulation

**“Incumbent Supplier”** means the contractor or contractors (including sub contractors) who carried out any services which are identical or substantially similar to any of the Services to be performed by the Contractor pursuant to this Agreement and which the Agency received prior to the commencement of this Contract

**“Replacement Services”** means any services which are identical or substantially similar to any of the Services and which the Agency receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Agency internally or by any Replacement Contractor.

**“Replacement Contractor”** any third party contractor who is engaged to provide the Replacement Services appointed by the Agency from time to time.

**Service Transfer Date:** the date on which the Services (or any part of the Services), for whatever reason transfer from the Contractor to the Agency (in-house) or any Replacement Contractor.

**“Staffing Information”** means in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Agency may reasonably request (subject to the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Agency car schemes applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

**“Transferring Employees”** those employees whose contract of employment will be transferred to the Agency or a Replacement Contractor pursuant to the Employment Regulations on expiry or termination of this agreement.

### **The Incumbent Employees**

- 33.3 The Agency and the Contractor believe that, pursuant to the Employment Regulations, at the commencement of this Contract, the Contractor will become the employer of the Incumbent Employees.
- 33.4 The Agency gives no warranties or indemnities and makes no representation in respect of the Incumbent Employees and the Contractor accepts that it solely shall be liable to meet all costs, claims, liabilities and expenses of whatever nature in respect of the Incumbent Employees
- 33.5 The Contractor shall indemnify the Agency in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Agency including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- 33.5.1 any failure by the Contractor to comply with its obligations pursuant to the Employment Regulations; and
- 33.5.1 anything done or omitted to be done by the Contractor in respect of any of the Incumbent Employees whether before or after the commencement date of the Contract.

### **Service Transfer – Transferring Employees**

- 33.6 The Contractor agrees that, subject to compliance with the Data Protection Legislation:
  - 33.6.1 within 20 days of the earliest of:
    - 33.6.1.1.1 receipt of a notification from the Agency of a Service Transfer or intended Service Transfer;
    - 33.6.1.1.2 receipt of the giving of notice of early termination of this agreement or any part thereof; or
    - 33.6.1.1.3 the date which is [6?] months before the expiry of the Contract Period or any renewal term,  
  
and, in any event, on receipt of a written request of the Agency at any time, it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Agency or, at the direction of the Agency, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List when reasonably requested by the Agency or any Replacement Contractor;
  - 33.6.2 at least 14 days before the Service Transfer Date, the Contractor shall prepare and provide to the Agency and/or, at the direction of the Agency, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's Personnel named are Transferring Employees;
  - 33.6.3 the Agency shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and
  - 33.6.4 on reasonable request by the Agency the Contractor shall provide the Agency or at the request of the Agency, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Agency reasonably requests.
- 33.7 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information will be true and accurate in all material respects.

- 33.8 From the date of the earliest event referred to in paragraph [33.6] of this Special Condition the Contractor agrees that it shall not without the prior written consent of the Agency, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior written consent of the Agency (such consent not to be unreasonably withheld or delayed):
- 33.8.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Agency;
  - 33.8.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
  - 33.8.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Agency;
  - 33.8.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List; and
- 33.9 replace any of the Contractor's Personnel listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.
- 33.10 The Contractor will promptly notify the Agency or, at the direction of the Agency, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.
- 33.11 At least 14 days before the expected Service Transfer Date, the Contractor shall provide to the Agency or any Replacement Contractor, in respect of each person (subject to compliance with Data Protection Legislation) on the Contractor's Final Staff List who is a Transferring Employee, their:
- 33.11.1 pay slip data for the most recent month;
  - 33.11.2 cumulative pay for tax and pension purposes;
  - 33.11.3 cumulative tax paid;
  - 33.11.4 tax code;
  - 33.11.5 voluntary deductions from pay; and
  - 33.11.6 bank or building society account details for payroll purposes.

33.12 In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that:

33.12.1 the Contractor shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The Contractor shall indemnify the Agency and any Replacement Contractor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Agency or any Replacement Contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

33.12.1.1 the Contractor's failure to perform and discharge any such obligation;

33.12.1.2 any act or omission by the Contractor on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;

33.12.1.3 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;

33.12.1.4 any claim arising out of the provision of, or proposal by the Contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;

33.12.1.5 any claim made by or in respect of any person employed or formerly employed by the Contractor other than a Transferring Employee for which it is alleged the Agency or any Replacement Contractor may be liable by virtue of this agreement and/or the Employment Regulations;

33.12.1.6 any act or omission of the Contractor in relation to its obligations under regulation 11 of the Employment Regulations, or in respect of an award of compensation under regulation 12 of the Employment Regulations except to the extent that the liability arises from the Agency or Replacement Contractor's failure to comply with regulation 11 of the Employment Regulations; and

33.12.1.7 any statement communicated to or action done by the Contractor or in respect of any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Agency in writing.

33.13 The Contractor shall indemnify the Agency and any Replacement Contractor in respect of any claims arising from any act or omission of the Contractor in relation to any other Contractor's Personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.

- 33.14 The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
- 33.15 The Agency shall assume (or shall procure that the Replacement Contractor shall assume) the outstanding obligations of the Contractor in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.

# Appendix to Conditions - Services

Ref: ECM\_57765

Title: Supply, Installation and Maintenance of Transit Time River Flow Gauges

	<b>Condition</b>
<b>1 Agency Contract Contacts</b> ████████████████████	<b>3</b>
Address:- 10, Warwick Road, Olton, Solihull, B92 7HX	
<b>2 Contractor Contacts</b> ████████████████████	
Nivus GMBH Wedgewood, Rugby Road Leamington Spa Warwickshire CV33 9BW	
<b>3 Completion</b>	<b>6</b>
Contract Start Date	01.04.2020
Contract End Date	31.03.2025
<b>4 Insurance</b>	<b>17</b>
████████████████████	██████████
████████████████████	██████████
<b>5 Limit on Liability</b>	<b>16</b>
████████████████████	██████████
<b>6 Notice period</b>	
The Contractor must provide the Agency with 3 (three) months notice to terminate this contract.	