

NRW TERMS AND CONDITIONS FOR GOODS

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 or 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 23 of the Public Contracts Regulations 2006.

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 ACT**

13.1 With respect to the parties rights and obligations under this Contract, the parties agree that NRW is the data controller and that the Contractor is the data processor.

13.2 Where the Contractor is processing personal data (as defined by the Data Protection Act 1998 (“DPA”)) as a data processor for NRW the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of or damage to the personal data, as required under the DPA.

13.3 Notwithstanding the generality of condition 13.2, the Contractor will:

13.3.1 process the personal data only in accordance with instructions from NRW;

13.3.2 process the personal data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

13.3.3 obtain prior written consent from NRW in order to transfer the personal data to any sub-contractors for the provision of the Services;

13.3.4 ensure that any Staff that are 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 condition 13;

13.3.5 ensure that none of the Contractor’s Staff publish, disclose or divulge any of the personal data to any third party unless directed in writing to do so by NRW;

13.3.6 notify NRW within five (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 NRW’s obligations under the DPA;

and provide NRW with full cooperation and assistance in relation to any complaint or request made including by:

- (a) providing NRW with full details of the complaint or request;
- (b) complying with any data access request within the relevant time scales in the DPA and in accordance with NRW's instructions;
- (c) providing NRW with any personal data it holds in relation to a data subject (within the timescales required by NRW); and
- (d) providing NRW with any information requested by NRW.

13.3.7 permit NRW or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and 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 NRW to enable NRW to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;

13.3.8 not process personal data outside the European Economic Area without the prior written consent of NRW and, where NRW consents to a transfer, to comply with any reasonable instructions notified to it by NRW and ensure compliance with the obligations of a data controller under the eight data protection principles as set out in Schedule 1 of the DPA by providing an adequate level of protection to any personal data transferred;

13.3.9 provide NRW with such information as NRW may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

13.3.10 maintain a written description of the technical and organisational methods employed by the Contractor for processing personal data (and provide the same to NRW on request within such timescales specified by NRW);

13.3.11 promptly notify NRW of any breach of security measures; and

13.3.12 ensure that it does nothing knowingly or negligently which places NRW in breach of NRW's obligations under the DPA.

13.4 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 416 of the Income and Corporation Taxes Act 1988, 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 23 of the Public Contracts Regulations 2006 (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.

DEFINITIONS

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 Act 1998.

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 3 of the Public Contracts Regulations 2006.

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.

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 or Undertakings (Protection of Employment) (Amendment) Regulations 20014 (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.

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.

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 PURCHASE OF GOODS

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

1. APPLICATION OF TERMS

1.1 During the Contract Period the Contractor shall sell and NRW may buy such quantities of the Goods as NRW may order as set out in the Contract Order in accordance with the terms of the Contract.

1.2 The Contract shall be on the terms of the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Contractor purports to apply under any purchase order, confirmation of order, specification or other document) and no terms or conditions endorsed on, delivered with or contained in the Contractor's confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2. SAMPLES

2.1 If requested by NRW, the Contractor shall provide NRW with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.

2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

2.3 The Contractor acknowledges that NRW 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.

3. DELIVERY

3.1 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. Where the Goods are collected by NRW, the point of delivery shall be when the Goods are loaded on NRW's vehicle.

- 3.2 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 NRW or duly authorised person shall reasonably direct.
- 3.3 Any access to the Premises and any labour and equipment that may be provided by NRW in connection with delivery shall be provided without acceptance by NRW of any liability whatsoever to the extent permitted by law.
- 3.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and his Sub-Contractors shall at all times comply with the security requirements of NRW.
- 3.5 NRW shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- 3.6 NRW shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If NRW elects not to accept such over- delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to NRW 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 NRW 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 NRW.
- 3.7 Unless expressly agreed to the contrary, NRW shall not be obliged to accept delivery by instalments. If, however, NRW 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 NRW, entitle NRW to terminate the whole of any unfulfilled part of the Contract without further liability to NRW.

4. **RISK AND OWNERSHIP**

- 4.1 Subject to paragraph 3 (Delivery), risk in the Goods shall, without prejudice to any other rights or remedies of NRW, pass to NRW at the time of delivery.
- 4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of NRW, pass to NRW at the time of delivery (or payment, if earlier).

5. **NON-DELIVERY**

5.1 On dispatch of any consignment of the Goods the Contractor shall send NRW an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to NRW on the due date for delivery, NRW shall (provided that the NRW has been advised in writing of the dispatch of the Goods), within ten (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 NRW or terminate the Contract in accordance with paragraph 3 (Delivery).

6. **LABELLING AND PACKAGING**

6.1 The Contractor shall ensure that the Goods supplied under this Contract shall be labelled and packaged in accordance with this Contract.

6.2 The Contractor shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003 (as amended). The container in which the Goods are situated 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.

6.3 Unless the NRW agrees to the contrary in writing, the Contractor shall be responsible for the removal and disposal of all packaging materials from the Premises within the period specified by NRW and at no cost to NRW.

6.4 Where no period for collection and disposal is specified by the NRW, the Contractor shall collect the packaging from the Premises no later than ten (10) Working Days from the date of delivery of the Goods. NRW shall be entitled to dispose of any packaging materials which have not been collected by the Contractor within those ten (10) Working Days or such other period as was specified by NRW for collection. The Contractor shall be responsible for the payment of any costs incurred by NRW in connection with its collection and disposal of that packaging material.

6.5 In the supply of Goods under the Contract, the Contractor shall:

- 6.5.1 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);
- 6.5.2 (unless there is agreement to the contrary under paragraph 6.3) 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;
- 6.5.3 make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
- 6.5.4 where using wooden pallets or timber derived products for the packaging and supply of goods to NRW: to comply with the UK timber procurement policy:
- 6.5.5 review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
- 6.5.6 if requested to do so, provide NRW with a description of the product packaging and evidence to satisfy NRW 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.

7. FAILURE TO MEET REQUIREMENTS

- 7.1 In addition to rights set out in the General Conditions; NRW may by written 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 NRW of such Goods. If NRW rejects any of the Goods pursuant to this paragraph NRW may (without prejudice to its other rights and remedies) either:
 - 7.1.1 Have such Goods promptly, free of charge and in any event within five (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
 - 7.1.2 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 NRW in obtaining other goods in replacement.

- 7.2 For the avoidance of doubt, NRW 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 paragraph 7.1.
- 7.3 The issue by NRW of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or NRW's acceptance of them.
- 7.4 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 so specified, for a period of 18 months from the date of delivery. If NRW shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which NRW may have) promptly remedy such defects (whether by repair or replacement as NRW shall elect) free of charge.
- 7.5 Any Goods rejected or returned by NRW as described in paragraph 7.1 shall be returned to the Contractor at the Contractor's risk and expense.

8. **TIMBER REQUIREMENTS**

- 8.1 The Contractor will ensure that all Timber supplied or used by the Contractor in performance of the Contract shall:
- 8.1.1 Be sourced from an independently verifiable legal and sustainable source including, for the avoidance of doubt, Timber from a licensed Forest Law Enforcement, Governance and Trade (FLEGT) partner; and
 - 8.1.2 Comply with the specifications as detailed in the Contract Order.
- 8.2 In addition to the requirements of paragraph 8.1 above, all Timber shall originate from a forest source where management of the forest has full regard for:
- 8.2.1 Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

8.2.2 Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and

8.2.3 Safeguarding the basic labour rights and health and safety of forest workers.

9. **REQUIREMENTS FOR PROOF OF TIMBER ORIGIN**

9.1 If requested by NRW, and not already provided at the tender evaluation stage, the Contractor shall provide to NRW:

9.1.1 Evidence that the Timber complies with the requirements as detailed in the Contract Order; and/or

9.1.2 Evidence that the Timber complies with the requirements of the social criteria defined in paragraph 8.2 above.

9.2 NRW reserves the right at any time during the execution of the Contract and for a period of 6 years from final delivery under the Contract to require the Contractor to produce the evidence required for NRW's inspection within 14 days of NRW's written request.

9.3 The Contractor shall maintain records of all Timber delivered to and accepted by NRW. Such information shall be made available to NRW if requested, for a period of 6 years from final delivery under the Contract.

10. **INDEPENDENT VERIFICATION**

10.1 NRW reserves the right to decide whether the evidence submitted to it demonstrates that the Timber complies with the Contract Order and the social criteria set out in paragraph 8.2.

10.2 In the event that NRW 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 and wood-derived products; and

(b) assess whether the source meets the relevant criteria.

11. **NRW'S RIGHT TO REJECT TIMBER**

11.1 NRW reserves the right to reject any Timber that does not comply with the Contract Order or the criteria in paragraph 8.2.

- 11.2 Where NRW exercises its right to reject any Timber, the Contractor shall supply alternative Timber, which does so comply, at no additional cost to NRW and without causing delay to the Contract completion period.
- 11.3 Management of the forest or plantation shall be audited at intervals confirming ongoing good forest management and by organisations with appropriate forest management experience that are independent of the organisation that holds timber harvest and/or management rights for that forest.
- 11.4 NRW will accept evidence from any of the following categories:
- 11.4.1 Category A evidence: Certification under a scheme recognised by the UK government as meeting the criteria set out in the document entitled "UK Government Timber Procurement Policy: Criteria for Evaluating Certification Schemes (Category A Evidence)" (available from the Contracting Authority on request and on the CPET website) which reflects the criteria for legal and sustainable set out in the document entitled UK Government Timber Procurement Policy, Definition of Legal and Sustainable for Timber Procurement' (available on the CPET website). The edition current on the day the Contract is awarded shall apply. A list of assessed certification schemes that currently meet the government's requirements can be found on the CPET website. Acceptable schemes must ensure that at least 70% (by volume or weight) is from a Legal and Sustainable source with the balance from a legal source.
- 11.4.2 Category B evidence: Documentary evidence, other than Category A evidence and FLEGT (or equivalent) evidence, that provides assurance that the source meets the criteria set out in the document entitled 'UK Government Timber Procurement Policy: Framework for Evaluating Category B Evidence' (available from the Contracting Authority on request and on the CPET website), which reflects the criteria for legal and sustainable set out in 'UK Government Timber Procurement Policy, Definition of Legal and Sustainable for Timber Procurement'. The edition current on the day the Contract is awarded shall apply. Such Category B evidence may include, for example, independent audits and declarations by the Contractor or his suppliers.

Where Category B evidence is to be relied on, the Contractor is required to notify the Contracting Authority of the source or sources of all virgin timber

and wood-derived products supplied. Source in this context means the forest or plantation where the trees were grown and all subsequent places of delivery through the supply chain prior to receipt of the timber or wood-derived product by the Contracting Authority. The Contractor shall separately identify virgin timber and wood-derived products supplied from forests and plantations that are claimed to be subject to sustainable timber production and shall submit to the Contracting Authority documentation in respect of such wood to confirm that the criteria for sustainable timber production set out in this specification have been met. If mixing is unavoidable within the supply chain then sources can still be accepted provided that there are adequate controls in place and at least 70% (by volume or weight) is from a Legal and Sustainable source with the balance from a legal source.

11.4.3 FLEGT evidence, from either or both of the following categories:

- (a) Evidence of timber and wood-derived products being exported from a timber-producing country that has signed a bilateral Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) with the European Union and which have been licensed for export by the producing country's government. Evidence of equivalence to FLEGT-licensed (for the purposes of the definition of Sustainable) may include Timber and wood-derived products that have been independently verified as meeting all the producing country's requirements for a FLEGT licence (in due course), where a VPA has been entered into but the FLEGT licensing system is not fully operational, or
- (b) Evidence from a country that has not entered into a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met.

FLEGT-licensed Timber and wood-derived products which have been processed in a third country may also be acceptable, provided that they demonstrate compliance with the Timber Procurement Policy definition of Legal and Sustainable (where equivalent to FLEGT-licensed can be evidence of meeting the definition of Sustainable).

