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Department  
for Environment  
Food & Rural Affairs

# **Contract for the Provision of Environmental Change Network Central Coordination Unit 2014-16**

**February 2015**

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# 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) Natural Environment Research Council as represented by its component body the Centre for Ecology and Hydrology whose registered office is at Polaris House, North Star Avenue, Swindon, SN2 1EU (the "Contractor")

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

## WHEREAS

- a) The Authority requires the Services set out in the attached Specification- Schedule 1.
- b) The Authority has appointed the Contractor to provide the Services and the Contractor hereby agrees to provide those Services in accordance with these terms and conditions.

## NOW IT IS HEREBY AGREED as follows:

### 1. TERMS OF CONTRACT

- 1.1 The Contractor shall provide the Authority with the Services in accordance with the "Contract" which comprises the following:

Section 1: Form of Contract  
Section 2: General Conditions

Schedule 1: Specification  
Schedule 2: Pricing Schedule  
Schedule 3: Security Requirements, Policy and Plan

- 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 shall start on 1<sup>st</sup> August 2014 (the "Commencement Date") and end on 31st March 2016 (the "End Date") unless it is terminated early or extended in accordance with the Contract.

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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.

**“Background IP”** means any information, techniques, software and materials, (regardless of the form or medium in which they are disclosed or stored) any Intellectual Property Rights controlled or owned by the Contractor prior to the Commencement Date and any Intellectual Property Rights generated by the Contractor independently of the Services and controlled or owned by the Contractor.

**“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”** means the Authority’s electronic contract management system.

**“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:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in Schedule 4; 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 Period”** means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an extension the end date of the extended period

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 Public Contracts Regulations 2006 (SI 2006/5).

**“Contractor”** means the person, firm, centre or company with whom the Authority enters into the Contract.

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 6.

**“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 the Contract ends set out in paragraph 1.2 if 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.

**“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 signed by the Parties confirming their intention to enter into 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.

**“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, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- a) prepared by or on behalf of the Contractor 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.

**“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.

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

“**Third Party Software**” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 6.

“**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 any variation to 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: Defra, Temple Quay House, Temple Quay, Bristol, BS1 6EB;

Email: [REDACTED]

(b) **For the Contractor:**

Science Contact Name: [REDACTED]

Address: Centre for Ecology and Hydrology, Lancaster Environment Centre, Library Avenue, Bailrigg, Lancaster, LA1 4AP; and

Email: [REDACTED]

Legal Contact Name: [REDACTED]

Address: Centre for Ecology and Hydrology, Maclean Building, Benson Lane, Crowmarsh Gifford, Wallingford, OX10 8BB.

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 Subject to Approval 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 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 nor 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 Date, 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 number
- and, 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 of the Initial Contract Period**

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 in substantially the form attached in Schedule 5. 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 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR.

E5.2 Both Parties shall cooperate with each other and share Requests for Information with each other that they receive as soon as practicable and in any event within 2 Working Days of receipt:

- (a) give the other Party a copy of all Information in its possession or control in the form that the Party requires within 5 Working Days (or such other period as the Party may specify) of the Party's request;
- (b) provide all necessary assistance as reasonably requested by the Party to enable it 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 Party.

E5.3 The Party receiving the Request for Information 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 Public Contracts Regulations 2006, 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) and Schedule 4, 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) and Schedule 4 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 Save for Background IP, all 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) furnished to or made available to the Contractor by or on behalf of the Authority;
  - (b) prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract; or
  - (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with clauses E8.1 (a) and (b) 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 prepared in accordance with clause E8.1(b) and (c). 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 Subject to clause G1.3 and to the best of its knowledge and belief, having made reasonable enquiries, 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 Background IP which the Authority requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E8.12 The Authority grants to the Contractor a royalty-free, irrevocable, worldwide, non-exclusive licence to use the IP Materials for academic purposes only.

## **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 and if it has identified an opportunity for the commercial exploitation of the Results then it may either:

(a) apply to the Authority for a licence (with a right to sub-license as required) as may be necessary; or

(b) provide such assistance as is required by the Authority to facilitate a licence being granted by the Authority to a third party.

E9.4 If the Contractor applies for a licence pursuant to clause E9.3(a) it shall 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 Background IP.

## **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.

F2.8 The Contractor will deliver the Services, however scientific research is by its nature uncertain and although the Contractor will perform its obligations under the Contract and will supply any outputs required under the Contract the Contractor cannot guarantee that the outputs of the research will lead to any particular conclusion or outcome.

### **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 Subject to the provisions of this clause F7, the Authority may request a Variation provided that such Variation does not amount to a material change.

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 £980,715.00

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 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.
- G1.9 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.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.11 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) to the best of its knowledge and belief, having made reasonable enquiries 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 Consequences of Expiry or Termination**

H4.1 If the Authority terminates the Contract under clause H2 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.

H4.2 If Contract is terminated under clause H2 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.

H4.2 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.

H4.3 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), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

### **H5 Disruption**

H5.1 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.

H5.2 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.

- H5.3 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.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H5.5 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.

## **H6 Recovery upon Termination**

- H6.1 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.
- H6.2 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.

## **H7 Retendering and Handover**

- H7.1 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.
- H7.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H7.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H7.3 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.
- H7.4 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 H7.1.

- H7.5 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.
- H7.6 If access is required to the Contractor's Premises for the purposes of clause H7.5, 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.
- H7.7 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.
- H7.8 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.

## **H8 Exit Management**

- H8.1 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 following procedure set out in clause H9.

## **H9 Exit Procedures**

- H9.1 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.
- H9.2 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.
- H9.3 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.
- H9.4 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.

## **H10 Knowledge Retention**

- H10.1 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

- 11.1 Subject to the provisions of clause 12 the Contract 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

- 12.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.
- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless: (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
  - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
  - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
  - (f) if the Parties fail to reach agreement 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 I2.6.

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

- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

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

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I2.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

# SCHEDULE 1 - SPECIFICATION

This will form the Scope of Works and was received by the Contractor in response to the Authority Specification.

## **Brief Project Description**

The UK Environmental Change Network (ECN) (<http://www.ecn.ac.uk>) provides a key element of UK LWEC-related scientific National Capability with respect to the detection and interpretation of long-term environmental change in terrestrial and freshwater habitats. It conducts fine temporal scale physical, chemical and biological measurements of 11 terrestrial and 45 freshwater sites ranging from lowland agricultural and woodland ecosystems, to the high mountains. Monitoring is coordinated by the ECN's Central Coordination Unit (CCU) at the Centre for Ecology & Hydrology, who quality-control, archive, assess, and make available for teaching, research and policy advice, the resulting data. The CCU also communicate ECN activities to sponsor, policy-maker, scientific and educational audiences through the ECN website, e-newsletters and occasional brochures and fliers, while scientific findings are published in the scientific literature, and are presented at conferences.

The ECN CCU receives most of its support from NERC, with a small contribution from Defra, which ensures scientific rigour and provides for a quality assured, scientific, long term, multivariate database. The ECN is also dependent on the strength of a much wider partnership of sponsors who fund the network of sites. The ECN CCU provides analyses and data products for validation purposes and in support of policy evidence needs, including evidence of potential threats, as well as benefits, to biodiversity and ecosystem services associated with environmental change. Its remit now also covers the associated Environmental Change Biodiversity Network (ECBN) that includes Natural England's 35 Long Term Monitoring Network sites,

Biodiversity 2020 emphasises the need to improve the evidence base - a key role of the ECN CCU. Data and analysis from the ECN is used to validate other national monitoring schemes, such as Countryside Survey, and to understand effects of, and interactions between, variables, such as in the development of a biodiversity indicator for climate change. For example, the ECN contributed data to the UK response to the 2012-2104 call for data from the UNECE Convention on Long Range Transboundary Air Pollution, supporting the development of an indicator of nitrogen impacts on vegetation communities that other parties found robust and agreeable, thus demonstrating the importance of such national capability and its international influence.

The Climate Change Act also commits the Government to report at least every five years on the risks to the UK of climate change, and to publish a programme setting out how these impacts will be addressed. The Act introduces powers for Government to require public bodies and statutory undertakers to carry out their own risk assessment and make plans to address those risks. ECN data has been used, and will continue to be used, to inform these assessments, including the LWEC Climate Change Report cards and development of a biodiversity indicator of impacts of climate change. The ECN serves many other policy needs as well such as air and water quality, understanding ecosystems and changes in protected sites.

There are two core elements to the proposed project. First, is the continued day-to-day planning, coordination, data collation, quality assurance, processing, analysis and dissemination activities to a consistently high standard. Second, is project development with respect to: a) improved efficiency of data management and data access; b) incorporation and integration of data from Natural England and Natural Resources Wales that contribute to the Environmental Change Biodiversity Network (ECBN), and other integrated monitoring networks within the ECN data system; c) development of new ECN "data products" to most effectively summarise and communicate ECN observations; d) improvement of communication of ECN outputs with policy makers and other stakeholders; and, e) continued involvement and integration of ECN within comparable programmes at international scales.

## **Policy Background**

### Policy Context

In its recently published Natural Environment White Paper (NEWP) the UK government set out the Government's natural environment agenda for England, and made the case for "putting Natural Capital at the centre of economic thinking and at the heart of the way we measure economic progress nationally." Essentially a term to describe stocks of both living and non-living resources, Natural Capital underpins human health and well-being through delivery of the range of Ecosystem Services (including supporting, provisioning, regulating and cultural services) (TEEB, 2010). The sustainability of this Natural Capital, and hence the continued provision of these services, is vulnerable to environmental disturbances and longer-term pressures from drivers such as global warming, pollution, and changes in the use of the land, fuelled by a growing population, that may interact at various spatial and temporal scales. The UK National Ecosystem Assessment (NEA) noted that while UK food production has increased substantially in recent decades, this has coincided with a decline in many other Ecosystem Services relating particularly to those underpinning the quality of our air, water and soil. The NEA concluded that around 30% of all services considered to be delivered by the ecosystems of eight broad habitat types were currently in decline, with a much larger percentage in a damaged condition, including wild species diversity and some of the services provided by soils.

In several cases the NEA highlighted links between reductions in ecosystem services and the degradation of habitat condition and/or local biodiversity, using information drawn from a range sources including, at a national scale, the ECN, UK Countryside Survey, Biological Records Centre, the Environment Agency, etc.. However, it also emphasised the wider paucity of understanding of these relationships and trends in many areas, reflecting limitations in the spatial extent, temporal coverage and quality of the current UK environmental evidence base. Therefore, while there remains a clear need to continue to build up robust long-term environmental time series, such as those developing under ECN, there is also a need to integrate more effectively the evidence gathered from across these complementary programmes in order to maximize our understanding of current trends in the natural environment across multiple spatial and temporal scales, and link these more clearly to Natural Capital and Ecosystem Service metrics. The NEWP acknowledges the need for closer integration of environmental monitoring effort and recognises the contribution of LWEC's UK Environmental Observation Framework (EOF) in improving co-ordination of monitoring activities, so that "data are made available in a coherent way". It states "we will take forward environmental monitoring in partnership with these organisations, seeking their help and expertise. In addition, and in line with the approach taken by the National Ecosystem Assessment (NEA), we will be joining up the Government's own environmental monitoring, to enhance our understanding of the state of ecosystem services." ECN representatives are playing a central role in developing these links, through CEH's internal Monitoring and Observation Strategy, and externally through direct involvement with EOF.

Citing TEEB and the NEA, the NEWP places emphasis on the need to value the economic and social benefits of a healthy natural environment while continuing to recognise nature's intrinsic value. Several elements of the NEWP have a firm environmental evidence base at their core. For example, the paper called for the problem of habitat fragmentation to be addressed by the development of a 'resilient ecological network', with twelve large-scale Nature Improvement Areas (NIAs) which are now being implemented. These comprise core areas - primarily existing wildlife sites, linked to wildlife corridors or stepping stones, and nature restoration areas, and should be protected by buffer zones. Development of these NIAs will clearly take time, but assessment of the efficacy of the strategy will require reference to long-term environmental data from independent sources and a degree of national integration/harmonisation to allow direct comparisons of environmental and ecological trends from within and without these NIAs to be made. The ECN is clearly well placed to contribute evidence to these assessments and make its data readily available to the wider research and policy communities.

The NEWP includes an overarching vision of ensuring that, by acting now, an increasing number of people will begin to benefit from the goods and services provided by the natural environment. Under the NEWP, Local Nature Partnerships will be established to help raise awareness of the value of nature and contribute to a green economy. The valuation of “natural capital” is encouraged, and a renewed drive is advocated towards a greener, low-carbon, economy based on the sustainable use of natural resources. A new research programme will be launched to fill evidence gaps about impacts on the natural environment of the level of infrastructure needed to meet 2050 emissions objectives, in particular with respect to the cumulative and indirect effects. The paper recognises the need to balance potentially conflicting ecosystem services, such as those contributing to food production and the environment, forest management/creation, soil security, and freshwater restoration. The combination of detailed multivariate environmental and ecological data at the site level, and the expert local knowledge of ECN site managers is beginning to inform on the nature of ecosystem service provision across a range of UK habitats and inform on the development of Ecosystem Services assessment methodology at a European scale (see Dick et al., 2011; Dick et al., 2014a-c)).

The NEWP also states the UK government’s intention to take leadership internationally, for example by pressing for effective implementation of the 2010 Nagoya agreement by the parties to the Convention on Biological Diversity. A new biodiversity strategy for England will be published, while in the EU, the Government intends to press for “greening” of the Common Agricultural and Common Fisheries Policies, and call for the implementation of an ambitious new EU Biodiversity Strategy and an ‘EU2020 Strategy’ that achieves low-carbon, resource-efficient growth. The ECN actively participates in several European and world-wide long-term environmental monitoring networks including, LTER, ILTER, and Alter-Net that should make an increasing contribution to international-scale environmental issues in the coming years. Later this year the ECN, through CEH, will become involved in a new EU Horizon 2020-funded project that aims to develop a European-scale informatics infrastructure for linking data from long-term environmental monitoring sites across the union and thus facilitate scientific research into environmental change.

In order to measure delivery of the NEWP’s objectives, a set of key indicators will be developed by spring 2012 and concise ‘state of the environment’ reports for England will be published periodically. In its “England” chapter the NEA states that “Indicator taxa whose presence, abundance or density reveal different levels of service provision (or the lack of it) could be identified and used as assays for the state of systems as appropriate, either via bespoke field protocols or by making use of existing data sets or data collection”. The ECN has previously contributed a set of climate change indicators to Defra’s Environmental Indicator database, and has more recently contributed to the development of ecologically-based climate change indicators under Defra’s Bico-Net programme. However, there are opportunities for further development of indicator metrics that could be applied to ECN data in order to provide regular (annual-scale) updates of ecological changes indicative of shifts in climate, nutrient loadings, acidity etc. through the development of models based on more spatially extensive integrated datasets such as the Countryside Survey and the Biological Records Centre.

The NEWP stresses the need to develop a better understanding of “when and where to invest in environmental protection” with respect to balancing needs of the protection of food and water supplies and the natural environment. This is highly pertinent to the UK Climate Change Act that requires regular (at least 5-yearly) reporting of the climate change-related risks to the UK. ECN data, through for example the Bico-Net project (ref) and some recent high profile scientific papers (e.g. Morecroft et al., 2009; Gottfried et al, 2012), and research being undertaken at ECN sites, are already making important contributions to our understanding of the impact of climate change. But there is considerable potential, through the development of closer links with other surveys and schemes, for ECN sites to act as sentinels for climate change impacts on not only the biota of the range of habitats it covers but the ecological and biogeochemical processes they underpin, such as the processing of carbon and nutrients.

The Climate Change Risk Assessment (CCRA), published by Defra, considered potential consequences of future climate change for the UK. Focussing on UKCP09 climate modelling forecasts it provided predictions of how different levels of greenhouse-gas emissions could affect sectors such as agriculture, health and infrastructure over the twenty-first century. The CCRA predicts increases in the frequency of exceptionally warm summer days, and increased frequencies of both droughts in summer and flooding in winter. Natural ecosystems, along with public health, business, agriculture and forestry, and urban infrastructure are all identified as priority areas for early action. The report also draws attention to potential opportunities arising from climate change, such as increased wheat yields as a result of warmer conditions, and expanding prospects for a low-carbon market and tourism. ECN data and ECN sites are already used in the development of understanding of carbon budgets in upland soils and woodland habitats (e.g. Fenn et al.2014; Worrall et al., 2003), and have potential value in distinguishing between effects of short-term variation in weather on ecosystems from longer term responses to climate change..

Importantly, the CCRA acknowledges considerable uncertainty in predictions, even with respect to basic climate variables such as air temperature, yet alone the likely consequences for the natural environment. Further developments in UK environmental monitoring and data assessment and interpretation are essential if impacts are to be evaluated and attributed to a level that will contribute practically to policy development. The UK policy response to CCRA was set out in the National Adaptation Programme (NAP) which formulated a climate-change policy agenda and a timeline for implementation that is now coming up for review as the next CCRA is due.

Under the Convention on Biological Diversity agreement was reached in Nagoya in 2010 (CBD COP10) to take effective and urgent action to halt the loss of biodiversity. Two targets were stated: 2020 – to ensure ecosystems are “resilient and continue to provide essential services; and, 2050 by which time biodiversity is “valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people”. Again, robust environmental evidence will be required to audit progress in these respects within the UK. Environmental and ecological data collated by ECN from a range of UK broad habitats, and experiments conducted at ECN sites, in conjunction with the other more broad-scale networks, will have an important role in informing on the resilience of ecosystems and tracking shifts in key ecosystem service provision. In a detailed assessment of the ECN carabid dataset, for example, Brooks et al., (2012) published evidence for the vulnerability of carabid populations to environmental change was closely linked to habitat structure, indicating the potential importance of management in maximising ecosystem resilience. More recently, Posgai and Littlewood (2014), drawing from the same ECN dataset, have shown that carabid species that are able to vary the timing of development in response to variations in weather conditions appear the most resilient to environmental pressures that are leading to widespread declines in many taxa. Trends in several ECN datasets representing the first two decades of vegetation and invertebrate data are in the process of being analysed for a series of scientific papers as part of a ECN-focussed special issue of the journal *Ecological Indicators* which is due to be published by the end of 2015.

The EU Soils Framework Directive, introduced in 2006, aimed to harmonise and raise the level of soil protection across the European Union, through tackling soil degradation, identification and remediation of contaminated land, and developing national policy to better recognise and protect soil function. While political negotiations continue, the NEWP has called for a broader national understanding of threats to soils in the UK – consistent with the Soil Strategy for England, with particular emphasis on threats posed to soils from climate change. Scientifically robust and repeated measures of soil physics and chemistry are rare within the UK, but uniquely, the ECN provides 5-yearly spatially replicated measurements at all its sites, with samples taken both by horizon and by uniform depth. In addition, soil water chemistry is monitored at high frequency (2 weekly) in organic and mineral horizons. The latter data have been widely studied, particularly with respect to influences on air pollutants on acidity (Evans et al., 2011), and influences of both pollutants and climate on carbon losses (Clark et al., Stutter et al., 2011). In comparison the bulk soil data are currently under-utilised but will have increasing value in informing national soil strategy over the current decade.

The UK agencies are actively involved in the implementation of the EU Water Framework Directive that aims to achieve good ecological status for all EU water bodies by 2015. Ecologically based tools have been developed for a range of key pressures, and monitoring is being conducted on a range of representative waters. The ECN freshwater network includes a number of English and Welsh, and Scottish, WFD sites that are monitored by the Environment Agency and SEPA respectively. In so doing it represents the only data resource with which to assess hydrochemical and biological (mostly macroinvertebrate) trends at the UK scale. There is still a need for the ECN to develop more effective communication of its freshwater chemical and biological datasets to a range of audiences. Importantly also, the ECN has also been accumulating a large archive of epilithic diatom samples that have yet to be analysed. Epilithic diatoms have been identified as a key indicator of GES under the WFD owing to their high sensitivity to changes in water quality. The analysis of the archive, in conjunction with the water chemistry data that are already available, would enable a very powerful test of the diatom-based WFD metrics.

Defra's Upland Policy Review (2011) states that the English uplands provide about "70% of the UK's drinking water and store about 40% of soil carbon" and that they "buffer water quality against the effects of diffuse and point source pollution, and help regulate flooding downstream". There is mounting concern regarding upland degradation and consequent loss of Natural Capital, particularly with respect to soil carbon, water quality and upland biodiversity. The review acknowledges that "hill farmers and land managers in the uplands are potential 'providers' or suppliers of a range of ecosystem services [ including improving water quality, flood mitigation, carbon storage, biodiversity and recreation] , whose delivery can be enhanced through changes to land management practice". However, there remains considerable debate regarding the chief drivers of environmental change, and the extent to which local land management is able to mitigate against changes such as rising levels of dissolved organic carbon (DOC) in drainage waters brought on, at least in part, by changes in regional scale drivers, i.e. air pollution (Monteith et al., 2007) and climate change. The ECN monitors environmental and ecological status at several upland terrestrial and freshwater sites, and works very closely with the (partly Defra funded) UK Upland Waters Monitoring Network (UWMN) in providing a nationally unique evidence base that is used extensively in environmental research in fields including acid rain research, atmospheric nitrogen eutrophication, upland hydrology, carbon budgets and impacts of forestry on upland water quality (Curtis et al., 2014). The ECN CCU provides water chemistry data management for the UWMN and is also linked to it through a subset of shared sites. CEH-based ECN- and UWMN-linked staff are currently involved in discussions with representatives from water companies based in the north and west of the UK regarding the likely future trajectory of DOC levels, and in a Scottish Office funded Centre for Expertise for Waters (CREW) project that is seeking to determine the most appropriate local management options in catchments where rising DOC levels pose a major concern for water treatment.

### **ECN's integral role in National Capability**

Clearly, evidence is increasingly required, from local through to national level, to inform the development of strategies to both mitigate effects of, and facilitate adaptation to, environmental change in the natural environment. It is also clear that more needs to be done to communicate the changing condition of the natural environment, and the threats to it, to audiences ranging from members of the general public, to land managers and policy makers, in order to promote better informed decision making.

Fundamental to these needs at a UK level is the development of an integrated and scientifically robust evidence base to provide reliable information on how the physical chemical and biological condition of the broad diversity of our terrestrial and aquatic ecosystems is changing and facilitate scientific assessment of the causes of change.

The ECN provides a unique and vital component of this "National Capability", by: a) conducting frequent and highly detailed measurements of a wide range of environmental driver and ecological response variables across a broad range of ecosystems; b) providing sites where long term and shorter term environmental experiments can be conducted; and c) communicating the concepts of environmental change and making its data freely available to scientists, policy makers, the education sector and the wider public. The ECN has also led the way, nationally and internationally, with respect to setting common standards for environmental monitoring methodologies and the management of complex environmental datasets.

However, with its necessary focus on a relatively small number of sites, under relatively constant management, there are obvious limits to the extent ECN in isolation will be able to contribute to our understanding of environmental change on landscape through to national scale. It is, therefore, working increasingly with more broad-scale cross-disciplinary monitoring initiatives including the UK Countryside Survey and the UK Biological Records Centre.

In addition, the ECN CCU has been involved with Natural England (NE) and the Countryside Council for Wales – now Natural Resources Wales (NRW) in the establishment of the Environmental Change Biodiversity Network (ECBN). Conceived originally as a tool for increasing the spatial coverage of ECN-level monitoring in order to increase the power to detect impacts of climate change and air pollution on semi-natural ecosystems, the ECBN has developed into a system of National Nature Reserves in England and Wales, with monitoring provided primarily by local Natural England and Countryside Council for Wales site wardens, according to ECN-compatible protocols. The ECN Central Coordination Unit (CCU) has played a central role in the development of ECBN since its inception, and with its long experience in handling and processing these complex datasets, large efficiencies stand to be made by the CCU taking responsibility for ECBN data management, and ensuring all data are fully compatible and physically relatable, or "interoperable", with ECN data.

A national conference on UK Biodiversity Monitoring, hosted by the ECN CCU in 2010 – Sier et al. (2010), demonstrated the complimentary of the various components of National Capability, such as those listed above. However, partly as a result of differences in sampling protocols, species coding dictionaries etc. insufficient effort has been made to date to exploit the potential added value they offer by linking their observations directly. Over the last 3 years the ECN CCU has made considerable progress in both developing electronic systems to increase the interoperability of datasets, and encouraging the taking up of common sampling protocols and data storage formats.

Closer integration of these monitoring initiatives is being overseen by LWEC's EOF process that also aims to ensure that the public funding of environmental monitoring is being used as efficiently as possible, by prioritising needs and reducing the amount of replication of monitoring effort between programmes. The ECN CCU continues to work very closely with EOF, and is contributing to projects and discussions concerning the develop of interoperability between its data holdings, and with other wider developing environmental datasets such as the ECBN and the Biological Research Centre. With a long track record in the development of appropriate monitoring protocols and in the efficient management and dissemination of complex datasets the ECN is increasingly involved in advising and developing environmental sampling and data management. The activities of the ECN CCU are supported primarily by National Capability funding from NERC. However, in this proposal, continued support is requested from Defra to underpin continued day-to-day operations (i.e. planning, coordination, data collation, quality assurance, processing, analysis and dissemination activities to a consistently high standard) and project development. The latter will encompass a) improved efficiency of data management and data access; b) the management and integration of data from Natural England and Natural Resources Wales that contribute to the Environmental Change Biodiversity Network (ECBN), and other integrated monitoring networks within the ECN data system; c) development of new ECN "data products" to most effectively summarise and communicate the environmental, social and economic significance of trends at ECN; d) improve communication of ECN outputs with policy makers and other stakeholders; and, e) continue involvement and integration of ECN within international Long Term Environmental Research programmes. Support is also required for an independent review of Defra-funded ECN CCU activities during the spring of 2015.

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## **Objectives**

The primary aim of this proposal is to maintain and develop aspects of the ECN CCU of direct importance to Defra in informing on the character, causes and consequences of environmental change within the UK, and thus make tangible contributions to the aims of the NEWP, Climate Risk Assessment and other policies and directives. The main aims of this proposal are represented by the seven Work Packages outlined below.

### **Work Package 1) Maintenance and development of the ECN operational system**

**Objective 1.1)** To continue to maintain and develop, over the period April 2014-March 2016, the high quality of environmental monitoring and data collected at ECN sites and archived in the ECN database, through continued liaison with ECN site managers and the processing of ECN data according to ECN data management protocols.

**Objective 1.2)** To organise the agenda and provide minutes of the annual ECN Steering Committee meetings in 2014 and 2015.

**Objective 1.3)** To restructure key ECN data tables (Meteorology and Water Chemistry) within the ECN database in order to increase data processing speeds and enable the inclusion of additional parameters and information relating to instrument or methodological changes.

### **Work Package 2) Data access**

**Objective 2.1)** To ensure the ECN CCU continues to comply with evolving EU INSPIRE standards, that ECN data feature on national and international data discovery portals, and that data remain readily discoverable on <http://data.gov.uk>.

**Objective 2.2)** To develop a system for publishing key ECN datasets, linked to Digital Object Identifiers (DOIs) on a rolling basis via the CEH Information Gateway, in order to enable more rapid access to ECN data by users and improve data management efficiency within the ECN CCU.

### **Work Package 3) Dataset integration and expansion**

**Objective 3.1)** To publish site information for all Environmental Change Biodiversity Network (ECBN) sites on the ECN Data Centre and subsequent sites as they are notified to the ECN CCU. Natural England (NE) to provide site information or changes to site information (including links to data already in public domain) in format requested by the ECN CCU and ECN CCU to publish this information within three months of receipt.

**Objective 3.2)** To agree ECBN soils data format and the quality assurance process. NE to provide draft data format and quality assurance process by end March 2015 and ECN CCU to suggest and seek agreement for any changes by end December 2015.

**Objective 3.3)** To make ECBN data accessible by carrying out ECN quality assurance checks and entering data into the ECN Data Centre ECBN database by end September of each year, including all datasets submitted by NE to CCU by end March of that year. NE to ensure all datasets are formatted according to the data structure determined by the ECN CCU and undergo initial standardized quality control procedures prior to being delivered annually as single blocks of data covering all active sites.

**Objective 3.4)** To regularly review procedures for dataset integration and expansion and make any changes to the process that are agreed between CCU and NE.

### **Work Package 4) ECN data products in the form of environmental indices and scientific papers**

**Objective 4.1)** To report to Defra on progress in enabling online assessment of trends in key botanical traits across ECN sites via the ECN Time Series viewer by March 2016.

**Objective 4.2)** To develop weather-adjusted ECN Butterfly and Moth population indicator of long-term change in biodiversity by March 2016.

**Objective 4.3.)** To report to Defra on the development of an online tool to identify break-points in ECN time series data on an annual basis by March 2016.

**Objective 4.4)** To provide Defra with a summary of an ECN-focussed Special Issue of the journal Ecological Indicators that will include an ECN Synopsis paper summarising key contributions ECN is making to a range of scientific and policy-related issues, in addition to several papers focused on analysis of environmental and biological trends in ECN data, by the end of December 2015.

### **Work Package 5) Communications with policy makers and other stakeholders**

**Objective 5.1)** To develop the series of web-based “Why it Matters” features over the period April 2014 to March 2016 to provide brief layman-targeted explanations of the content of recently published scientific papers based on ECN data, and what the implications of the findings are to policy development.

**Objective 5.2)** To provide summary papers and conduct two Webinars for Defra policy officers to explain ECN developments and new findings that emerge over the two year contract period.

**Objective 5.3)** To contribute to national strategic development of long term environmental monitoring through representation at EOF and on the LWEC Ecosystem Task Force, and engagement with ongoing plans for rationalization of monitoring under the new Defra Terrestrial Monitoring Strategy and a new form of Countryside Survey/ Environmental Observatory.

**Objective 5.4)** To produce a short report summarising current understanding of risk to ecosystems posed by plant viruses, and scope options to begin to monitor plant viruses at ECN sites.

### **Work Package 6) International linkages.**

Objective 6.1) To continue to contribute to international strategic development through representation of UK LTER at European (LTER) and global (ILTER) levels.

### **Work Package 7) Defra ECN review**

Objective 6.1) To work with Defra in drawing up terms of reference for an independent mid-term review of ECN and commission the review.

## **Approach and Methodology**

### **Work Package 1) Maintenance and development of the ECN operational system**

**Objective 1.1)** We shall continue to maintain the core activities of the ECN Data Centre in the receipt, quality control, storage and dissemination of data, according to established procedures and data management protocols, up to the end of March 2016 (Milestone 1a). Tabulated information regarding continued progress in accumulation of data will be reported at the ECN Steering Committee meetings in May 2015 and May 2016 (see Objective 1.2).

**Objective 1.2)** We shall organise the agenda of the annual ECN Steering Committee meetings to be held at the CEH offices in Lancaster in 2014 (Milestone 1b) and SNH offices in Edinburgh in 2015, including a visit to the ECN site Loch Leven (Milestone 1d), provide annual operational reports to these meetings, including summaries of current database status, data requests, use of data in publications, and developments in Long Term Ecological Research Networks at an international level. We shall promptly write up and circulate the resulting minutes to all participants (Milestones 1c & 1e – for 2014 & 2015 respectively). We shall also solicit information from Steering Committee members concerning how data from network sites are being utilized for policy development and summarise the outcome in a brief policy-focused paper during the summer of 2015 (Milestone 1f).

**Objective 1.3)** We shall produce SQL computer scripts to manipulate ECN Meteorology and Water Chemistry tables into the new structure. This will reduce data redundancy that will otherwise accumulate as a consequence of the collection of new types of data. We shall also produce new scripts to enable efficient processing of data under the revised table structure. Documented procedures will be stored within the ECN Data Centre (Milestone 1g).

### **Work Package 2) Data access**

**Objective 2.1)** We shall continue to ensure that ECN complies with evolving EU INSPIRE standards, that its most up to date data are featured on national and international data discovery portals, and that data remain readily discoverable on <http://data.gov.uk>. To this end we shall liaise regularly with CEH colleagues responsible for CEH Data Systems and work with them in the continued development of ontologies that are enabling increased cross-linking of environmental datasets with the CEH Gateway.

**Objective 2.2)** We shall develop a system for publishing key ECN datasets, linked to Digital Object Identifiers (DOIs), on a rolling basis via the CEH Information Gateway, in order to enable more rapid access to ECN data by users and improve data management efficiency within the ECN CCU (Milestone 2a).

### **Work Package 3) Dataset integration and expansion**

**Objective 3.1)** We shall publish site information, including geographic data, site descriptions, measurement metadata and links to data already in the public domain, within three months of receipt of this information from NE over the full course of the contract.

**Objective 3.2)** We shall work with NE and agree, by end December 2015, on the appropriate ECBN soils data format and the quality assurance process, following initial receipt of a draft document provided by NE by the end of March 2015.

**Objective 3.3)** We shall conduct ECN quality assurance checks on all new complete and correctly formatted datasets provided by NE by the end of March 2015 and enter data into the ECN Data Centre ECBN database by end September 2015 (Milestone 3a).

**Objective 3.4)** We shall meet with NE in January 2015 to review procedures for dataset integration and expansion and agree on any changes to the process (Milestone 3b), and conduct further review meetings in July 2015 and January 2016.

#### **Work Package 4) ECN data products in the form of environmental indices and scientific papers**

**Objective 4.1)** We shall report to Defra on progress in linking ECN vegetation-based environmental metrics, developed under the last Defra ECN CCU contract, to the ECN Time Series viewer in order to provide interactive online assessment of trends in key botanical traits across ECN sites (Milestone 4a). These metrics will be applied in the analysis of trends in ECN vegetation and their relationship to climatological and air pollution drivers with the intention of publishing the results in a peer reviewed scientific journal.

**Objective 4.2)** We shall develop and report on statistically-based, weather-adjusted ECN lepidopteran (Butterfly and Moth) population indices, based on statistical relationships between community structure and climate metrics established during the recently completed Defra-funded BICCO-Net2 project, to provide a more sensitive indicator of long-term change in lepidopteran biodiversity, and hence develop an early warning system of unexpected deviations and changes in community structure (Milestone 4b).

**Objective 4.3.)** We shall automate the use of computer scripts, developed under the previous Defra ECN CCU contract to identify break-points in ECN physical, chemical and biological time series data, and make available the output via the ECN website on an annual basis. The resulting tool will also be used as an extra quality control step (Milestone 4c).

**Objective 4.4)** We shall provide Defra with a summary of an ECN-focussed Special Issue of Ecological Indicators which will include an ECN Synopsis paper summarising the key contributions ECN is making to a range of scientific and policy-related issues in the field of environmental change research, and papers summarising 20 year trends in meteorological, air chemistry and biological datasets (Milestone 4d).

#### **Work Package 5) Communications with policy makers and other stakeholders**

**Objective 5.1)** We shall write a series of web-based “Why it Matters” features, which provide brief layman-targeted explanations of the content of recently published scientific papers based on ECN data, and what the implications of the findings are to policy development. We shall also incorporate a slide-based summary for each feature in a similar format to summaries we have recently provided for an EU-funded project ROBIN (see <http://robinproject.info/home/gallery/slideshows/gallery-biodiversity-threat/>),

**Objective 5.2)** We shall conduct two Webinars for Defra policy officers in the Spring of 2015 (Milestone 5a) and 2016 (Milestone 5b) to explain ECN developments and new findings that emerge over the two year contract period and seek feedback regarding emerging issues and current knowledge gaps..

**Objective 5.3)** We shall produce a short report explaining current understanding of risk to ecosystems posed by plant viruses, outline current work examining plant virus distribution at the CEH-run ECN site, Wytham, and provide a range of costed options to begin to monitor plant viruses at ECN sites (Milestone 5c).

#### **Work Package 6) International Linkages**

**Objective 6.1)** We shall engage with the international LTER community through representation of UK LTER at European (LTER) and global (ILTER) levels, and act as the UK lead in a EU Horizon 2020 bid to

support LTER infrastructure at a European scale (due for submission in September 2014) (Milestone 6a).

### **Work Package 7) Defra ECN review**

**Objective 7.1)** We shall work with Defra in drawing up terms of reference for a mid-term review (sub-contracted to Team Projects Ltd) that will detail policy relevance, fit with the Defra Terrestrial Monitoring Strategy, Evidence Strategies and priorities and other monitoring and assess value for money in delivery of National Capability, sub-contract an appropriate independent reviewer to conduct the work, and cooperate during March 2015. (Milestone 7a).

The review will draw on ECN CCU presentations and consultations with policy teams and Defra partners to demonstrate and assess strengths and weaknesses of the ECN CCU, to be provided as a stand-alone report detailing the value and uses of the ECN CCU and with recommendations to enhance ECN applications. The review should cover:

- Uses of data, data products and other ECN generated information for policy needs
- Links and role of ECN in Defra Terrestrial Monitoring Strategy, and the possible Countryside Observatory
- Inputs of ECN advice to Defra and partner funded research projects and consultations
- Links with, and influence of, international environmental monitoring
- Role of ECN in national capability
- Opportunities for other policy relevant uses
- Value for money

### **Survey**

Will the project require a survey to be carried out- No

### **Project Milestones**

	Target date (dd/mm/yyyy)	No. of months from start date	Description of milestone (maximum 120 characters)
1	1/08/2014	2	1b) Organise 2014 ECN Steering Committee
2	1/08/2014	3	1c) Circulate 2014 ECN Steering Committee minutes
3	8/09/2014	6	6a) Participate in delivery of LTER-Led proposal to EU H2020 to develop European LTER Infrastructure
4	20/01/2015	10	3b) Meet with NE representatives and agree on revisions to procedures for integration and expansion
5	31/03/2015	12	1g) Restructure and document key ECN Data Tables
6	31/03/2015	12	5c) Produce short report on potential to monitor plan viruses at ECN sites
7	15/03/2015	13	5a) Conduct ECN webinar for Defra policy officers
8	31/03/2015	12	7a) External ECN Review completed
9	31/03/2015	12	Provide annual project report to Defra
10	14/05/2015	14	1d) Organise 2015 ECN Steering Committee

11	30/06/2015	15	1e) Circulate 2015 ECN Steering Committee minutes
12	30/08/2015	17	1f) Produce brief document describing how ECN measurements are applied to policy
13	30/09/2015	18	3a) All ECBN data provided by NE by March 2015 quality assured and entered onto the ECBN database
14	30/10/2015	19	2a) Produce system for publishing DOI-linked datasets
15	20/12/2015	21	4d) Provide Defra with policy-focussed summary of ECN Special Issue of Ecological Indicators
16	31/01/2016	22	4c) Provide online assessments of evidence for break points in key ECN datasets
17	15/02/2016	23	4a) Enable online assessments of evidence for break points in key ECN datasets
18	28/02/2016	23	5b) Conduct ECN Webinar for Defra policy officers
19	28/02/2016	23	4b) Enable online assessment of weather-adjusted lepidopteran trends
20	31/03/2016	24	1a) Maintain upkeep of ECN database
21	31/03/2016	24	Deliver final report in EVID 4 format
22	31/03/2016	24	Produce standalone Executive Summary

## **Knowledge Exchange**

Our approach to knowledge exchange is guided by our current Knowledge Exchange (KE) strategy (2014-2017). We will aim to: raise awareness of ECN; explain the network's policy relevance and its value to the scientific community; communicate new results, data products, data interfaces and other ECN developments; increase ECN data use; promote research at ECN sites, and develop media aimed at educating young people in the field of environmental change.

Our KE strategy identifies the research community, policymakers, the conservation sector and ECN's existing and potential supporters as key audiences for ECN communication, and from whom we can also gain information.

General awareness-raising will be undertaken via the ECN website, our e-news service (sent by e-mail), attendance at appropriate events, social media networks, particularly Twitter (but also including Facebook and LinkedIn), through and via contact with researchers in fields such as the environmental and biological sciences and geography. We will build our presence on social media.

We will develop and foster links with the Ecosystem Knowledge Network, and ensure ECN is contributing to the needs of the NEWP as defined through the 2020 Biodiversity Strategy, the Nature Improvement Areas Monitoring and Evaluation Framework, and the next Climate Change Risk Assessment. Webinars with Defra policy contacts will provide an additional opportunity for knowledge exchange with Defra and any other invited policy-makers. We will also support the development of an effective UK Environmental Observation Framework.

Where appropriate, we will exploit our links with relevant European and international networks such as LTER-Europe, ILTER and ALTER-Net. We will develop information, to be made available via the ECN website, aimed at increasing the network's relevance to policy-makers. This will principally be in the forms of layman's summaries of selected published research that has used ECN data. These summaries will

combine text and graphics, and they will indicate the relevance of the research to societal issues and policy areas.

The following outputs are expected from the project. Key audiences and the ways in which we will disseminate each are indicated:

- Site-specific indicators of environmental change – Key audiences: researchers; policy-makers; general public. Method: Available via the ECN website.
- News items and articles – Key audiences: general public; policy-makers; researchers. Method: articles on the ECN website. Some articles will be focused towards policy-makers. We will also promote the articles via our e-news service and via social media networks.
- Scientific publications – Key audiences: scientists. Method: papers will be summarised and promoted via the website, e-news and social media networks. If appropriate, we will issue press releases and explain (on our website) the significance of the paper in non-technical terms (as described above). Note that a special issue of *Ecological Indicators* to mark the anniversary of 20 years of ECN terrestrial data is in preparation and due for publication in December 2015.
- Symposium to mark 20 years of ECN data collection, aimed at – Key audiences: scientists and policymakers. Method: event.
- Article in NERC's *Planet Earth* magazine describing ECN and its value – Key audiences: general public; policy-makers; researchers. Method: magazine article (hardcopy and online) by [REDACTED], ECN's Science Liaison Officer.
- Revised flyers and posters – Key audiences: researchers; policy-makers; general public. Method: promotional materials will be made available via the website and directly to ECN site contacts and SC members and we will encourage their use at appropriate events such as conferences and open days. We will also encourage Site Managers to produce appropriate site-focussed reports, brochures, etc. for ECN, as some Site Managers have already done.
- Minutes of annual Steering Committee meetings – Key audience: ECN Steering Committee (SC). Method: e-mail.
- Annual reports on progress in the development of the ECN R&D strategy and data products to be presented to via webinars with Defra contacts.
- Revised strategic documents covering research & development, information management and knowledge exchange – Key audiences: SC; ECN site contacts; ECN Science and Technical Advisory Group; general public. Method: downloadable files.

## **Quality Assurance**

CEH operates a suite of quality assurance procedures designed to meet the JCOP including: strict laboratory quality controls (e.g., use of QC materials, standards, blanks, sample re-analysis); regular servicing and calibration records for all equipment; documented procedures for all field and laboratory methods, including health and safety; clearly-defined project management, individual roles and competencies based on regular progress reviews, documented staff skills matrices and training records; and strict conventions for naming, handling and documenting samples and subsequent datasets in order to ensure traceability.

CEH does not currently follow the quality and environmental management systems detailed in ISO9001:2000 and ISO14001:1996 but does operate a rigorous internal quality assurance programme based on PRINCE 2 standards and follows the Joint Code of Practice for Research (JCoP) as defined by Defra, FSA, BBSRC and NERC. In 2004 Environmental Change Network procedure at CEH was audited by the UK Accreditation Service (UKAS) as part of a Defra baseline assessment to assess compliance with the JCoP. The audit investigated all aspects of research including people are trained, project planning, management, review processes, documentation, facilities and laboratories, data management, protocols and “traceability” (ie, audit trails) of research carried out. The resulting UKAS report found no significant deviations from the CoP. The report also concluded that “Data quality, management and control was “of an exceptionally high standard”. The main elements of the QA procedures maintained by ECN are: (i) the use of standard data collection and data transfer protocols ; (ii) the operation of data and information and management procedures including data quality issues; and (iii) the maintenance of communication and review procedures to ensure that standards and procedures are applied and reviewed appropriately.

## **Risks, Ethical Considerations and Health and Safety**

Risk management for the ECN programme is currently assessed by the ECN Steering Committee. The main risks to this project are:

### 1. Loss of staff in CEH.

Mitigation measures: CEH is committed to supporting ECN as part of its core long-term monitoring and research programme. Hence staff resources allocated to the Co-ordination activities relatively unaffected by gradual reductions in staff numbers. Some core staff have left through early retirement but their roles have been replaced. The ECN CCU is located at the CEH Lancaster site and benefits from the co-location of an Environmental Informatics team on the same site.

### 2. Lack of stakeholder engagement (sponsors and researchers) in workshops and consultations.

The ECN CCU continues to work with ECN's existing organisational structures including its Steering Committee(sponsors), Scientific and Technical Advisory Group (science community) and ECN Site Managers to ensure good participation in the project. It uses its recently redeveloped webpage and electronic newsletter based communications tools to inform potential participants of the activities. The ECN is well connected in the UK, Europe and globally; past science ECN-organised workshops and conferences have been well attended and very well received.

### 3. Lack of resources to deliver future research and development outputs.

Mitigation measures: ECN is an operational programme with few resources directly allocated to analysis and research. CEH appointed a Band 4 ECN Research Coordinator in January 2008 who is able to spend a significant amount of time building research ties (especially with ECN's partner research organisations, CEH colleagues and with the University Sector) based on the ECN data and sites. It is important that the relationship with Defra prioritises research output over administrative tasks.

### 4. Loss of sites and sponsors.

Mitigation measures: Since the start of the programme in 1992 ECN has lost only one terrestrial site, and has retained its full membership of sponsors. Nevertheless, loss of sponsors through organisational change and changing priorities remains the biggest risk to ECN and in the current economic climate widespread budget cuts do represent a significant risk to the future unified operation of the network. The appointment of a full time Research Coordinator in 2008 was designed to ensure that ECN produces outputs that are relevant to a range of sponsor needs and are meeting a range of Defra requirements. The primary vehicle for ensuring a continued and growing importance to the needs of sponsors is the ECN Steering Group, where new ECN developments are reported and sponsor concerns are conveyed. The ECN Research Coordinator and senior colleagues at CEH have been highly active through the UK Environmental Observation Framework (UKEOF) in its assessment of national capability requirements, current resources and gaps. By pursuing the ECN Implementation Plan, i.e. by raising the output of scientific publications, increasing the profile of the Network through the redeveloped web page, increasing interaction with scientists from across the Research Councils and Universities and engaging more with Defra through the Defra ECN Users Group the ECN CCU will continue to build the business case for national support of ECN through EOF and NERC's National Capability Advisory Group (NCAG).

#### 5. Data quality and availability.

Mitigation measures: ECN is a distributed system involving staff from 7 research organisations. To maintain the required quality and comparability of data requires a heavy investment in QC and co-ordination activities. ECN appointed a new "site operations manager" at the end of 2007 to oversee QC issues, and also retains a highly experienced informatics staff to maintain and develop high standards of data quality and improve systems for ensuring the rapid availability of data to users. ECN staff also work closely with informatics staff in CEH and European programmes to ensure that the ECN database develops in line with new technologies.

#### 6. Outbreaks of plant or animal disease and restricted access to sites.

Mitigation: In the event of any such outbreak, the ECN CCU will liaise closely with ECN managers and encourage them to comply fully with any imposed access restrictions or additional bio-safety procedures, engage with relevant landowners to ensure that loss of sampling and data is kept to a minimum, and ensure that a full sampling programme resumes as soon as restrictions are lifted.

### **Project Management**

Network co-ordination has been funded jointly since 1992 by NERC and Defra. It is undertaken by the ECN Central Co-ordination Unit (CCU) in CEH (largely located at CEH Lancaster) with in-kind support to committees provided by a range of partners in the policy community (e.g. ECN sponsors on the ECN Steering Committee) and with scientific input from the University and Institutes on the Scientific and Technical Advisory Group (STAG). The CCU comprises 4 FTEs who deal with operational and scientific coordination, sponsor liaison, data management and delivery, statistics and analysis, international development, and communications.

The ECN Research Coordinator, [REDACTED] has overall management responsibility for the project and will also be the day-to-day contact for the Defra Project Officer. The Defra Project Officer will be alerted as Milestones are reached and if unforeseen problems arise. The ECN Research Coordinator expects to hold a project start-up meeting with the Defra Project Officer, where more detailed plans will be made for the proposed Defra review. This project will continue to support the operational aspects of the ECN CCU as laid out in its current procedural documents on: standard measurement protocols, data transfer formats, data management and data access procedures, the ECN research strategy and the ECN communications strategy. Copies of these are available on the website at [www.ecn.ac.uk](http://www.ecn.ac.uk).

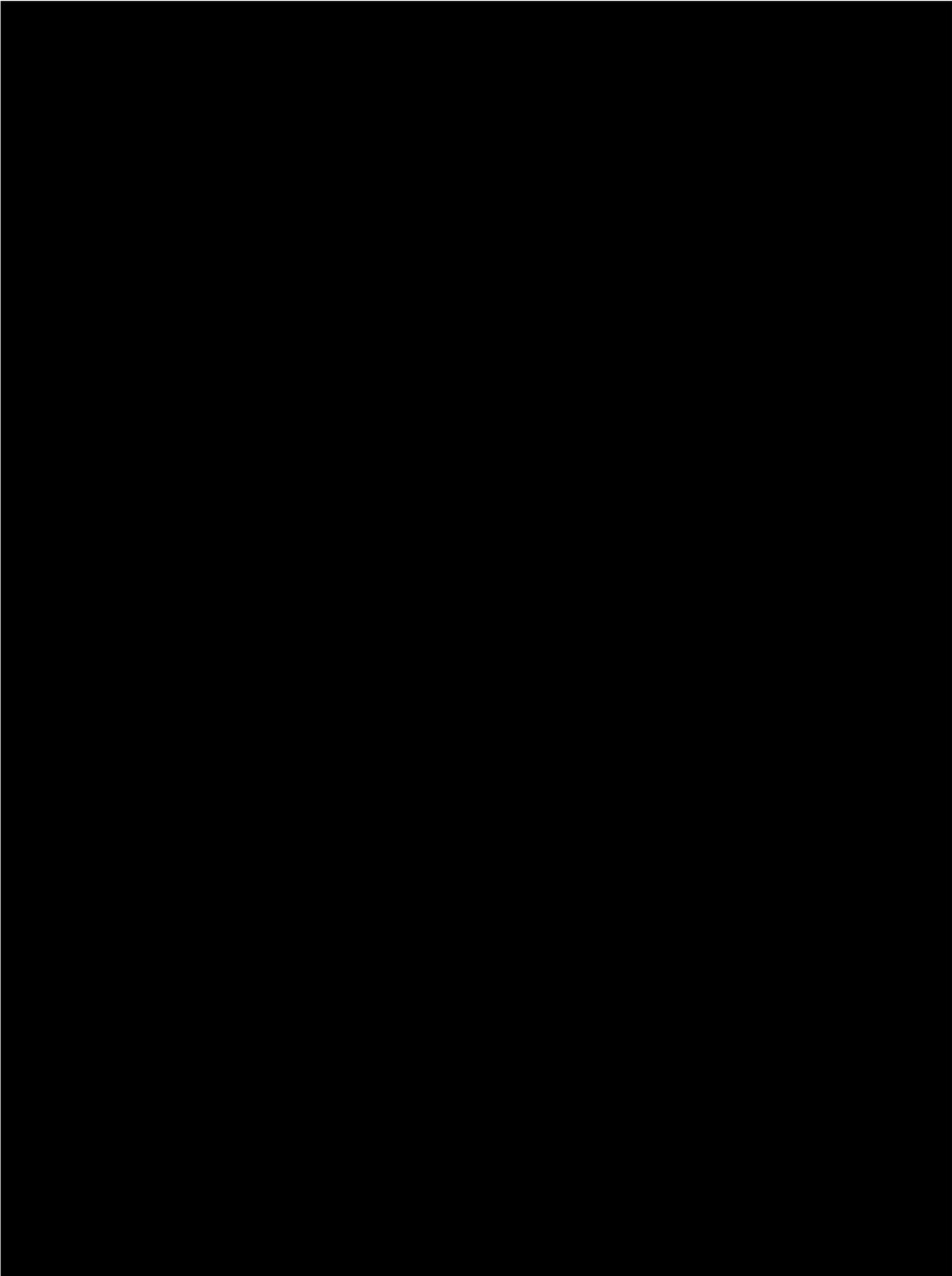
ECN CCU data management is led by [REDACTED] who oversees the development of the ECN database, ECN compliance with INSPIRE Directive, links between the ECN database and the CEH Gateway and the data.gov website, and has management responsibility for [REDACTED] who maintains the ECN Data Centre databases and acts as the principal point of contact for data providers. [REDACTED] is responsible for site operations across the ECN Network, is the principal point of contact with ECN site managers, and is responsible for organising annual meetings with ECN site managers. [REDACTED] will lead all ECN communication activities and provide the ECN CCU communication point with communication officers in Defra, CEH, NERC and other sponsor organisations.

The project is structured around a set of clearly defined milestones, which are listed below. Milestones will be used to prioritise work and monitor progress through the project. The ECN CCU team will meet on a regular basis to ensure work is progressing according to schedule and let the Defra project officer know if any problems or delays become apparent. A project initiation meeting will be held with Defra at the start of the project, and further meetings are proposed, largely by telecon to reduce travel costs, and annual face to face meetings. The Defra project officer will assist in providing telecon dial in facility.

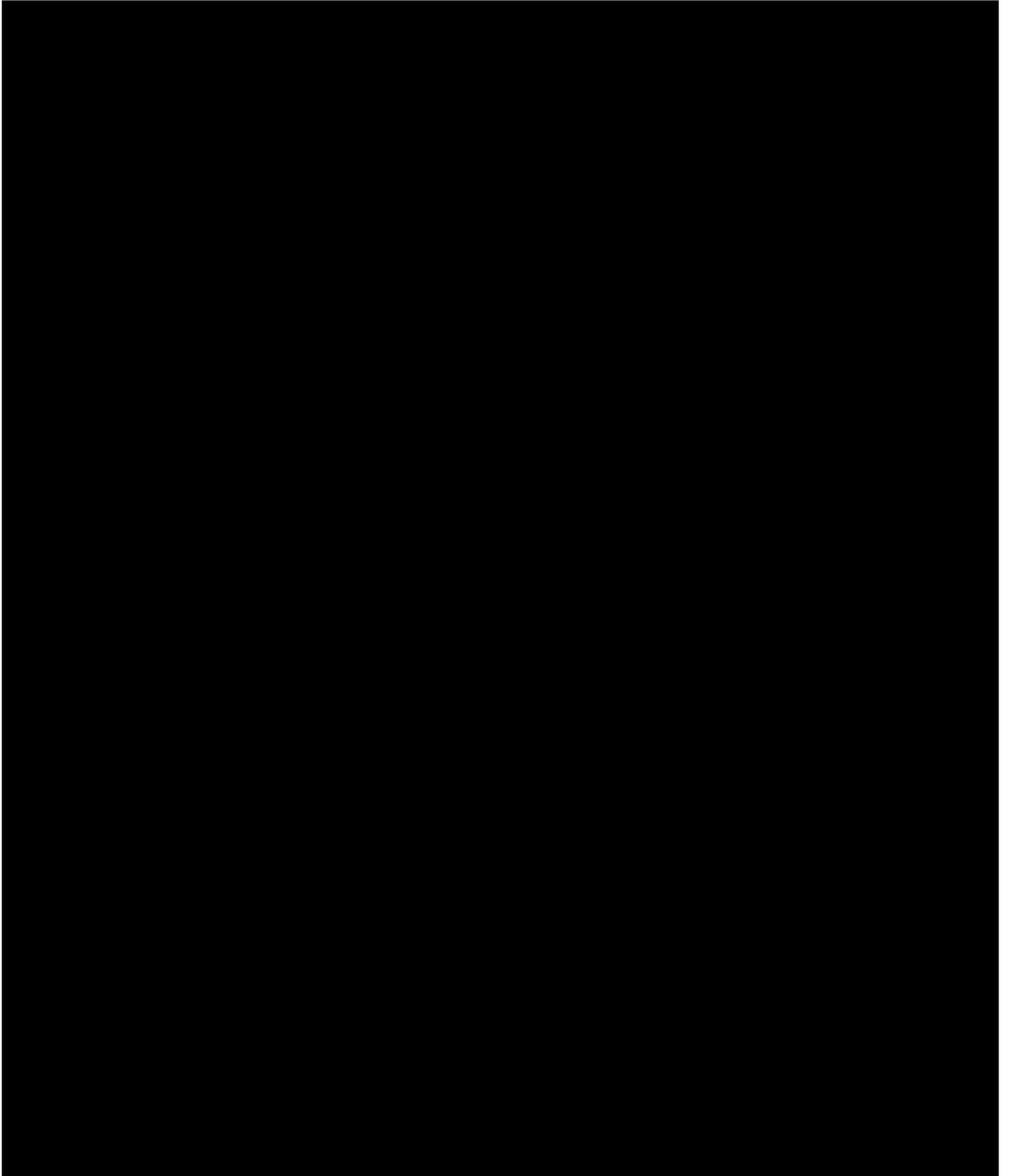
### **Proposed Team**

The proposed team comprises highly skilled members of the ECN CCU, based at CEH, who have many years of experience managing and developing the ECN data system, working with members of the ECN STAG and the ECN Steering Committee to ensure the ECN continues to deliver a high quality product to its various stake holders. Our team also comprises an environmental statistician, and a terrestrial plant

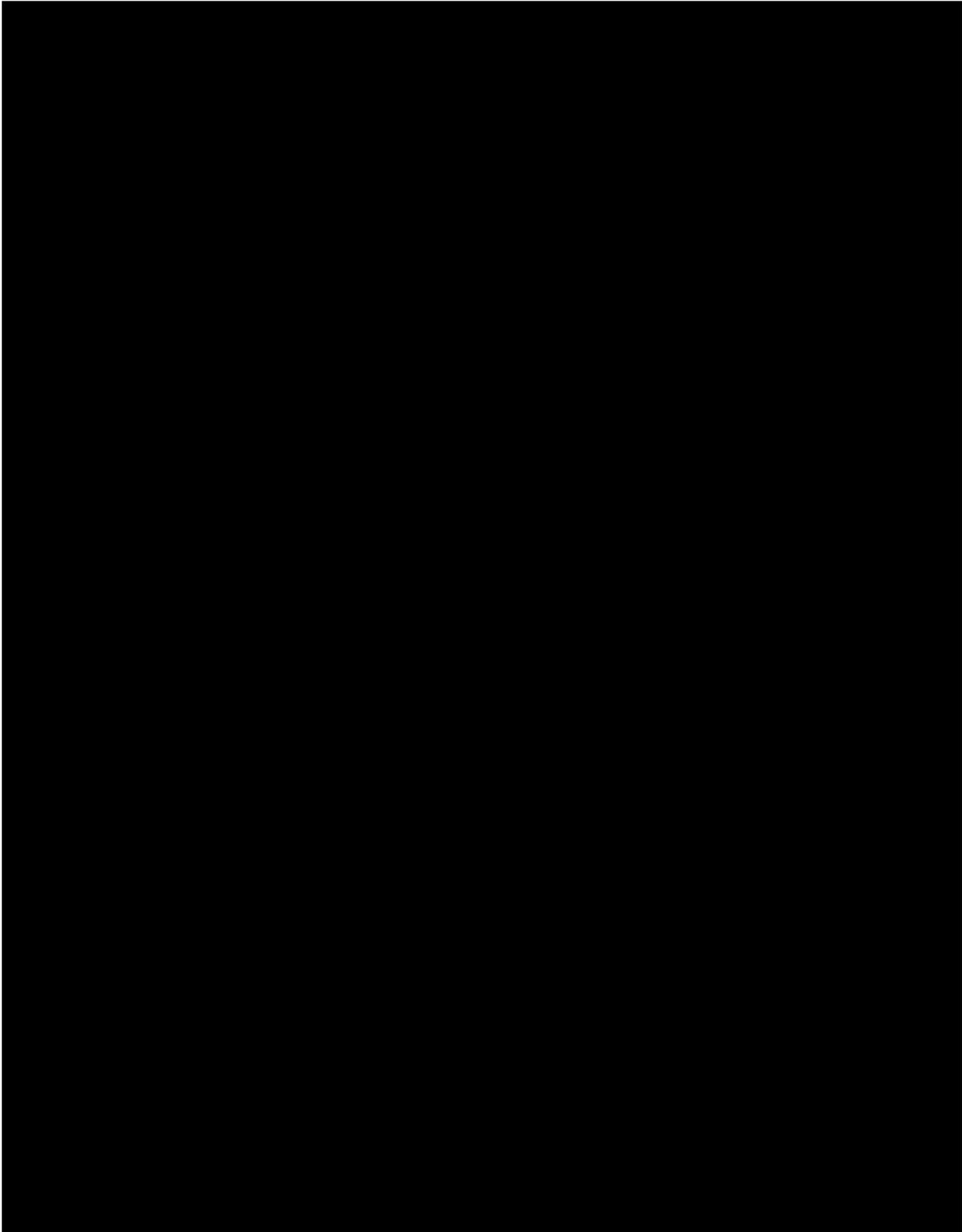
ecologist who will be assisting in the analysis and interpretation of ECN data for the purpose of provision of environmental indicators and scientific publications.



Project Costs



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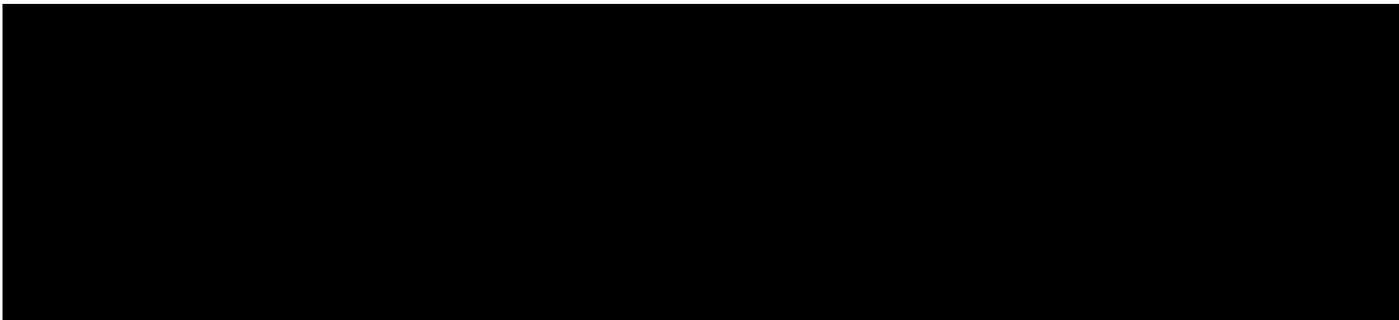


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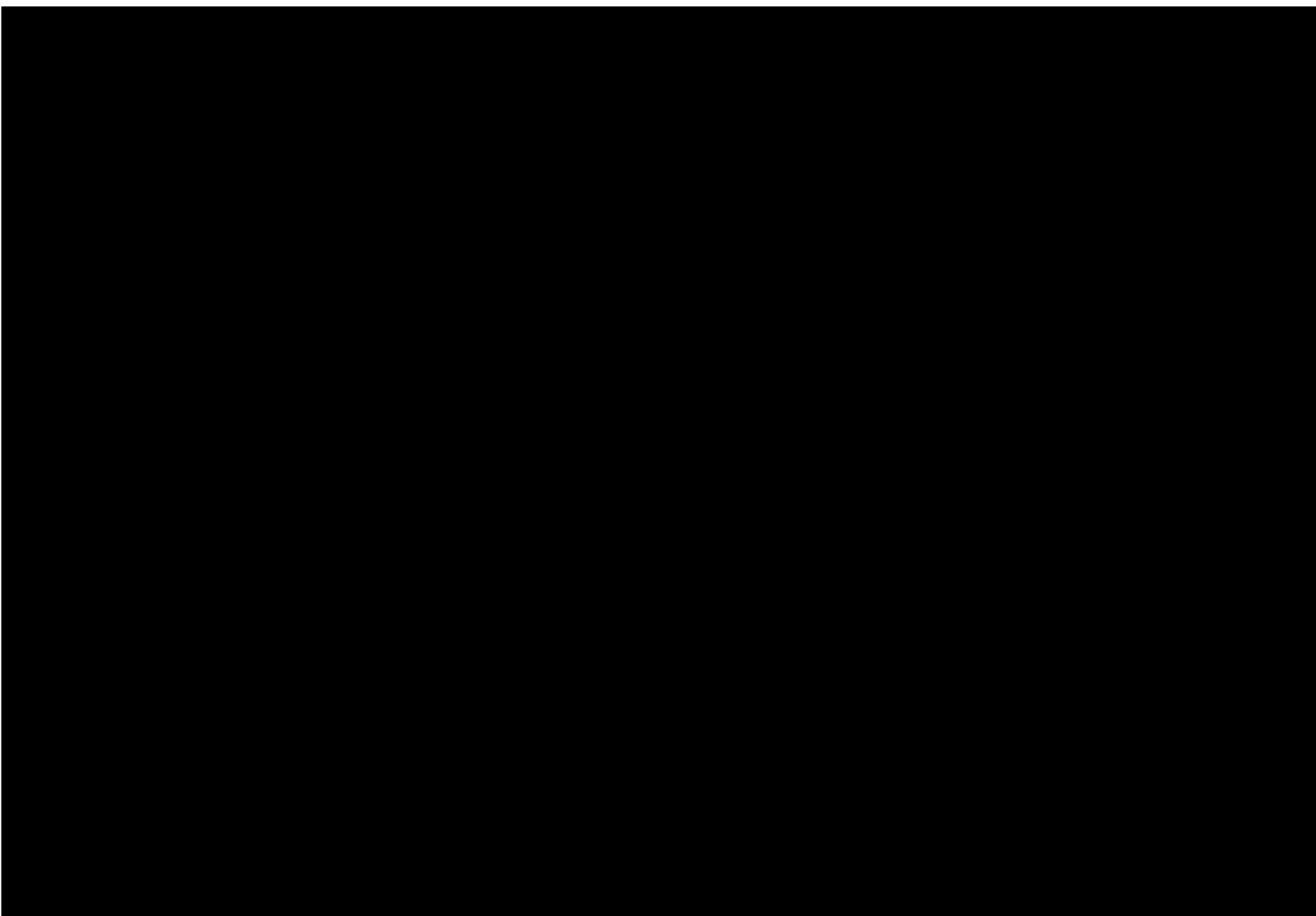
# SCHEDULE 2 – PRICING SCHEDULE

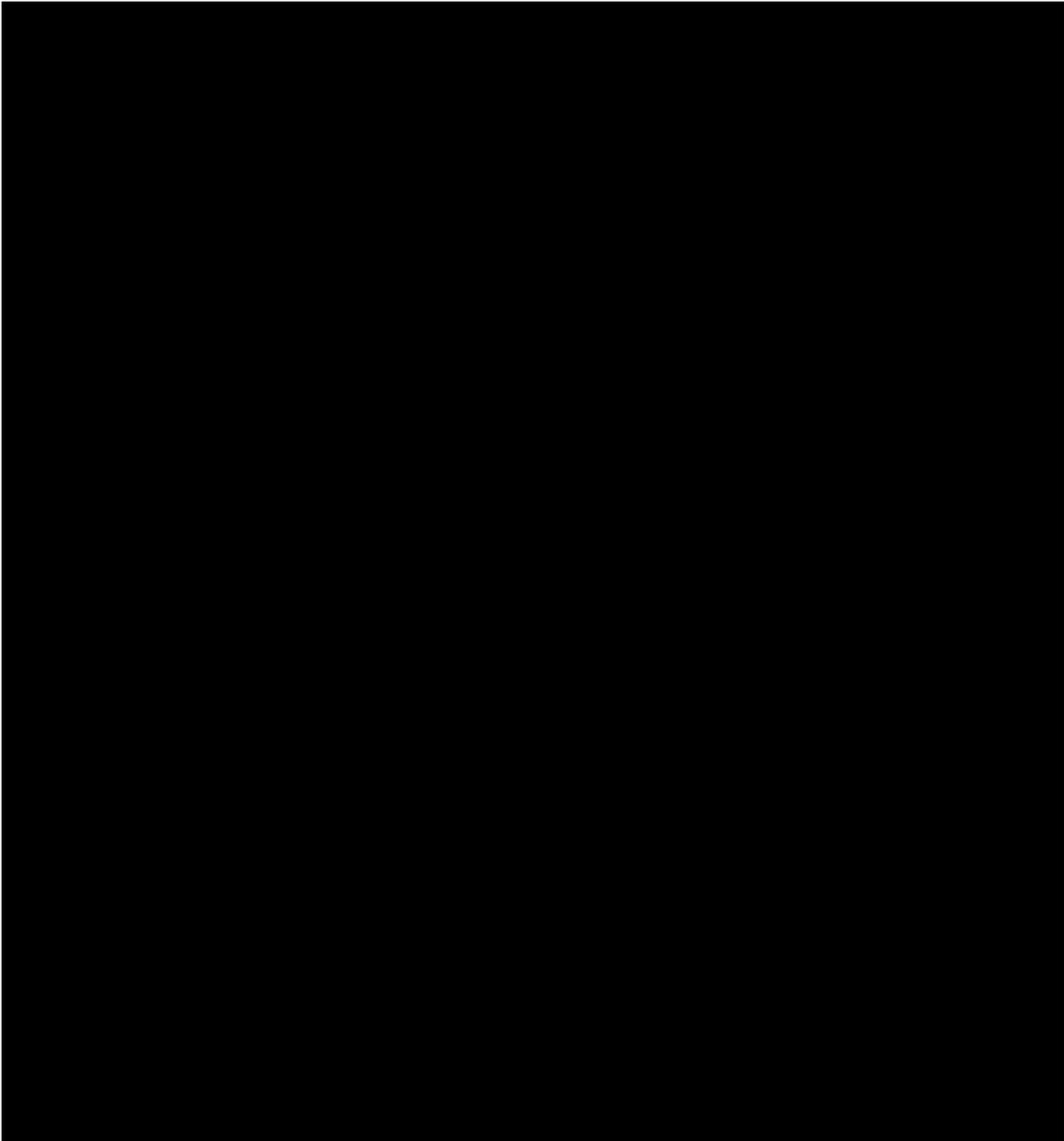
1. The Authority and the Co-funders, taken together, will pay to the Contractor no more than the fixed sum identified in Table 1 of **£196,143** (Ex VAT)

**Table 1: Summary of Costs (Ex VAT)- per financial year and total**

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2. The total of the payments (Ex VAT) to be made in accordance with the agreement, for each financial year as illustrated in **Table 1**.
3. Subject to any variation of the project, the amount in **Table 1** shall remain firm throughout the duration of the agreement.
4. In the event that the agreement is varied, the amount in **Table 1** shall be adjusted by such reasonable sum as may be agreed, in writing, between the authority and the contractor.
5. The payment arrangements shall be as follows:

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- b. The Authority is liable to the Contractors in respect of any payment to be made under the Agreement.
- c. Where the Contractors are required to charge VAT to the Authority at the current rate, the Contractors shall submit a VAT invoice at the beginning of each Financial Year covering all payments to be made during that year. No payment will be made by the Authority to such Contractor unless and until this invoice is received by the Authority.
- d. Any overpayment to the Contractors made by the Authority, whether of Project price or of VAT, shall be a sum of money recoverable by the Authority from the Contractors.
- e. The Contractor will be responsible for the payment of Sub-Contractors.

# SCHEDULE 3 - SECURITY REQUIREMENTS, POLICY AND PLAN

## INTERPRETATION AND DEFINITION

For the purposes of this Schedule 3, unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Breach of Security”** means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract.

**“Contractor Equipment”** means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Services;

**“ICT”** means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

**“Protectively Marked”** shall have the meaning as set out in the Security Policy Framework.

**“Security Plan”** means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 3.

**“Software”** means Specially Written Software, Contractor Software and Third Party Software.

**“Specially Written Software”** means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.

## 1. INTRODUCTION

This Schedule 3 covers:

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

## 2. PRINCIPLES OF SECURITY

- 2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.
- 2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
  - 2.2.1 is in accordance with Good Industry Practice and Law;
  - 2.2.2 complies with Security Policy Framework; and
  - 2.2.3 meets any specific security threats to the Contractor System.

- 2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):
- 2.3.1 loss of integrity of Authority Data;
  - 2.3.2 loss of confidentiality of Authority Data;
  - 2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;
  - 2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
  - 2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
  - 2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.

### **3. SECURITY PLAN**

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 3.
- 3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.
- 3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause I2 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.
- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
- 3.5.1 the provisions of this Schedule 3;
  - 3.5.2 the provisions of Schedule 1 relating to security;
  - 3.5.3 the Information Assurance Standards;
  - 3.5.4 the data protection compliance guidance produced by the Authority;
  - 3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;
  - 3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and

3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.

3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.

3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.

3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 3.

#### **4. AMENDMENT AND REVISION**

4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:

4.1.1 emerging changes in Good Industry Practice;

4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;

4.1.3 any new perceived or changed threats to the Contractor System;

4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or

4.1.5 a reasonable request by the Authority.

4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

#### **5. AUDIT AND TESTING**

5.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.

5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.

5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

## **6. BREACH OF SECURITY**

- 6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:
- 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
  - 6.2.2 prevent an equivalent breach in the future.
- 6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 3.
- 6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

## **APPENDIX 1- OUTLINE SECURITY PLAN**

## **APPENDIX 2 - SECURITY POLICY: SECURITY POLICY FRAMEWORK**

A copy of the Security Policy Framework may be found at:

<https://www.gov.uk/government/publications/security-policy-framework>