

NRW TERMS AND CONDITIONS FOR CONSULTANCY

GENERAL CONDITIONS

1. INTERPRETATION

- 1.1 The terms and expressions set out in Schedule 1 shall have the meanings ascribed therein.
- 1.2 Condition and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.11 References to conditions, clauses and paragraphs are to the conditions of the Contract and the paragraphs of the Schedules.
- 1.12 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **PRECEDENCE**

2.1 In the event of and only to the extent of any conflict between the Contract Order, the General Conditions, the Contract Specific Conditions or the Special Conditions, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Special Conditions;
- (b) the Contract Specific Conditions;
- (c) the General Conditions;
- (d) the Contract Order (which for the purposes of this condition 2 excludes any Special Conditions which take precedence by virtue of condition 2.1(a));
- (e) any other document referred to in the Contract.

2.2 Unless expressly agreed, a document varied pursuant to condition 8 shall not take higher precedence than specified here.

2.3 This Contract has been drafted in the English language. If this Contract is translated into any other language, the English language version shall prevail.

3. **DURATION**

3.1 The Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the last date of the Contract Period set out in the Contract Order, subject to earlier termination in accordance with the terms of the Contract or otherwise lawfully terminated.

3.2 NRW may, by giving written notice to the Contractor, extend the Contract for a further period up to the date set out in the Contract Order. The provisions of this Contract will apply throughout any such extended period.

4. **CONTRACTOR'S OBLIGATIONS**

4.1 The Contractor shall perform its obligations under the Contract in accordance with the terms and conditions set out in the Contract and shall comply and co-operate with any reasonable instructions given by NRW or the Contract Supervisor.

4.2 The Contractor is deemed to have satisfied himself as to the scope, extent and location of work to be carried out under the Contract.

- 4.3 The Contractor will, unless the Contract Order specifically states otherwise, be responsible at its own cost and expense for establishing its own sources of supply for any goods, equipment and materials and for the provision of all necessary Staff needed in connection with the management and performance of the Contract. The Contractor shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of NRW or any representative of NRW.
- 4.4 The Contractor shall be responsible for compliance with and ensure that all obligations are performed in accordance with the Health and Safety Requirements.
- 4.5 The Contractor shall ensure that, as an enduring obligation throughout the Contract Period it shall use the latest versions of antivirus definitions available and check for and delete any malicious software.
- 4.6 The Contractor shall, in performance of the Services, comply with the requirements of any government guidance in respect of data handling and security policies notified by NRW to the Contractor from time to time and shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with any security policy or plan in place.

5. **INVOICES, PAYMENT, COSTS AND TAX**

- 5.1 Unless otherwise specified in the Contract Order, NRW shall endeavour to pay undisputed sums due to the Contractor in accordance with the Contract Price within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of NRW.
- 5.2 Any invoices submitted by the Contractor shall contain the purchase order number provided by NRW, be expressed in sterling, contain all appropriate references, and a detailed breakdown of Services and will be supported by any other documents required by NRW to substantiate the invoice.
- 5.3 No overhead costs of the Contractor shall be chargeable to or payable by NRW unless specified in the Contract Order. 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.
- 5.4 Expenses may only be claimed by the Contractor where these are identified in the Contract Order as being recoverable, clearly identified, supported by original receipts and agreed in advance by the NRW Representative.

- 5.5 Invoices shall be submitted to NRW at the address identified in the Contract Order or such other address as NRW may notify the Contractor from time to time.
- 5.6 Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 5.7 NRW may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of NRW.
- 5.8 NRW may deduct and withhold from any sum due to the Contractor under this Contract any sum of money due from the Contractor to NRW whether owed under this Contract or otherwise.
- 5.9 The Contractor shall, within 14 days of receiving a request from NRW provide a report on all costs and expenses which it has incurred and are recoverable from NRW under the Contract. The report shall contain sufficient information to identify the purpose of such cost and expense and the identity of the receiver of the same For the avoidance of doubt the report shall include costs and expenses which have not yet been paid by the Contractor but which it is contractually liable to pay.
- 5.10 Notwithstanding the obligations to provide reports set out in condition 5.9, the Contractor shall inform NRW prior to it contractually incurring any significant costs or expenses in relation to this Contract. Significant costs in this clause shall mean any cost or expense which exceeds 5 percent of the total Contract Price.
- 5.11 Any late payment of undisputed invoices by NRW will be subject to interest at the rate of a maximum of 4 percent above the base rate from time to time of the Bank of England.
- 5.12 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty 30 days from the date of a valid invoice.

6. **WARRANTIES AND REPRESENTATIONS**

- 6.1 The Contractor warrants and represents that:

- 6.1.1 it has the 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;
- 6.1.2 all obligations of the Contractor hereunder shall be performed and rendered by appropriately experienced, qualified and trained staff with all due skill, care, ability and diligence including but not limited to Good Industry Practice and in accordance with its own established internal procedures;
- 6.1.3 all Staff used to provide the Services will be vetted in accordance with Good Industry Practice and, where applicable, will be subject to NRW's employment check policy or equivalent and any security policy notified to the Contractor from time to time;
- 6.1.4 the Services shall be to the reasonable satisfaction of NRW and meet any requirements made known to the Contractor by NRW;
- 6.1.5 the Services shall correspond with the requirements of the Contract Order and any other specification within the Contract;
- 6.1.6 the Services shall conform in all respects with the requirements of any applicable Law from time to time in force and that it has and will continue to hold all necessary (if any) licences, consents, permissions and regulatory approvals from any Regulatory Body necessary to perform the Contractor's obligations under the Contract;
- 6.1.7 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract;
- 6.1.8 it has not and its directors, partners or other senior Staff, have not committed any of the offences set out in Regulation 57 of the Public Contracts Regulations 2015.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights in any information or material introduced by one Party to the other Party pursuant to this Contract shall remain the property of the Party that owned such Intellectual Property Rights prior to such introduction.

- 7.2 The Contractor grants NRW a non-exclusive perpetual licence to the Existing Rights solely in order for NRW to make use and allow others to make use of the Services and the Resulting Rights.
- 7.3 The Contractor undertakes that it has identified and declared to NRW any data, documentation or know how which the Contractor or its sub-contractors owns, or has rights to, immediately prior to the commencement of the Contract which could be reasonably judged necessary for the Services to be used. The Contractor further undertakes to take, on NRW's request, all such reasonable steps that are necessary to provide access to such data and documentation as required to enable NRW to make use of the Services.
- 7.4 The Contractor hereby assigns to NRW all Resulting Rights and all materials embodying such rights to the fullest extent permitted by law and shall complete any such documentation and do all such things as NRW may require to evidence such assignment.
- 7.5 The Contractor undertakes:
- 7.5.1 to notify to NRW in writing full details of any Resulting Rights promptly on their creation, together with full details of the following;
- (a) any data, methods or information created by the Contractor (that will not be described, or otherwise included, in the Services);
 - (b) improved ways of processing or analysing data or information (that will not be described, or otherwise included, in the Services);
 - (c) any errors or mistakes identified in any information or data supplied by NRW; or
 - (d) any potential patentable inventions arising from the Contract.

In the event that the Contractor believes there is nothing to notify this should be confirmed in writing before submission of the final invoice.

- 7.5.2 whenever requested to do so by NRW and in any event on the termination of an Engagement, promptly to deliver to NRW all Confidential Information received from NRW under the terms of this Contract which are in its possession, custody or power.

- 7.5.3 that it has identified and declared to NRW any Intellectual Property Rights that the Contractor or its sub contractors owns, or has rights to, immediately prior to the commencement of the Contract that could be enhanced by or developed under the Contract, in sufficient detail to ensure that they can be differentiated from those created during the performance of this Contract.
- 7.6 The Contractor shall not, and shall procure that the Contractor's Staff and suppliers shall not (except when necessary for the implementation of the Contract) without prior consent from NRW, use or disclose Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.
- 7.7 The Contractor waives, or shall procure the waiver, of any moral rights in the Resulting Rights, to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support or maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Intellectual Property Rights or other materials, infringes the Contractors moral rights.
- 7.8 The Contractor warrants and represents that any materials, products, information or service supplied or licensed by the Contractor under this Contract will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and shall keep indemnified NRW against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which NRW may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim refers to designs furnished by NRW or the use of data supplied by NRW which is not required to be verified by the Contractor under any provision of the Contract.
- 7.9 The cover of all reports or drawings forming part of the Services will include a statement © Natural Resources Wales and the date of creation. Any maps produced by the Contractor in the course of the Contract that contain OS basemaps provided by NRW must include the statement 'Crown copyright and database rights (year of supply) Ordnance Survey 100019741'.

8. **ALTERATION OF REQUIREMENT**

8.1 No variation of the Contract or of any document referred to in it shall be effective unless the costs of the variation shall be agreed and details of the variation are in writing and signed by the parties.

9. **CONFLICT OF INTEREST**

9.1 The Contractor confirms that at the date of the Contract, neither the Contractor nor any of its Staff or suppliers are placed in a position where there is or may be any actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to NRW under the provisions of the Contract and that it shall take appropriate steps to ensure that there is no such conflict throughout the Contract Period. The Contractor will disclose to NRW full particulars of any such conflict of interest which may arise.

9.2 The provisions of this condition 9 shall apply during the continuance of the Contract and indefinitely after its termination.

10. **BRIBERY AND CORRUPTION**

10.1 The Contractor shall:

10.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

10.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

10.1.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and condition 10.1.1, and will enforce them where appropriate;

10.1.4 promptly report to NRW any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract;

10.1.5 when reasonably requested by NRW, certify to NRW in writing signed by an officer of the Contractor compliance with this clause by the Contractor and all persons associated with it under condition 10.2. The Contractor shall provide such other supporting evidence of compliance as NRW may reasonably request.

10.2 The Contractor shall ensure that any person associated with the Contractor who is performing Services or providing Goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this condition 10 (**Relevant Terms**). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to NRW for any breach by such persons of any of the Relevant Terms.

10.3 Breach of this condition 10 shall be deemed a material breach of this Contract.

11. **EQUALITY AND EQUAL OPPORTUNITIES**

11.1 The Contractor shall not, and shall procure that its Staff shall not, unlawfully discriminate (whether directly or indirectly) against any person.

11.2 The Contractor shall, and shall procure that its Staff involved in the provision of the Services shall, comply with NRW's policy on equal opportunities (as amended from time to time).

11.3 In the event of any finding of unlawful discrimination being made against the Contractor or any of its Staff engaged by the Contractor during the term of the Contract by any Court or tribunal, or of any adverse finding in any formal investigation by an official body over the same period, the Contractor must immediately inform NRW of this in writing and must immediately take all necessary steps to prevent repetition of the unlawful discrimination. The Contractor must on request, provide NRW with written details of all steps taken under this condition.

12. **NRW DATA**

12.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to any NRW Data.

12.2 The Contractor shall not store, copy or disclose or use the NRW Data except as necessary for the performance by the Contractor of its obligations under this Contract

or as otherwise expressly authorised in writing by NRW. Any NRW Data supplied to the Contractor should be returned or destroyed on termination of this Contract.

- 12.3 To the extent that the NRW Data is held and/or processed by the Contractor, the Contractor shall supply that NRW Data to NRW as requested by NRW in the format specified in the request.
- 12.4 The Contractor shall take responsibility for preserving the integrity of NRW Data and preventing the corruption or loss of NRW Data.
- 12.5 NRW Data and any third party-owned data issued by NRW to the Contractor will be provided by means of a licence. The Contractor agrees to adhere to all terms and conditions applicable to the relevant licence and to ensure that all published outputs are annotated with the correct acknowledgments or copyright statement as provided in the licence.
- 12.6 The Contractor shall perform secure back-ups of all NRW Data and shall ensure that up to date back-ups are stored off-site and in accordance with any business continuity and disaster recovery plan NRW have in place or requires the Contractor to have in place. The Contractor shall ensure that such back-ups are available to NRW at all times upon request and are delivered to NRW at no less than 3 monthly intervals or as requested by NRW.
- 12.7 The Contractor shall ensure that any system on which the Contractor holds any NRW Data, including back-up data, is a secure system that complies with any security policy of NRW and that it has in place appropriate technical and organisational measures to ensure the security of the same.
- 12.8 If the NRW Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, NRW may:
- 12.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of NRW Data to the extent and in accordance with the requirements specified by NRW; and/or
 - 12.8.2 itself restore or procure the restoration of NRW Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified by NRW.
- 12.9 If at any time the Contractor suspects or has reason to believe that NRW Data has or may become corrupted, lost or sufficiently degraded in any way for any reason then

the Contractor shall notify NRW immediately and inform NRW of the remedial action the Contractor proposes to take.

13. **DATA PROTECTION**

13.1 Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, NRW and the Contractor are each data processors in respect of Personal Data processed under this Contract. Where the Contractor is processing Personal Data on behalf of NRW it will be a data processor and must comply with the provisions of clause 13 and schedule 3. To the extent that NRW is processing Personal Data on behalf of the Contractor it will be a data controller and must comply with the provisions of this clause 13 and schedule 4 (where data controller and data processor have the meanings as defined in the Data Protection Legislation). Schedules 3 and 4 set out the scope, nature and purpose of processing, the duration of the processing and the types of Personal Data and categories of data subject.

13.3 Without prejudice to the generality of clause 13.1, when acting as a data controller, each party shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the data processor for the duration and purposes of this Contract.

13.4 Without prejudice to the generality of clause 13.1, a data processor shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Contract:

13.4.1 process that Personal Data only on the written instructions of the data controller unless the data processor is required by the Applicable Laws to process Personal Data. Where the data processor is relying on the Applicable Laws as the basis for processing Personal Data, the data processor shall promptly notify the data controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the data processor from so notifying the data controller;

13.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the data controller, to protect against unauthorised or unlawful processing of Personal Data and against accidental

loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

13.4.3 ensure that all of its personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and do not process Personal Data except in accordance with this Contract;

13.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the data controller has been obtained and the following conditions are fulfilled:

- (a) NRW or the Contractor have provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;
- (c) the data processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the data processor complies with reasonable instructions notified to it in advance by the data controller with respect to the processing of the Personal Data;

13.4.5 assist the data controller in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

13.4.6 notify the data controller without undue delay on becoming aware of a Personal Data breach;

13.4.7 at the written direction of the data controller, delete or return Personal Data and copies thereof to the data controller on termination of the Contract unless required by the Applicable Laws to store the Personal Data; and

13.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the data controller or the data controller's designated auditor.

13.4.9 subject to clause 13.4.10, notify the data controller immediately if it:

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

13.4.10 The data processor's obligation to notify under clause 13.4.9 shall include the provision of further information to the data controller in phases, as details become available.

13.5 Before allowing any sub-processor to process any Personal Data related to this Contract, a data processor must:

- (a) notify the data controller in writing of the intended sub-processor and processing;
- (b) obtain the written consent of the data controller;

- (c) enter into a written agreement with the sub-processor which gives effect to the terms set out in this clause 13 such that they apply to the sub-processor; and
- (d) provide the data controller with such information regarding the sub-processor as the data controller may reasonably require.

13.6 NRW may, at any time on not less than 30 days' notice, revise this clause 13 by:

- (a) replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract); or
- (b) amending it to ensure that it complies with any guidance issued by the Information Commissioner's Office.

13.7 The provisions of this condition shall apply during the Contract Period and indefinitely after its expiry or termination.

14. **CONFIDENTIALITY**

14.1 Each party:

14.1.1 shall treat all Confidential Information belonging to the other as confidential and safeguard it accordingly; and

14.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

14.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from NRW under or in connection with the Contract:

14.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

- 14.2.2 is treated as confidential and not disclosed (without the prior written consent of NRW) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract; and
 - 14.2.3 that its Staff or professional advisors or consultants are aware of the Contractor's confidentiality obligations under the Contract and shall sign a confidentiality undertaking on the same terms before commencing work in connection with the Contract.
- 14.3 This condition 14 shall not apply to Confidential Information which:
- 14.3.1 is or becomes publicly available (otherwise than by a breach of any obligation of confidentiality); or
 - 14.3.2 was known to a party, without restriction as to its disclosure, before the information was disclosed to it by the other party; or
 - 14.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 14.3.4 is required to be disclosed by Law; or
 - 14.3.5 is independently developed by a party without direct or indirect access to, or use or knowledge of, the information disclosed to it by the other party.
- 14.4 Nothing in this Contract shall prevent NRW from disclosing the Contractor's Confidential Information:
- 14.4.1 to Welsh Government or any other Contracting Authority who shall be entitled to further disclose the Confidential Information to its other departments or Contracting Authorities on the basis it is confidential and not be disclosed to any non-Contracting Authority third party;
 - 14.4.2 to any consultant, contractor or other person engaged by NRW or any person for the purposes of an audit review;
 - 14.4.3 for the purpose of examination and certification of NRW's accounts or where required under any audit of the economy, efficiency and effectiveness with which NRW has used its resources.

- 14.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Contract are granted to the other party, or to be implied from this Contract.
- 14.6 On termination of this Contract, each party shall:
- 14.6.1 return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - 14.6.2 erase all the other party's Confidential Information from its computer systems (to the extent possible); and
 - 14.6.3 certify in writing to the other party that it has complied with the requirements of this condition, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by Law. The provisions of this condition shall continue to apply to any such documents and materials retained by a recipient party.

Provided that this condition 14.6 shall not apply to any Confidential Information provided by the Contractor to NRW in performing its obligations under this Contract and which is necessary for NRW to benefit from the Services following termination.

- 14.7 Except as expressly stated in this Contract, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 14.8 The provisions of this condition shall continue to apply after termination of this Contract.
15. **FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**
- 15.1 The Contractor acknowledges that NRW is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and co-operate with NRW (at the Contractor's expense) to enable NRW to comply with these requirements.
- 15.2 NRW shall be responsible for determining at its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA

or the EIR or is to be disclosed in response to a request for information and in no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by NRW.

- 15.3 In responding to a request for information, including information in connection with the Contract (including but not limited to tender documents, subsequent contractual information or information classified as confidential or sensitive) NRW will, where in its absolute discretion it deems necessary, use reasonable endeavours to consult the Contractor. Notwithstanding this the Contractor acknowledges that NRW may disclose information without consulting the Contractor, or following consultation with the Contractor having taken its views into account.
- 15.4 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall provide all necessary assistance as reasonably requested by NRW to enable NRW to respond to a request for information within the time for compliance and shall permit NRW to inspect such records as requested from time to time.

16. **SECURITY**

- 16.1 The Contractor acknowledges that NRW places great emphasis on confidentiality, integrity and availability of information and consequently on the security of Premises and the security of any of the Contractor's systems. The Contractor also acknowledges the confidentiality of NRW's Data.
- 16.2 The Contractor shall be responsible for the security of any of its systems and shall at all times provide a level of security which:
- 16.2.1 is in accordance with Good Industry Practice and Law;
 - 16.2.2 complies with any security policy of NRW or any policy NRW require the Contractor to develop, implement and maintain;
 - 16.2.3 meets any specific security threats to any of the Contractor's systems; and
 - 16.2.4 any other extent national information security requirements and guidance issued from time to time.
- 16.3 The Contractor should avoid the use of removable media to store NRW Data or information wherever possible. In the event that removable media is used the Contractor shall ensure:

- 16.3.1 the NRW Data or information transferred to the removable media is the absolute minimum necessary to carry out the Services, both in terms of the number of people covered by the information and the scope of information held;
 - 16.3.2 the removable media should be encrypted to an agreed standard and must be protected by an authentication mechanism; and
 - 16.3.3 user rights to transfer NRW Data to removable media should be strictly limited to staff for whom it is absolutely necessary.
- 16.4 The Contractor shall as an enduring obligation throughout the Contract Period use the latest versions of anti-virus definitions available to check for and delete any malicious software from its systems or the operating environment.
- 16.5 Without limiting conditions 16.2 and 16.3, 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 (in accordance with Good Industry Practice for the UK public sector):
- 16.5.1 loss of integrity of NRW Data;
 - 16.5.2 loss of confidentiality of NRW Data;
 - 16.5.3 unauthorised access to, use of, or interference with NRW Data by any person or organisation;
 - 16.5.4 unauthorised access to network elements, Premises and tools used by the Contractor in the provision of the Services;
 - 16.5.5 use of the Contractor's systems or Services by any third party in order to gain unauthorised access to any computer resource or NRW Data; and
 - 16.5.6 loss of availability of NRW Data due to any failure or compromise of the Services.
- 16.6 Either Party shall notify the other immediately upon becoming aware of any malicious software or breach of security including, but not limited to, an actual, potential or attempted breach, or threat to any security plan that NRW have in place or may require the Contractor to develop and put in place.

16.7 Upon becoming aware of any circumstances referred to in condition 16.5 the Contractor shall immediately take all reasonable steps necessary to:

16.7.1 remedy such breach or protect the Contractors systems against any such potential or attempted breach or threat; and

16.7.2 prevent an equivalent breach in the future

Such steps shall include any action or changes reasonably required by NRW.

16.8 In the event of any circumstances referred to in condition 16.5 the Contractor shall as soon as reasonably practicable provide to NRW full details (using such reporting mechanism as may be specified by NRW from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

17. **TERMINATION**

17.1 Without prejudice to any other rights or remedies which NRW may have, NRW may terminate this Contract by giving three months' written notice to the Contractor.

17.2 NRW may terminate the Contract by notice in writing with immediate effect with no liability to make any further payment to the Contractor (other than in respect of amounts accrued prior to the date of termination) where the Contractor:

17.2.1 undergoes a change of control, within the meaning of section 1124 of the Income and Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Contract; or

17.2.2 becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a receiver or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or

17.2.3 commits, or any of its directors, partners or senior Staff commit, an offence as set out in Regulation 57 of the Public Contracts Regulations 2015 (as amended) or is guilty of any fraud or dishonesty or acts in any manner which in the opinion of NRW brings or is likely to bring the Contractor or NRW into disrepute or is materially adverse to the interests of NRW; or

17.2.4 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the

meaning of section 123 of the Insolvency Act 1986 or the Contractor ceases to trade; or

17.2.5 commits any serious or repeated breach or non-observance of any of the provisions of the Contract or refuses or neglects to comply with any reasonable and lawful directions of NRW.

17.3 NRW may only exercise its right under condition 17.2.1 within six months of the date a change of control occurs and shall not be permitted to do so where it has agreed in writing in advance to the particular change of control that occurs. The Contractor shall notify the Contract Supervisor immediately when any change of control occurs.

17.4 Either party may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the other party with immediate effect if that other party commits a Default and if:

17.4.1 the Default is not remedied within 30 days, or such other period as may be agreed between the parties, after issue of a written notice specifying the Default and requesting it to be remedied; or

17.4.2 the Default is not capable of remedy; or

17.4.3 the Default is a fundamental breach of the Contract.

18. **CONSEQUENCES OF TERMINATION**

18.1 On termination of the Contract pursuant to conditions 17.1, 17.2.1, 17.2.2 or 17.2.4 NRW shall:

18.1.1 pay to the Contractor sums due and reasonably incurred up to the date of termination where NRW has received Goods or Services to the equivalent value;

18.1.2 pay to the Contractor sums due for expenditure incurred after the date of termination only in so far as it is a result of commitments entered into by the Contractor in good faith before the date on which notice of termination was given and which cannot be voided on or before the termination date. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence of losses reasonably and actually incurred by the Contractor as a result of termination within 5 days of receiving the notice of termination

provided that any such sum payable in accordance with this condition 18.1 shall only be payable by NRW if they would have been payable in accordance with this Contract if it had not been terminated

18.2 NRW shall not be liable under condition 18.1.2 to pay any sum which was claimable under insurance held by the Contractor, or when added to any sum paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period.

19. **EMPLOYMENT REGULATIONS**

19.1 In the event that the termination of this Contract could constitute a “relevant transfer” within the meaning of the Employment Regulations, the Contractor undertakes to NRW:

19.1.1 to comply within any of its obligations under the Employment Regulations and to co-operate with NRW and or any Replacement Contractor in the event of a relevant transfer;

19.1.2 that it has not made any amendment or change to the terms and conditions of its Staff in the 6 months preceding termination of this Contract;

19.1.3 to indemnify and keep NRW indemnified against all liabilities, costs, losses, claims, charges, demands or expenses which are attributable to any act or omission by the Contractor prior to or arising from the termination of the Contract in respect of any of the Contractor’s obligations or duties (whether arising under common law, statute, custom or otherwise) to or in relation to any of its Staff or former staff (including but not limited to any liability arising out of the termination or dismissal of any employee or former employee or out of a failure by the Contractor to comply with its obligations under the Employment Regulations);

19.1.4 that all amounts payable to or in relation to its Staff engaged in the performance of this Contract (including wages and salaries, overtime, bonus or commission (earned but unpaid), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period prior to the termination of this Contract shall be discharged by the Contractor and the Contractor undertakes to

indemnify NRW against any and all costs, charges and expenses arising out of or in connection with such amounts; and

19.1.5 to indemnify NRW and any Replacement Contractor in respect of any claims arising from any act or omission of the Contractor in relation to any other of the Contractor's Staff who are not employed, assigned or engaged in providing the Services under the Contract.

19.2 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this condition 19 to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

20. **LIABILITY AND INSURANCE**

20.1 Neither party excludes or limits liability to the other for death or personal injury caused by its negligence or for any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or such other liability that it is not permissible to exclude by law.

20.2 The Contractor shall indemnify and keep indemnified NRW fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of, or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by an act or omission of the Contractor. This condition 20.2 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or by any circumstances within its or their control.

20.3 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing a level of cover and other terms of insurance acceptable to and agreed by NRW in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property, employers liability, product liability, professional indemnity 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.

- 20.4 The Contractor shall on request supply to NRW copies of such insurance policies and evidence that the relevant premiums have been paid.
- 20.5 The Contractor shall notify NRW as soon as possible and in any event within 48 hours of any incident that may lead to any claim, demand or proceedings and shall supply such particulars or details thereof as NRW shall reasonably require.
- 20.6 The Contractor shall fully and promptly indemnify NRW in respect of any damage whatsoever caused by any staff of the Contractor, whether such damage be caused by negligence or in any other way whatsoever to any land, building or chattel in the ownership, occupation or possession of NRW arising out of or in consequence of the performance of the Contract or the performance of the Services.

21. **LIMITATION OF LIABILITY**

21.1 Subject to condition 20.1, NRW's total liability arising under, or in connection with, this Contract, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:

21.1.1 for non-payment of invoices for Services purchased, to the amount unpaid;
or

21.1.2 for any other type of liability, to the amount paid for the Services under the Contract.

21.2 Subject to condition 20.1, the Contractor's total liability arising under, or in connection with, this Contract, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to five (5) million pounds or one hundred and twenty five percent (125%) of the total Contract Price whichever is the greater.

21.3 Subject to condition 20.1, neither Party will be liable to the other Party for:

21.3.1 any indirect, special or consequential loss or damage; or

21.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

21.4 Subject to condition 21.2 NRW may, amongst other things, recover as a direct loss:

21.4.1 any additional operational and/or administrative costs and expenses arising from the Contractor's Default;

21.4.2 any wasted expenditure or charges rendered unnecessary and/or incurred by NRW arising from the Contractor's Default;

21.4.3 the additional cost of procuring replacement Services for the remainder of the Contract Period; and

21.4.4 any anticipated savings.

22. ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS

22.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the prior written consent of NRW. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

22.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

22.3 NRW may at any time novate, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

23. ENVIRONMENTAL OBLIGATIONS

23.1 The Contractor shall provide the Services in compliance at all times with all Environmental Law and other regulations impacting on the Conduct of the Contractor's business and with due consideration of the Environmental Targets.

23.2 In provision of the Services the Contractor will use reasonable endeavours to contribute to the Environmental Targets.

23.3 The Contractor shall in all its own operations, including purchase of materials and Services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and shall ensure that no harm to any person, property of the environment may result from the acts or omissions of the Contractor's employees, subcontractors and agents in relation to the Contract and be able to provide proof of so doing to the Contract Supervisor on demand.

23.4 The Contractor confirms that:

- a) the process used in the manufacture of Goods minimises the use of ozone depleting substances, toxic chemicals and other pollutants including lead, methyl chloroform and formaldehyde;
- b) alternatives to non-renewable natural resources have been sought and used as a preference wherever possible; and
- c) in the manufacture of Goods and in the choice of any associated packaging, it has given preference to materials that contain maximum recycled content and capacity for recycling or, where cost-effective recycling is impracticable, maximum biodegradability.

24. **FIRES**

- 24.1 When carrying out Services on NRW's Premises, the Contractor shall not light fires within the forest area without permission of NRW and shall take all reasonable and proper precautions under the direction of NRW to prevent and to deal with fire in the said area or adjoining ground and the Contractor shall be responsible for any loss whatsoever through fire attributable to its negligence.

25. **CARAVANS ETC**

- 25.1 When carrying out Services on NRW's Premises, the Contractor agrees to ensure that no caravan, mobile home, campervan or equivalent vehicle or tent shall be brought onto NRW's land without the written consent of NRW (which consent may be withheld or given subject to such conditions as NRW may, in its discretion, determine).

26. **ACCESS, PREMISES AND MATERIALS**

- 26.1 NRW's policy is to allow public access to all NRW forests wherever possible (subject to NRW's Byelaws, where applicable). However access is not allowed when this would infringe upon any agreements, covenants or undertakings and is controlled where it conflicts with the management and protection of the forest. The Contractor shall observe NRW's policy on public access at all times and shall be responsible for informing all employees and sub-contractors of the same. In particular the Contractor shall observe any specific permissions and consents relating to other activities occurring on or near any location where the Services are being performed and shall obey the written or verbal instructions of any NRW officer.

26.2 Without prejudice to its other obligations under this Contract, the Contractor shall ensure that:-

26.2.1 all vehicles operated by or on behalf of the Contractor shall be in a roadworthy condition and suitable for the relevant road conditions and terrain and shall be driven or used only by competent personnel with all proper skill, care and attention and shall be driven at such speed as shall be prudent and reasonable in all the circumstances, having regard (without limitation) to the nature of the route, vehicular load and prevailing weather and road conditions;

26.2.2 all vehicles and/or equipment operated by or on behalf of the Contractor shall be in a safe and operable condition and, without prejudice to the foregoing, shall comply with and be operated in accordance with all applicable legal requirements;

26.2.3 the use of any machine or method of working operated by or on behalf of the Contractor which is causing or is likely to cause, in the opinion of NRW, avoidable damage to standing trees, any road, path, track or drain, or to other property, is stopped on request from NRW; and

26.2.4 the Authorised Access Routes and all roads in and around any Work Site (including, for the avoidance of doubt all public rights of way and access) are at all times kept free of obstructions resulting from the Contractor's operations which would prevent free flow of traffic except for a minimum of delay, except where agreement has been reached for temporary closure in connection with the performance of the Services or unless otherwise specifically agreed by NRW.

26.3 The Contractor must use Authorised Access Routes only (and may use such routes solely for the fulfilment of its obligations under the Contract). The Contractor must take every reasonable precaution to prevent any avoidable damage to such Authorised Access Routes (including, without prejudice to the generality of the foregoing, ensuring that they are not used after exceptionally heavy rains or during or after a thaw, until suitable for use without causing avoidable damage) and restore all actual damage occasioned thereto. The use of such routes shall be at the Contractor's own risk and (save to the extent occasioned by the negligence of NRW or its employees) NRW shall not be liable for any damage or injury arising out of the Contractor's use

of such routes. NRW gives no warranty that any such Authorised Access Routes will be usable by vehicles at any specified time.

26.4 In the event that all or part of the Authorised Access Routes require to be repaired or maintained, NRW shall be entitled, after consultation with the Contractor save in an emergency, to close all or part of the Authorised Access Routes while the work is carried out.

26.5 All equipment, plant and materials brought onto the Work Site by or on behalf of the Contractor shall be at the Contractor's own risk and NRW shall have no liability for any loss or damage to any such equipment, plant or materials unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence of NRW or its employees. The Contractor shall provide for the haulage or carriage thereof to the Work Site and the removal thereof when no longer required at its sole cost. Unless otherwise agreed, the equipment, plant and materials brought onto the Work Site will remain the property of the Contractor except where the equipment, plant or materials is deemed to have been abandoned.

27. **AUDIT**

27.1 The Contractor shall keep and maintain full and accurate records to the satisfaction of NRW of all expenditure which is reimbursable by NRW and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by NRW on a time charge basis.

27.2 The Contractor shall allow NRW, its agents, representatives and auditors, and/or a Regulatory Body or governmental department access at all times to:

27.2.1 records and other materials and assets used in the Contractor's provision of the Services; and

27.2.2 the Contractor's Staff involved in the provision of the Services;

27.2.3 reasonable access to any sites or premises controlled by the Contractor and to any equipment or systems used (whether exclusively or non-exclusively) in the performance of the Services; and

27.2.4 witness, conduct or access results of any tests of security processes and counter-measures required to be in place in accordance with this Contract.

27.3 The Contractor shall co-operate with any audit carried out pursuant to this clause and shall make available all such information and records as are reasonably required by the auditing party to conduct the audit free of charge and on a timely basis and shall allow the auditing party to take copies of all such information and records.

27.4 Without prejudice to any other rights or remedies NRW may have, if any audit identifies that the Contractor has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan.

28. **WAIVER**

28.1 Failure to exercise, or any delay in exercising, any right or remedy provided under the Contract or by Law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

28.2 No single or partial exercise of any right or remedy provided under the Contract or by Law shall preclude or restrict the further exercise of any such right or remedy.

28.3 Except as otherwise expressly provided by 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.

28.4 A waiver (which may be given subject to conditions) of any right or remedy provided under the Contract or by Law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

29. **SEVERABILITY**

29.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, such provision shall be severed and the other provisions will remain in force and effect as if the Contract had been executed with such invalid, illegal or unenforceable provision eliminated.

30. **FORCE MAJEURE**

30.1 Neither party shall be liable to the other for any delay in or failure to perform its obligations under the Contract if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the Contract. If a party is unable to perform its obligations under the Contract as a result of a Force Majeure event for a period in excess of 6 months, the other party may terminate the Contract by notice in writing with immediate effect.

30.2 If either party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its party it shall notify the other as soon as reasonably possible and shall estimate the period such failure or delay shall continue.

31. **FRAUD**

31.1 The Contractor shall safeguard NRW's funding of the Contract against fraud generally and, in particular, fraud on the part of its Staff, or the Contractor's directors and suppliers. The Contractor shall notify NRW immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

32. **RECOVERY OF SUMS DUE**

32.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to NRW in respect of any breach of the Contract), NRW may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with NRW.

33. **ANNOUNCEMENTS**

33.1 The Contractor shall not make, or permit any person to make, any public announcement concerning the Contract (whether before, at or after completion) except as required by Law or with the prior written consent of NRW (such consent not to be unreasonably withheld, delayed or conditioned).

34. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

34.1 Subject to condition 19.2, a person who is not a party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

35. **DISPUTE RESOLUTION**

35.1 If any dispute arises in connection with this Contract, the Contractor should in the first instance provide a written complaint to NRW's Executive Director for Finance and Corporate Services.

35.2 NRW's Executive Director for Finance and Corporate Services will proceed to investigate the Contractor's complaint and confirm whether or not the appeal has been successful. If agreement cannot be reached by this method and the appeal is not successful, both parties can agree to refer the dispute or difference to the Chartered Institute of Arbitrators of 12 Bloomsbury Square London WC1A 2LP.

35.3 If either party elects not to pursue the alternative dispute resolution procedure, both parties shall submit to the jurisdiction of the courts of England and Wales.

36. **ENTIRE CONTRACT**

36.1 The Contract and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Contract.

36.2 Each party warrants to the other parties that, in entering into the Contract and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Contract or not) other than as expressly set out in the Contract or those documents.

36.3 Nothing in this condition shall limit or exclude any liability for fraud.

37. **SCOPE OF CONTRACT**

37.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

38. NOTICE

38.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or by commercial courier, to each party required to receive the notice at its address as set out in the Contract Order or at such other address as the relevant party may specify by notice in writing to the other.

38.2 Any notice shall be deemed to have been duly given:

38.2.1 if delivered personally, when left at the address referred to in the Contract Order; or

38.2.2 if delivered by commercial courier, on the date of signature of the courier's receipt.

38.3 The provisions of this clause shall not apply to the service of any process in any legal action or proceedings.

39. LAW AND JURISDICTION

39.1 The Contract and all disputes or claims arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

39.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle all disputes or claims that arise out of or in connection with the Contract or its subject matter.

40. WELSH LANGUAGE

40.1 The Contractor shall comply with the requirements of NRW's Welsh Language Scheme where applicable to the performance of its obligations under the Contract.

SCHEDULE 1

DEFINITIONS

Applicable Laws: means laws relating to the processing of Personal Data of any member of the European Union or of the European Union and applicable to NRW and/or the Contractor.

Authorised Access Routes: means the roads which may be used by the Contractor pursuant to this Contract marked as such on the Contract Map, and/or such other roads as may be agreed between NRW and the Contractor from time to time.

Business Day: a day when the clearing banks are open for business other than a Saturday, Sunday or public holiday in England or Wales.

Capacity: means as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date: means the date when the project, services or contract is to start as specified in the Contract Order.

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 which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation.

Contract: means the Contract between NRW and the Contractor consisting of these General Conditions, the Contract Order, the Special Conditions and any other documents (or parts thereof) specified by NRW.

Contract Map: the map or maps annexed to the Contract Order;

Contract Order: the Contract Order form or purchase order form issued by NRW to the Contractor setting out the specification and requirements.

Contract Period: means the period of duration of the Contract from the Commencement Date in accordance with the Contract Order.

Contract Price: means the price exclusive of any applicable tax, payable to the Contractor by NRW under the Contract, as set out in the Contract Order, for the full and proper performance by the Contractor of its part of the Contract as determined under the conditions of the Contract.

Contract Specific Conditions: means the special terms and conditions of NRW applicable to the type of Services to be provided by the Contractor as set out in Schedule 2.

Contract Supervisor: means the person for the time being appointed by NRW as being authorised to administer the Contract on behalf of NRW or such person as may be nominated by the NRW Representative to act on its behalf.

Contracting Authority: has the meaning given to it in Regulation 2 of the Public Contracts Regulations 2015.

Contractor: means the person, firm or company with whom NRW enters into the Contract the details of which are set out in the Contract Order.

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

Data Protection Legislation: means (i) until 25 May 2018, the Data Protection Act 1998 then from 25 May 2018 (ii) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended from time to time, in the UK and then (iii) any successor legislation to the GDPR or the Data Protection Act 1998.

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

Default: means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such party is liable to the other.

Delivery Location: means, unless otherwise agreed in writing by NRW, the location set out for delivery in the Contract Order.

Employment Regulations: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended under the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (SI2014/16).

Engagement: means the engagement of the Contractor by NRW to provide the Services on the terms of the Contract.

Environmental Law: means the Environmental Information Regulations 2004.

Environmental Targets: means cross governmental environmental objectives, including an obligation to:

- a) conserve energy, water and other resources; and
- b) reduce waste and minimise the release of greenhouse gases, acid rain precursors, volatile organic compounds and other substances damaging to health and the environment as a result of activity on, or related to the government estate.

Existing Rights: means any Intellectual Property Rights of the Contractor used in the provision of the Services that was in existence prior to the Commencement Date which was not specifically created for use or intended use in relation to the performance of the obligations under this Contract.

FLEGT: FLEGT licensed timber is timber that has come from a country that has entered into Voluntary Partnership Contract (VPA) with the UK, in accordance with EU and UK legislation.

Force Majeure: means any event or occurrence which is outside the reasonable control of the party concerned, and which is not attributable to any act or failure to take preventative action by the party concerned, including (but not limited to) governmental regulations, fire, flood or any disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

General Conditions: means these terms and conditions.

GDPR: means the General Data Protection Regulation (*EU 2016/679*)

Good Industry Practice: means using standards, practice, methods and procedures and exercising that degree of skill and care, diligence, prudence and foresight which one would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of understanding under the same or similar circumstances.

Goods: means any goods agreed in the Contract Order to be supplied to NRW by the Contractor (including any part or parts of them).

Haulage Timber: such timber as is from time to time made available by NRW at the Stacking Sites for collection and haulage in accordance with this Contract.

Health and Safety Requirements: means all applicable health and safety legislation, rules, policies and regulations and other reasonable health and safety requirements that NRW has in force from time to time.

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* 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* or equivalent.

Installation Works: means the installation works which are required to be carried out prior to the commencement of the Services.

Intellectual Property Rights: means all Intellectual Property Rights including without limitation, patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, 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.

Law: means applicable law, statute, bye-law, regulations, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

NRW: means Natural Resources Wales of Ty Cambria 29 Newport Road Cardiff CF24 0TP.

NRW Data: means 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:

a) supplied to the Contractor by or on behalf of NRW; or

b) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or

c) any personal data for which NRW is the data controller.

Party: means any party to this Contract individually and "**Parties**" refers to all of the parties to this Contract collectively. A Party shall include all permitted assigns of the Party in question.

Payment Profile: means the payment profile and any milestones for payment identified in the Contract Order.

Personal Data: means personal data as defined in the Data Protection Legislation.

Premises: means the location at which the Services are to be provided as specified in the Contract Order.

Products: means (i) the trees marked by NRW with the method of marking specified on the Contract Map and located within the Work Site (including, without prejudice to the foregoing generality, the wood and timber represented by those trees), or (ii) the timber products as presented at stump and roadside within the Work Site.

Quality Standards: means those quality standards required of the Services as specified in the Contract (or if not expressly specified within the Contract, those quality standards as agreed between the parties prior to the Commencement Date.

Regulatory Body: means those government departments and regulatory, statutory and other entities, committees 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 NRW.

Replacement Contractor: means a firm, company or organisation with which NRW contracts to provide the Services or service which is substantially the same type of services (in whole or in part) after termination of the Contract.

Resulting Rights: means individually and collectively all inventions, improvements and/or discoveries which are conceived and/or made and any Intellectual Property Rights created by one or more members of Staff of the Contractor or its subcontractors acting either on their own or jointly with one or more employees of NRW in performance of the Services.

Services: means any such Goods or services as are to be supplied by the Contractor under the Contract more particularly described in the Contract Order.

Special Terms: means the special terms identified in the Contract Order.

Specification: means the specification document as agreed between the parties prior to the Commencement Date which sets out the detailed specifications required for the provision of the Services.

Stacking Sites: those locations adjacent to Authorised Access Routes (at all times located within the Work Site) and indicated on the Contract Map, on which the timber resulting from the harvesting of Products is to be stacked.

Staff: means all persons employed by the Contractor to perform the Contract together with the Contractor's servants, agents and sub-contractors used in the performance of the Contract.

Timber: includes all virgin timber and wood-derived products that may be supplied by the Contractor or the Staff to NRW under this Contract, or which is used by the Contractor or the Staff in the performance of this Contract from time to time.

Timetable: the timetable for the provision and completion of the Services as specified in the Contract Order for the Services.

Work Site: means those areas of land (including any Authorised Access Routes) shown by hatching (or otherwise identified) on the Contract Map.

Working Days: means those days when the clearing banks are open for business other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2

CONTRACT SPECIFIC CONDITIONS FOR THE PROVISION OF CONSULTANCY SERVICES

These Contract Specific Conditions are to be read in conjunction with the General Conditions and the Contract Order and govern the provision of consultancy services by a Contractor to NRW.

1. CONTRACTORS DUTIES

1.1 During the Engagement the Contractor shall:

1.1.1 use its best endeavours to promote the interest of NRW;

- 1.1.2 perform the Services under the name 'NRW' or such other name as NRW may choose from time to time;
 - 1.1.3 promptly give to NRW all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services;
 - 1.1.4 complete the Services in accordance with the Timetable, or if no Timetable is specified, within a reasonable period of time;
 - 1.1.5 in providing the Services, co-operate fully and procure that its Staff (where applicable) co-operate fully with NRW's employees, agents and sub-contractors
- 1.2 If the Contractor is unable to provide the Services, or any part thereof, it shall advise NRW of that fact as soon as reasonably practicable giving the reasons where appropriate and likely duration. Nothing in this paragraph 1.2 shall in any way alter, modify, relieve or in any other way vary the Contractor's obligation to provide the Services.
- 1.3 The Contractor shall use best endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as NRW may require.
- 1.4 Unless it has been specifically authorised to do so by NRW in writing, the Contractor shall not:
- 1.4.1 have any authority to incur any expenditure in the name of or for the account of NRW; or
 - 1.4.2 hold himself out as having authority to bind NRW.
- 1.5 The Contractor shall at all times behave in an orderly manner and in as quiet a manner as may be reasonable practical, having regard to the nature of the duties being provided by them and behave in such a way as to cause no unreasonable or unnecessary disruption to the work of any of NRW's own staff or any unreasonable disturbance to local residents or visitors and care should be taken to minimise disturbance of or damage to any wildlife interest.
- 1.6 The Contractor must at all times whilst providing the Services to be properly and presentably dressed in appropriate uniforms or work wear. All such uniforms, work wear or any special or protective clothing to be worn must be provided by the Contractor.

- 1.7 The Contractor acknowledges that work may be carried out at remote locations and it will be responsible for its own protection of that of Staff and ensuring they are fully compliant with all necessary health and safety obligations at Law, including Health and Safety Requirements, and must ensure suitable lone working arrangements are in place.
- 1.8 The Contractor must provide at its own expense, and wear or carry such identification (including photographic identification) as may be specified by NRW.
- 1.9 The Contractor must obtain prior authorisation from NRW in advance of the commencement of any Services for areas, if any, suitable for the parking of vehicles, storage and deliveries.
- 1.10 In relation to NRW Premises the Contractor shall:
- 1.10.1 ensure that all persons carrying out the Services on NRW Premises comply with the security and safety policies and regulations from time to time in force on NRW Premises; and
 - 1.10.2 comply with all instructions of NRW notified to it in relation to its access to such NRW Premises (including the removal of any person where required by NRW).

2. **CONTRACT SUPERVISOR**

- 2.1 The Contract Supervisor shall have overall responsibility for monitoring the performance of the Services.
- 2.2 The Contractor shall meet regularly with the Contract Supervisor and act in good faith and record all decisions made with the Contract Supervisor in writing.

3. **FEES**

- 3.1 The Contractor's invoice to NRW shall give details of the hours which the Contractor has worked, the Services which it has provided and the amount of the fee payable (plus VAT, if applicable) for such Services.

4. **EXPENSES**

- 4.1 NRW shall reimburse any reasonable travel expenses properly and necessarily incurred by the Contractor in the course of the Engagement, subject to prior

authorisation by NRW in writing and production of receipts or other appropriate evidence of payment.

5. **OTHER ACTIVITIES**

5.1 Nothing in the Contract shall prevent the Contractor from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that such activity does not cause a breach of any of the Contractor's obligations under the Contract, including for the avoidance of doubt condition 9 of the General Conditions.

6. **TERMINATION**

6.1 NRW may terminate the Engagement with immediate effect with no liability to make any further payment to the Contractor (other than in respect of amounts accrued prior to the date of termination) if at any time the Contractor:

6.1.1 is guilty of any gross misconduct affecting the business of NRW; or

6.1.2 is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or

6.1.3 is in the reasonable opinion of NRW negligent and incompetent in the performance of the Services.

6.2 The rights of NRW under this paragraph are without prejudice to any other rights that it might have at Law or in the General Conditions to terminate the Engagement or to accept any breach of the Contract on the part of the Contractor as having brought the Contract to an end.

7. **CONTRACTOR STATUS**

7.1 The Contract constitutes a contract for the provision of Services and not a contract of employment and accordingly the Contractor shall be fully responsible for and shall indemnify NRW for and in respect of 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 performance of the Services, where such recovery is not prohibited by law. The Contractor shall further indemnify NRW against all reasonable costs, expenses and any penalty, fine or interest incurred or

payable by NRW in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

8. **ACCESS, PREMISES AND MATERIALS**

8.1 NRW's policy is to allow public access to all NRW forests wherever possible (subject to NRW's Byelaws, where applicable). However access is not allowed when this would infringe upon any agreements, covenants or undertakings and is controlled where it conflicts with the management and protection of the forest. The Contractor shall observe NRW's policy on public access at all times and shall be responsible for informing all employees and sub-contractors of the same. In particular the Contractor shall observe any specific permissions and consents relating to other activities occurring on or near any location where the Services are being performed and shall obey the written or verbal instructions of any NRW officer.

8.2 Without prejudice to its other obligations under this Contract, the Contractor shall ensure that:-

8.2.1 all vehicles operated by or on behalf of the Contractor shall be in a roadworthy condition and suitable for the relevant road conditions and terrain and shall be driven or used only by competent personnel with all proper skill, care and attention and shall be driven at such speed as shall be prudent and reasonable in all the circumstances, having regard (without limitation) to the nature of the route, vehicular load and prevailing weather and road conditions;

8.2.2 all vehicles and/or equipment operated by or on behalf of the Contractor shall be in a safe and operable condition and, without prejudice to the foregoing, shall comply with and be operated in accordance with all applicable legal requirements;

8.2.3 the use of any machine or method of working operated by or on behalf of the Contractor which is causing or is likely to cause, in the opinion of NRW, avoidable damage to standing trees, any road, path, track or drain, or to other property, is stopped on request from NRW; and

8.2.4 the Authorised Access Routes and all roads in and around any Work Site (including, for the avoidance of doubt all public rights of way and access) are at all times kept free of obstructions resulting from the Contractor's operations which would prevent free flow of traffic except for a minimum of

delay, except where agreement has been reached for temporary closure in connection with the performance of the Services or unless otherwise specifically agreed by NRW.

- 8.3 The Contractor must use Authorised Access Routes only (and may use such routes solely for the fulfilment of its obligations under the Contract). The Contractor must take every reasonable precaution to prevent any avoidable damage to such Authorised Access Routes (including, without prejudice to the generality of the foregoing, ensuring that they are not used after exceptionally heavy rains or during or after a thaw, until suitable for use without causing avoidable damage) and restore all actual damage occasioned thereto. The use of such routes shall be at the Contractor's own risk and (save to the extent occasioned by the negligence of NRW or its employees) NRW shall not be liable for any damage or injury arising out of the Contractor's use of such routes. NRW gives no warranty that any such Authorised Access Routes will be usable by vehicles at any specified time.
- 8.4 In the event that all or part of the Authorised Access Routes require to be repaired or maintained, NRW shall be entitled, after consultation with the Contractor save in an emergency, to close all or part of the Authorised Access Routes while the work is carried out.
- 8.5 All equipment, plant and materials brought onto the Work Site by or on behalf of the Contractor shall be at the Contractor's own risk and NRW shall have no liability for any loss or damage to any such equipment, plant or materials unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence of NRW or its employees. The Contractor shall provide for the haulage or carriage thereof to the Work Site and the removal thereof when no longer required at its sole cost. Unless otherwise agreed, the equipment, plant and materials brought onto the Work Site will remain the property of the Contractor except where the equipment, plant or materials is deemed to have been abandoned.

SCHEDULE 3

THE PROCESSING OF PERSONAL DATA BY THE CONTRACTOR

This schedule sets out the scope, nature and purpose of the processing of Personal Data by the Contractor on behalf of NRW and constitutes the written instructions of NRW referred to in clause 13.4.1. The Contractor may only process Personal Data on behalf of NRW in accordance with the requirements of clause 13 and this schedule.

1. THE SCOPE, NATURE AND PURPOSE OF PROCESSING

1.1 The Contractor may process Personal Data in order to [set out how the Contractor may process Personal Data, the purpose of that processing and any limitations on the processing that may be undertaken]

2. THE DURATION OF PROCESSING

2.1 The Contractor may process Personal Data for [the duration of the Contract Period] [a period of X days/weeks/months from the Commencement Date] [specific period]

3. THE TYPES OF PERSONAL DATA

3.1 The Contractor may process Personal Data of the following types:

- (a) [personal details]
- (b) [family, lifestyle and social circumstances]
- (c) [financial details]
- (d) [employment and education details]
- (e) [goods or services provided]

3.2 The Contractor [may not process sensitive Personal Data] [may process sensitive Personal Data of the following types:

- (a) [physical or mental health details]
- (b) [racial or ethnic origin]
- (c) [religious or philosophical beliefs]

- (d) [trade union membership]
- (e) [political opinions]
- (f) [genetic data]
- (g) [biometric data]
- (h) [sex life and sexual orientation]]

4. THE CATEGORIES OF DATA SUBJECT

4.1 The contractor may process Personal Data relating NRW's:

- (a) [employees]
- (b) [customers and clients]
- (c) [suppliers and service providers]
- (d) [advisors, consultants and other professional experts]
- (e) [complainants and enquirers].

SCHEDULE 4

THE PROCESSING OF PERSONAL DATA BY NRW

This schedule sets out the scope, nature and purpose of the processing of Personal Data by the NRW on behalf of the Contractor and constitutes the written instructions of the Contractor referred to in clause 13.4.1. NRW may only process Personal Data on behalf of the Contractor in accordance with the requirements of clause 13 and this schedule.

1. THE SCOPE, NATURE AND PURPOSE OF PROCESSING

1.1 NRW may process Personal Data in order to [set out how NRW may process Personal Data, the purpose of that processing and any limitations on the processing that may be undertaken]

2. THE DURATION OF PROCESSING

2.1 NRW may process Personal Data for [the duration of the Contract Period] [a period of X days/weeks/months from the Commencement Date] [specific period]

3. THE TYPES OF PERSONAL DATA

3.1 NRW may process Personal Data of the following types:

- (a) [personal details]
- (b) [family, lifestyle and social circumstances]
- (c) [financial details]
- (d) [employment and education details]
- (e) [goods or services provided]

3.2 NRW [may not process sensitive Personal Data] [may process sensitive Personal Data of the following types:

- (a) [physical or mental health details]
- (b) [racial or ethnic origin]
- (c) [religious or philosophical beliefs]
- (d) [trade union membership]
- (e) [political opinions]
- (f) [genetic data]
- (g) [biometric data]
- (h) [sex life and sexual orientation]]

4. THE CATEGORIES OF DATA SUBJECT

4.1 NRW may process Personal Data relating the Contractor's:

- (a) [employees]
- (b) [customers and clients]
- (c) [suppliers and service providers]
- (d) [advisors, consultants and other professional experts]
- (e) [complainants and enquirers].