

## NRW TERMS AND CONDITIONS FOR SERVICES

### 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 Licence Agreement;
- (d) the General Conditions;
- (e) 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)).
- (f) 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 Contractor's 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'.

- 7.10 The Contractor warrants that it will adhere to all of the obligations in Schedule 3 and in Appendix 1 including but not limited to any Special Licence Provisions.

## 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 is the data controller and the Contractor is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation). Schedule 4 sets out the scope, nature and purpose of processing by the Contractor, 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, NRW will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Contract.

13.4 Without prejudice to the generality of clause 13.1, the Contractor 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 NRW unless the Contractor is required by the Applicable Laws to process Personal Data. Where the Contractor is relying on the Applicable Laws as the basis for processing Personal Data, the Contractor shall promptly notify NRW of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying NRW;

- 13.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by NRW, 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 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 NRW 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 Contractor 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 Contractor complies with reasonable instructions notified to it in advance by NRW with respect to the processing of the Personal Data;
- 13.4.5 assist NRW 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 NRW without undue delay on becoming aware of a Personal Data breach;
- 13.4.7 at the written direction of NRW, delete or return Personal Data and copies thereof to NRW 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 NRW or NRW's designated auditor.
- 13.4.9 subject to clause 13.4.10, notify NRW 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 Contractor's obligation to notify under clause 13.4.9 shall include the provision of further information to NRW in phases, as details become available.

- 13.5 Before allowing any sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify NRW in writing of the intended sub-processor and processing;
  - (b) obtain the written consent of NRW;

- (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 NRW with such information regarding the sub-processor as NRW 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.

17.5 NRW may terminate the Contract if the Contractor breaches any provision under Schedule 3 or Appendix 1.

## 18. **CONSEQUENCES OF TERMINATION**

18.1 On termination of the Contract pursuant to conditions 17.1, 17.2.1, 17.2.2, 17.2.4 or 17.2.5 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

**2<sup>nd</sup> Generation Process Derived Product:** means a product that is Process Derived from the Approved Product on which it is immediately based where any preceding Approved Product in the chain of derivation from the Licensed Content is Process Derived and such product is not prohibited by paragraph 6.1.1 in Appendix 1.

**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 the Contractor.

**Approved Chain Derived Product:** mean a Chain Derived Product identified in Section 2 Schedule 3 and that is fully compliant with the details included in Section 2 Schedule 3 (in particular those of the assessed product category) and any relevant condition or paragraph including those created by the Reseller.

**Approved VAR Product:** mean a product created by the Reseller that is Derived directly from the Licensed Content, identified in Section 2 in Schedule 3 a sample of which has been supplied to the Natural Resources Wales prior to approval and that is fully compliant with all the details included in Section 2 Schedule 3 (in particular those of the assessed product category) and any relevant condition or paragraph.

**Approved Product:** means, unless the context required otherwise an Approved Chain Derived Product and/or an Approved VAR Product.

**Archival Use:** means use after expiry, Cessation or termination that comprises retention internally by the Licensee or its contractors of copies of the Licensed Content for a period not exceeding six years and only to the extent necessary to answer technical support questions or to comply with any statutory or regulatory requirement.

**Area Search and Print:** means the product category whereby a product is created by means of a full copy of or extract of or Search of Licensed Content and such content is supplied in original or derived form with mapping, interpretation, guidance or other consultancy type work, such as data selection or other customisation, specific to that customer.

**Area View Only:** means the product category whereby a product meeting the description of any other dataset product category is made available but not supplied to a customer who is given no legal right to any more than viewing the product and all reasonable technical measures are taken to prevent any act in excess of viewing.



**As-Is:** This means a copy of the whole or Part of the original Content that is unaltered and unadapted and not merged with other Content other than by:

- layout, font, size, colour and other minor display changes,
- digital file compression,
- putting into an encrypted or protected format such as a protected ZIP file or a locked pdf but not un-encrypting original Information that is already in a protected format,
- bundling with other Content or with a cover sheet provided that the original Content remains discrete,
- changing into a different format.

**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.

**Cessation:** means removal or cessation of use of particular Licensed Content or an Approved External Use from the scope of this agreement.

**Chain Derived Product:** means a product that is:

- a) Derived from an Approved Product, and
- b) creates a chain of two or more products requiring approval,
- c) where the new product is not Copy Derived from the Licensed Content and not a 2<sup>nd</sup> Generation Process Derived Product.

**Co-Deliverer:** means a person who is supplied by a public or not for profit body with Content for purposes all of which that body considers to be of **significant importance** to the achievement of that body's statutory functions, where that person supplied with Content uses it only for non-commercial purposes.

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

**Commercial:** means

- internal Use within a Commercial Body except to the extent that such use relates to statutory functions of a body subject to the Environmental Information Regulations 2004 or comprises public task functions,

offering a product or service containing Licensed Content for direct monetary compensation such as the sale of a book or newsletter with a cover charge even if it does not cover all costs but not including supply by a public sector body of products or services to other UK and EU public sector bodies or in pursuance of international treaties or conventions for a charge that does not exceed marginal costs (or costs required to be charged by legislation or binding government rules) where those bodies in receipt of such products or services are permitted to use only for statutory or public task purposes, or

offering a product or service based on Licensed Content for indirect commercial advantage by a Commercial Body.

**Commercial Body:** means an organisation that is primarily engaged in a profession, even if it has public task functions (unless it is a body that is prevented by its set up from distributing any of its income whether as money or in any other form to its Committee, board or members and limits payments to employees to salaries and a bonus scheme that is not designed to distribute all profits or surplus income but has provisions for distribution of surplus income for some public good (usually charitable) purpose ) or is engaged in trade or commerce.

**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 but not including the Licensed Content unless otherwise stated.

**Consistency Principle:** means the principle whereby End Users of Content receive information that is the same from whichever person they obtain it.

**Content:** has the same meaning as in the Re-Use of Public Sector Information Regulations 2005, including also computer programs and other intellectual property rights.

**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.

**Contractor Use:** means passing of Content to a person (Contractor) who is contracted to provide services to the Content provider, when:

- use is limited to the purposes of that contract, and
- all terms of the original licence are applied to the Contractor, and
- the person letting the contract remains responsible for those terms, and
- the Contractor does not pass the Content to any person other than the Licensee or a subcontractor who complies with these conditions and paragraphs in Schedule 3 and

- the Contractor destroys all copies of the original Licensed Content supplied (and anything Copy Derived from that) at the end of the contract.

**Copy Derived:** means the process of creating something from Content that is not the result of As-Is use and either:

- includes a copy of that Content as a whole or as a Part, and/or
- that Content can be reverse engineered from it, by which is meant the Content can be recreated by technical or other means in full or in Part from a derivative or a series of similar derivatives of it, and/or
- is a derivative that is Substitutable.

**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.

**Derived:** unless the context requires otherwise means Copy Derived or Process Derived.

**e-Learning:** means a Process based electronic system of teach yourself training.

**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).

**End User:** means any person using Content supplied by way of licensed External Use for its own Internal Use, Standard Permitted External Use or for Professional Use.

**End User Licence Agreement and EULA:** mean the terms under which the Licensee supplies Licensed Content to End Users pursuant to paragraph 6 of Appendix 1.

**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.

**External As-is Use:** means use that is not Internal Use or Standard Permitted External Use that involves the creation of As-Is Licensed Content.

- a. **External Derived Use:** means use that is not Internal Use or Standard Permitted External Use that involves the creation of Derived Licensed Content.

**External Use:** means External As-Is Use and/or External Derived Use or Standard Permitted External Use.

- b. **“Fees”** means Licence Fees and Royalty Charges.

**Fixed Format”** means Content that is formatted in such a way as to be static and unalterable (or not easily alterable without the loading of special software). It will typically include hard

copy, portable document format (pdf), image format (such as jpeg, gif, tiff and bmp) and video format (such as mpeg, avi and wmv).

**Fixed Image Publishing:** means general distribution of Licensed Content comprising a still or moving image for viewing by the public where the following conditions apply:

- either:
  - it is a sample or extract that does not exceed 5% of the original specific Licensed Content or anything Copy Derived therefrom displayed in a Non-Commercial. website, social media pages or other electronic or hard copy publication operated by the Licensee (“ Non-Commercial Publication”), or
  - it is Process Derived Content used in a Non-Commercial Publication, or
  - it is Licensed Content or anything derived therefrom displayed in any Media Publication to provided that it is not a specific information service or in any other way tailored to the needs of a particular customer or locality,
- there are no use rights granted to end users other than to view and all reasonable technical measures are taken to prevent more than viewing, and
  - there is appropriate attribution in respect of Natural Resources Wales contribution, and
  - it is supplied with any Information Warning NRW have identified as applicable to that Content (or such other wording as NRW may agree).

**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.

**Information Warning:** means information required by Section 5 Schedule 3 to be taken into account when using the Information.

**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.

**Intermediary Reseller:** means a person other than the Reseller who creates an Approved Chain-Derived Product.

**Internal Use:** means use of Licensed Content by the Licensee or their employees (or in the case of an academic body, their students) that does not involve a supply of Licensed Content to anyone else.

**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.

**Licence Agreement:** the licence agreement at Schedule 3 together with the standard terms and conditions of an intellectual property licence at Appendix 1.

**Licence Fees:** means NRW's marginal costs of supply charges and licensing charges as identified in Section 3 Schedule 3 together with Third Party Royalties.

**Licensed Content:** means the Content identified in Section 3 Schedule 3 and, except where the context requires otherwise anything Derived from it.

**Licensee:** For the purposes of Schedule 3 the Licensee will be the Contractor.

**Licensee Update Date:** means the date or period identified in Section 3 Schedule 3 when an Update is made for the Licensee.

**Licensee Update Frequency:** means the frequency with which the Licensee is supplied Updates to the Licensed Content.

**Licensee Update Supply Date:** means the latest date identified in Section 3 Schedule 3 by which NRW will supply an update to the Licensee.

- **Media Publication:** means a publication whether printed or electronic, and whether or not there are any charges, where no use rights are granted to end users other than to read and all reasonable technical measures are taken to prevent more than viewing (generally only applicable to electronic data), that is either
  - a newspaper, or
  - a current affairs publication issued at least three times a year, or
  - an academic, literary, trade or technical journal whose primary purpose is the advancement of or criticism or review of the arts, science or technology and issued at least three times a year, or



- any factual documentary type programmes or materials for the purposes of educating the public generally, on media such as television, distributed disks, films, video on demand or online media.

**No Detriment Principle:** means that any intended use of Licensed Content must not represent a risk of being misleading to the End User, detriment to NRW's ability to achieve its objectives, detriment to the environment, including the risk of reduced future enhancement, or being prejudicial to the effective management of Content held by the NRW..

**Non-Commercial:** means use that is not Commercial.

**Notice:** means a notice given in accordance with paragraph 21 in Appendix 1.

**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.

**Part:** In relation to Content means any discrete part of the original Content that is contained in a larger set of Content.

**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.

**Point Search and Print:** means the product category whereby a search is made by reference to information at a point, being a "pin in the map" representing a customer asset or mobile GPS receiver location that does not include information outside that point even if it affects that point. It can be treated as a single product regardless of the number of customers as long as it is

only one product or application or publication that typically, but not necessarily, will be website or smart phone view.

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

**Principles:** means the Transparency Principle, the Consistency Principle and the No Detriment Principle.

**Process:** means a rules based procedure that includes some user input such as; methods, techniques, expert systems, flow charts, etc whether or not electronic, computer programs, apps, macros, artifacts, and other electronic tools and utilities etc.

**Process Derived:** describes an output derived from Content that is not the result of As-Is or Copy Derived use that requires the physical input of that Content into a Process that involves some form of copying and/or manipulation (usually this will involve modelling).

**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.

**Professional Use:** means, in respect of a particular client and particular transaction or matter, supply by a Consultant providing professional services to that client of As-Is Fixed Format Natural Resources Wales Content as a necessary but minor background part of those service, where:

- a) the Content is obtained directly from NRW (and any applicable Licence Fees paid) or by way of an Approved Product or a Copy Derived derivative of it, as and when needed for and on behalf of a particular client
- b) the Content supplied to a client relates to a site in single ownership and can include any other Content necessary for an environmental assessment of that site; and
- c) the client is not granted any licence to copy, adapt or sub-license the Content other than to take one back up copy or to supply As-Is Fixed Format copies necessary for that client matter (or the Consultant can supply such copies on behalf of the client) provided that no charge is made for such supplies; and

d) no charge is made by the Consultant to its client for the Content other than a charge for professional services and disbursements; and

e) Content is attributed as required by Natural Resources Wales.

Note: The marginal costs of a UK trading fund (or any similar government body) can include all charges that are required by legislation or binding government rules in relation to making supplies to other public sector bodies

**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.

**Regulatory Use:** means inclusion by or on behalf of a person of Fixed Format Content either As-Is or Derived in any documentation where this is reasonably necessary in connection with any process of a court, tribunal or regulatory body (but not including a trade association) affecting that person.

**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.

**Reseller Agent:** means any person, including a distributor or an agent of the Reseller (or if applicable an Intermediary Reseller), who is supplied with an Approved Product with the intention that such person is permitted to sell it As-Is to an End User.

**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.

**Royalty Charges:** means charges identified in Section 2 Schedule 3 as Royalty Charges in respect of any Approved Product, including Third Party Royalties in relation to Approved Products.

**Search:** means a query of a dataset by reference to a specified attribute example comprising a) the name of an individual, organisation, substance or site, b) geographical location or postcode or c) a particular date or d) any other similar precise search criterion.

**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.

**Software:** has the same meaning as “Process”.

**Special Licence Provisions:** means those provisions under Section 4 of Schedule 3 agreed between NRW and the Contractor.

**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.

**Standard Provision:** means one or more of the Standard Terms and Conditions in Appendix 1 also referred individually as a numbered “paragraph”.

**Standard Permitted External Use:** means Contractor Use, Regulatory Use or Fixed Image Publishing.

**Sub-setting and Subset”** means the act and result respectively of reducing the proportion of a full dataset, without it comprising a Search and without reducing the fields or attributes supplied), by making a geographical extract (“spatial” sub-setting that is charged per square kilometre) or a selection of geographical points, sites, persons or other key attributes or use of one or more filters or selection criteria (“non-spatial” sub-setting”, charged on a per record basis).

**Substitutable:** in relation to Content means that a derivative of original Content serves substantially the same purpose as the original Content, has not been changed to something different and is effectively imparting the same or substantially the same knowledge.

**Terminal Use Restriction:** means the limit specified in Section 3 Schedule 3 on the number of servers, desktop or portable computers, personal digital assistants, mobile phones or any other electronic means of access, permitted in a particular Year to gain direct access to (this includes viewing) the Licensed Content or anything Copy Derived from it.

**Third Party Claim:** means any claim for compensation or other legal remedy (including remedies in respect of negligence) in connection with this agreement or the Licensed Content by any person other than the Licensee or NRW.

**Third Party Royalties:** means the charges payable to third parties as identified in and Section 2 Schedule 3 (External Use) and Section 3 Schedule 3 (Internal Use).

**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.

**Transparency Principle:** means the principle that End Users should not be misled in any way about matters relating to the Licensed Content which affect its potential usefulness or as regards its source.

**Updates:** means, where indicated in Section 3 Schedule 3 as included, updated copies of Licensed Content that contain replacements for existing Licensed Content that are made by the NRW to reflect quality improvements or the elimination of errors, or additional within the same description, derived from an extract of the relevant NRW primary source. An Update collates information from the relevant NRW primary Content source and can comprise either the supply of specific replacement Content or a full replacement set of Content.

**Value Added Reseller and VAR:** means a person who supplies an Approved Product to third parties on a commercial basis with added value through additional information, facilities or services.

**VAR Update Go Live Date:** means the date identified to the Contractor at the time of an Update supply before which the Contractor must not update an Approved Product with Updates.

**Wholesale:** means an As-Is supply of a Value Added Reseller dataset product (whether that product has been created As-Is, Copy Derived or Process Derived from Licensed Content),

which does NOT include mapping, interpretation, guidance or other consultancy type work, such as data selection or other customisation, specific to that customer but Wholesale can include geographical “cookie cuts”, basic metadata and systems technical advice such as how to load and install.

**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.

**Written:** includes fax but not email.

**Year:** means each period of twelve months commencing on the date particular Licensed Content is first licensed under this agreement and each anniversary thereof.

## SCHEDULE 2

### CONTRACT SPECIFIC CONDITIONS FOR THE PURCHASE OF SERVICES

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

#### 1. CONTRACTORS OBLIGATIONS

1.1 The Contractor shall:

1.1.1 in providing the Services, co-operate fully, and procure that its Staff co-operate fully with NRW's employees, agents and sub-contractors; and

1.1.2 in the event of the Contractor not being able to perform the Services, or any part thereof, immediately inform NRW giving details of the circumstances, reasons and likely duration. Nothing in this paragraph 1.1.2 shall in any way alter, modify, relieve, or in any other way vary the Contractor's obligation to provide the Services.

1.2 The Contractor must ensure that a sufficient reserve of suitably qualified, instructed and competent Staff are available to ensure appropriate cover arrangements to

provide the Services during holidays and sickness absence, or for absence due to any other reason.

## 2. **STAFF**

2.1 The Contractor must ensure that every member of staff employed by the Contractor in the provision of the Services is at all times properly and sufficiently qualified and instructed with regard to:

2.1.1 the task or tasks which that person has to perform;

2.1.2 any relevant provisions of the Contract;

2.1.3 the Health and Safety Requirements;

2.1.4 the need to maintain the highest standards of appearance, courtesy and consideration in relation to contact with members of the public; and

2.1.5 the need to efficiently and promptly deal with situations which involve actual or potential danger of personal injury to any person and report such situations to NRW and summon the appropriate emergency medical service if required.

2.2 The Contractor must ensure that its Staff carry out their duties and, whilst providing the Services, behave:

2.2.1 in an orderly manner and in as quiet a manner as may be reasonably practical, having regard to the nature of the duties being provided by them; and

2.2.2 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.

2.3 The Contractor must require its Staff 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 by the Contractor's Staff must be provided by the Contractor.

2.4 The Contractor acknowledges that work may be carried out at remote locations and that they will be responsible for the protection 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.

- 2.5 The Contractor must provide at its own expense, and must require its Staff engaged in providing the Services to wear or carry such identification (including photographic identification) as may be specified by NRW.
- 2.6 The Contractor undertakes that all amounts payable to or in relation to its Staff engaged in the performance of the Contract (including any wages and salaries, overtime, bonus or commission (earned but unpaid), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) shall be discharged by the Contractor for the entire duration of the Contract Period and the Contractor hereby indemnifies NRW against any and all costs, charges and expenses arising out of or in connection with such amounts.
- 2.7 The Contractor agrees that it shall not without the prior written consent of NRW:
  - 2.7.1 increase the proportion of working time spent on, or number of Staff, providing the Services (or any relevant part) under the Contract save for fulfilling assignments and projects previously scheduled and agreed between NRW and the Contractor; and
  - 2.7.2 replace any individual member of Staff employed, assigned or engaged in providing the Services under the Contract.
- 2.8 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.



### **3. PREMISES**

3.1 In relation to NRW Premises the Contractor shall:

3.1.1 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

3.1.2 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).

### **4. MANNER OF CARRYING OUT THE SERVICES**

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

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

4.3 Throughout the Contract Period, the Contractor shall:

4.3.1 have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Services;

4.3.2 provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Services; and

4.3.3 not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

### **5. TIMBER REQUIREMENTS**

- 5.1 The Contractor will ensure that all Timber supplied or used by the Contractor in performance of the Contract shall:
- 5.1.1 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
  - 5.1.2 Comply with the specifications as detailed in the Contract Order.
- 5.2 In addition to the requirements of paragraph 5.1 above, all Timber shall originate from a forest source where management of the forest has full regard for:
- 5.2.1 Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
  - 5.2.2 Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
  - 5.2.3 Safeguarding the basic labour rights and health and safety of forest workers.

## 6. **REQUIREMENTS FOR PROOF OF TIMBER ORIGIN**

- 6.1 If requested by NRW, and not already provided at the tender evaluation stage, the Contractor shall provide to NRW:
- 6.1.1 Evidence that the Timber complies with the requirements as detailed in the Contract Order; and/or
  - 6.1.2 Evidence that the Timber complies with the requirements of the social criteria defined in paragraph 5.2 above.
- 6.2 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.
- 6.3 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.

## 7. **INDEPENDENT VERIFICATION**

- 7.1 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 5.2.
- 7.2 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.

## 8. **NRW'S RIGHT TO REJECT TIMBER**

- 8.1 NRW reserves the right to reject any Timber that does not comply with the Contract Order or the criteria in paragraph 5.2.
- 8.2 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.
- 8.3 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.
- 8.4 NRW will accept evidence from any of the following categories:
- 8.4.1 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.

8.4.2 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.

8.4.3 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).

## 9. CHAINSAW OPERATORS

9.1 The Contractor shall at all times comply with all employment law and additionally the following:-

9.1.1 Chainsaw operators working on NRW land must be in possession of either a current certificate(s) of competence issued by an approved awarding body or the current equivalent units or qualifications within a recognised National or Scottish Vocational Qualification. During consolidation training prior to full assessment against a national standard a valid "Record of Training and Achievement" or qualifications issued by the Forestry Industry Safety Accord ("FISA") or the equivalent from any body which from time to time replaces it is an acceptable interim confirmation of competence;

9.1.2 Any overhead electric lines in the area covered by the Contract will be indicated on the Contract Map. The agent responsible for any overhead electric line indicated on the Contract Map shall be listed in the Schedule. At no time shall anyone work within two tree lengths of an overhead electric or power line unless they have complied with the specific control measures specified in the relevant FISA guide in place from time to time (or any equivalent guidance issued by any body that replaces FISA from time to time). NRW shall have the right at all times to demand that anyone working within 2 tree lengths of an overhead electric line shall stop work immediately unless they possess either a valid Site Safety Document or Permit to Work, both as specified in the relevant FISA guide. Operators on sites that include overhead electric lines must be in possession of the relevant applicable FISA

Safety Guide or the equivalent from any body that from time to time replaces it.

## 10. **SUB-CONTRACTORS**

- 10.1 The Contractor shall remain liable for the performance of all its obligations under this Contract notwithstanding its appointment of any authorised sub-contractor or agent to perform any of them. Any act or omission of any sub-contractor or agent of the Contractor, or of any employee of the Contractor or of any such sub-contractor or employee, shall be deemed to be the act or omission of the Contractor which shall be responsible therefor accordingly and shall indemnify NRW against any loss or damage suffered by NRW arising from any act or omission of such sub-contractors, agents or employees.
- 10.2 NRW shall be entitled upon giving 24 hours notice, save in emergencies where its entitlement will have immediate effect, to veto the use by the contractor of any sub-contractor that NRW does not consider suitable to carry out the obligations in this Contract. The Contractor shall ensure that such contractor or sub-contractor shall immediately cease any activities and vacate the Work Site and Authorised Access Routes. For the avoidance of doubt, the prior approval of such sub-contractor by NRW shall not prejudice the rights of NRW under this paragraph 10.2.

## **SCHEDULE 3**

### **LICENCE AGREEMENT FOR CO-DELIVERER**

#### **Special Licence – Co-Deliverer**

**Ref: ATI**

#### **PARTIES**

- (a) NATURAL RESOURCES BODY FOR WALES whose principal office is at Ty Cambria, 29 Newport Road, Cardiff CF24 0TP (“NRW”) (1) and
- (b) the Contractor.

## BACKGROUND

This licence applies if the Contractor are seeking permission for re-use of NRW Content by using it non-commercially for a specific project or purpose that is significantly important for the achievement of our statutory functions.

## LICENCE

NRW and the Contractor agree that:

1. This Licence Agreement (the "Licence Agreement") which is dated on the later of the two dates of signing below includes these paragraphs, the Sections below, the Standard Terms and Conditions for a Natural Resources Wales Intellectual Property Licence in Appendix 1 and Standard Definitions in Schedule 1.
2. NRW will provide the Contractor (if the Contractor do not already have a copy) with the Licensed Content.
3. The Contractor will pay NRW the Fees due under this Licence Agreement.
4. If it is not possible to interpret consistently the Special Licence Provisions in Section 4 below and the Standard Terms and Conditions in Appendix 1 the Special Licence Provisions will prevail.

## SECTION 1 – Commencement Date, Term and Contact Details

This Licence Agreement commences on xx/xx/2015 for a period of 1 year expiring at the end of xx/xx/2016 or the actual end of the relevant project or purpose identified in Schedule 2 Part A, subject to earlier termination.

Operational contact (day to day)	NRW	LICENSEE
Name:		
Position:		
Tel:		
Email:		
Address:		

## SUMMARY TABLES

These tables are not definitive or legally part of the Licence Agreement but for convenience only. In the event of any discrepancy between them and the Licence Agreement the Licence Agreement will prevail but NRW will allow or be allowed a reasonable time for making any correcting payments or refunds.

Licensed Content (all charges are GBP and exclusive of VAT)

No.	Content including any replacement or aka names	Third Party Royalties
1		Waived
2		Waived
3		

## SECTION 2 – Approved Use

### A. INTERNAL USE

The following internal uses are licensed:

Internal Use and Archival Use conditional upon all use being Non-Commercial only and in pursuance of the following project(s) or purpose(s) which NRW consider to be of significant importance to the achievement of our statutory functions.

No.	Description of Project or Purpose	Expected start	Expected end
1			

## B. EXTERNAL USE AND PERMITTED SUBLICENSING

- B1. External use (including Contractor Use) necessarily connected with permitted Internal Use in Part A above
- B2. Supply for Non-Commercial purposes to someone else for a use NRW consider significantly helps NRW to achieve our statutory functions or public task and have listed below:
- a) Not applicable

## SECTION 3 – Licensed Content

This Section provides full details of the Licensed Content and also of Licence Fees for internal use of that Content and any special marginal costs of supply charges. These fees are Content related and (together with Third Party Royalties in relation to products or external use identified in Section 2) comprise cost recovery charges that aim to recover our costs of reproducing and disseminating Content that NRW license. Different types of Content have different cost recovery based charges and the annual review will, inter alia, re-assess which charging band to apply and whether any increase is required to reflect the effect of inflation on our costs. Terminal discounts may be available for certain types of Content. Licence Fees for Internal use:

- are annual (apart from any costs of supply e.g. infrastructure set up),
- are reviewed annually on 1<sup>st</sup> April,
- are subject to VAT but identified below exclusive of VAT,
- identify separately any Third Party Royalties that relate directly to use of Licensed Content. These are the actual charges that NRW has to pay to third parties.
- always, where ongoing, are due in respect of full Years, regardless of termination, Cessation, variation or expiry.

### Not applicable to this licence

#### SPECIAL CONTENT

1	Number	1
2	Name & AfA Code (if applicable)	
3	Description	
4	Content Type	
5	Geographical Coverage	Natural Resources Wales owned dataset
6 - 8	These paragraphs are not applicable to this licence	
9	Format supplied	
10 - 14	These paragraphs are not applicable to this licence	



15	Are there any known Third Party Rights?	
If yes, state who owns those rights and has licensed NRW.		
16	One off cost of supply charges	
17	Number of Terminals licensed (National Datasets only)	
18	Licence Fees	<b>Fees in relation to this Content – reviewed annually on 1 April</b> NB Licence Fees are annual. Standard wording below is based on Wales only data.
<b>Internal Use Charges</b>		
	<b>Content Factor</b>	<b>NRW Internal Use Charges GBP per annum</b>
		<b>Third Party Royalties GBP per annum</b>
		<b>Dataset Terminal Discount % (if applicable)</b>
		<b>Cost of supply charges per annum</b>
		<b>Total GBP per annum</b>
	Not applicable	Not applicable
	Not applicable	Not applicable
	Not applicable	Not applicable
	Not applicable	Not applicable
	Not applicable	Not applicable
19	Are there any Special Licence Provisions added with specific reference to this Content?	
20	Are there any information warnings added with specific reference to this Content?	
21	Full details/attributes	

## Open Content

Any designated NRW Open Content used by the Contractor; however it has come into your possession.

## SECTION 4 – Special Licence Provisions

### S2 Special Licence Provisions applicable to all Non-Commercial Licensees

S2.1 The Contractor shall when supplying Licensed Content externally

- take into account any relevant Information Warning,
- include the most up to date version of Licensed Content available to the Contractor,
- acknowledge NRW as the relevant intellectual property right owner.

- S2.2 Maximum liability in paragraph 8 in Appendix 1 shall be replaced by “one hundred thousand pounds”.
- S2.3 The provisions of paragraph 13 Appendix 1 in respect of consequences of termination etc shall only apply to Archival Use at the end of the permitted period of Archival Use and the EULA provisions of paragraph 6 Appendix 1 shall likewise not require Licensed Content to be destroyed prior to the expiry of any Archival Use permission granted by the Contractor.
- S2.4 A person to whom the Contractor supply Licensed Content by way of permitted External Use must only make Internal Non-Commercial Use of that Content.

**Signed on behalf of Natural Resources Body for Wales**

Name	
Job Title	
Signature (electronic)	
Date	

**Signed on behalf of the Licensee**

Name	
Job Title	
Signature	
Date	

**APPENDIX 1**

**STANDARD TERMS AND CONDITIONS FOR A NATURAL RESOURCES WALES INTELLECTUAL PROPERTY LICENCE**

**1. DEFINITIONS**

In this Licence Agreement the definitions in Schedule 1 shall apply.

**2. INTERPRETATION**

- 2.1 a reference to any statute, statutory provision or statutory instrument includes a reference to all rules and regulations made under it or them as from time to time amended, consolidated or re-enacted;
- 2.2 reference to any person includes any legal entity, including without limitation a natural person or incorporated entity;

2.3 a reference to a paragraph is a reference to a paragraph under this Appendix 1;

2.4 words importing a singular include the plural and vice versa;

2.5 The headings in this Licence Agreement are for ease of reference only.

### 3. **TERM**

The period of this Licence Agreement shall be as specified in Section 1 Schedule 3 at the end of which it will expire automatically without notice.

### 4. **SUPPLY OF LICENSED CONTENT TO THE LICENSEE**

Where Licensed Content replaces earlier Content supplied the Licensee shall not use that earlier Content otherwise than for Archival Use;

### 5. **LICENCE**

In consideration of the mutual obligations in this Licence Agreement and the payment (if applicable) by the Licensee of the Fees the NRW hereby grants to the Licensee personally (and not to any affiliated company or organisation) a non-transferable, non-exclusive revocable worldwide licence subject to the terms of this Licence Agreement to make the uses and to sublicense as specified in the Section 2 of Schedule 3 and to take any copies of the Licensed Content reasonably needed in connection with licensed use including backup copies.

### 6. **OBLIGATIONS OF THE PARTIES**

6.1 The Licensee shall:

#### LICENSED CONTENT

6.1.1 Not supply to another person Licensed Content or any other NRW Content or anything Derived therefrom (but this does not prohibit anything not Derived), unless required by law, other than as licensed by the NRW and accompanied by appropriate acknowledgement and attribution of the NRW's contribution and ownership of Intellectual Property Rights and in particular ensure that any web hosting or web mapping services are consistent with this obligation and not given any greater licence to use the Licensed Content than is permitted by way of Contractor Use;

6.1.2 comply with any Terminal Use Restriction;

- 6.1.3 take all reasonable technical, contractual and other security measures to protect the integrity and security of Licensed Content and to prevent any use of the Licensed Content contrary to this Licence Agreement and any breach of this sub-condition which has a demonstrable effect shall be capable of being treated as a material breach of this Licence Agreement;

#### PUBLICITY & MARKETING

- 6.1.4 other than as required by paragraph 6.1.1, not refer to NRW in any marketing or publicity material without prior approval of NRW in writing and not use any Licensed Content in such material unless licensed herein;

#### END USER TERMS AND CONDITIONS

- 6.1.5 ensure that any supply of Licensed Content to a third party in pursuance of this Licence Agreement is on the terms of an EULA which prohibits any External Use that is not separately licensed by the NRW and requires As-Is or Copy Derived Licensed Content to be destroyed at the end of the term of the EULA;

#### COMPLIANCE WITH THE PRINCIPLES

- 6.1.6 do nothing which might contravene the Principles and any breach of this sub-condition which has a demonstrable effect shall be a material breach of this Licence Agreement provided that provision of truthful responses to enquiries put to the Licensee which are purely factual in nature shall only be a breach if contrary to paragraph 11;

#### NOTIFICATIONS BY THE LICENSEE

- 6.1.7 The Licensee will notify the NRW if:
- (a) it becomes aware that it is in breach of the Licence Agreement
  - (b) it suspects or discovers any possible infringement of the NRW's Intellectual Property Rights in the Licensed Content by a third party
  - (c) it suspects or discovers that use of the Licensed Content might be an infringement of any third party's Intellectual Property Rights or of any third party's contractual rights derived therefrom or be any other breach of confidentiality or statute

- (d) it receives any Third Party Claim or a significant complaint or report in connection with this Licence Agreement or the Licensed Content and will, subject to any legally binding confidentiality, supply copies of any relevant documentation to the NRW.

6.2 The NRW shall:

6.2.1 supply to the Licensee such information and assistance as the Licensee may reasonably request, for the purposes of this Licence Agreement in connection with the processes and procedures used to create the Licensed Content unless such information is confidential to the NRW or supply would breach any intellectual property rights, contractual restrictions or other third party confidentiality;

6.2.2 treat equitably the Licensee and other comparable licensees.

7. **PAYMENT**

7.1 Fees are as detailed in Sections 2 and 3 of Schedule 3 and are, subject to any Special Licence Provisions, payable in advance of this Licence Agreement.

7.2 Where Fees are payable, the Licensee shall keep true, accurate and sufficient accounts and records to enable the amount of all payments required under this Licence Agreement to be determined. The Licensee shall keep such accounts and records during the life of this Licence Agreement and six years after its termination or expiry.

8. **LIABILITY**

8.1 **QUALITY AND FITNESS FOR PURPOSE**

The NRW does not warrant that the Licensed Content will always be accurate, complete or up to date or that the Licensed Content will provide any particular facilities or functions or be suitable for any particular purpose. The Licensee must ensure that the Licensed Content meets its needs and is entirely responsible for the consequences of any use of the Licensed Content.

8.2 **ELECTRONIC FORMAT**

If an electronic format has been used, the NRW applies reasonable endeavours to ensure that but cannot guarantee that the media on which the Licensed Content is provided will always be free from defects, computer viruses, worms, Trojan horses, software locks or other similar code of a destructive or unwelcome nature. The

Licensee should carry out all necessary checks prior to loading the Licensed Content on to its computer system.

### 8.3 ECONOMIC AND INDIRECT LOSS

Other than in respect of paragraph 11, compliance with the Principles and the warranty in paragraph 10, neither party shall be liable to the other or any other person (whether in contract or in negligence or in other tort or otherwise) for:

8.3.1 any economic losses (including without limitation loss of revenues, profits, contracts, business or anticipated savings) other than Fees; or

8.3.2 any loss of goodwill or reputation; or

8.3.3 any special, indirect or consequential losses in any case whether or not such losses were within the contemplation of the parties at the date of this Licence (including loss of business, profit, reputation or goodwill) arising out of or in connection with this Licence Agreement or its subject matter.

### 8.4 MAXIMUM LIABILITY

The Parties' maximum aggregate liability to the other (including legal costs) in connection with this Licence Agreement shall not (apart from payment of Fees and the indemnities in paragraph 17) exceed the total sum of Fees due under this Licence Agreement or such other sum as shall be indicated in Special Licence Provisions.

### 8.5 NOTICE OF CLAIMS

Neither party shall be liable for any claim between the parties (not being in relation to a Third Party Claim) arising under this Licence Agreement unless Notice of the claim is given to the other within six months of becoming aware of the circumstances giving rise to such claim, or of such time as the relevant party ought reasonably to have become aware of such circumstances.

### 8.6 DEFECTS IN OWNERSHIP

The NRW shall not be liable under this Licence Agreement for any defect in its Intellectual Property Rights to the Licensed Content if, both:

8.6.1 it has used reasonable endeavours to ensure that relevant numbered section in Section 3 Schedule 3 is in the generality the property of or licensed to the NRW; and

8.6.2 after the application of the provisions in paragraph 10 on remedying defects, such defect would not require the withdrawal of that numbered section or a significant part thereof, it being accepted that less than five percent (5%) (measured either as to value, geographically, or by quantity) would not be significant.

#### 8.7 DEATH AND PERSONAL INJURY

Nothing in this paragraph 8 shall limit or exclude either party's liability for death or personal injury arising from its negligence.

### 9. REPRESENTATIONS

Except as expressly provided in this Licence Agreement, all representations, conditions and warranties whether express or implied (by statute or otherwise) are hereby excluded to the fullest extent permitted by law provided that this shall not exclude statutory or common law rights in respect of negligence.

### 10. INTELLECTUAL PROPERTY RIGHTS

10.1 No Intellectual Property Rights are transferred or licensed to the Licensee save those which are expressly provided in this Licence Agreement.

10.2 The NRW warrants that subject to the provisions on defects in ownership contained in paragraph 8 it has all other powers and rights necessary to grant to the Licensee the licences set out in paragraph 5.

10.3 If any use of any part of the Licensed Content in accordance with this Licence Agreement infringes any Intellectual Property Rights the NRW shall use all reasonable endeavours to obtain the right (without charge) for the Licensee to continue to use and to distribute the infringing Content. If however the NRW is unable to do this, it shall use all reasonable endeavours to modify or replace that Content so as to be as close to the usefulness of the original Licensed Content as reasonably possible and (if this is not possible) it may remove the infringing Content from Section 3 Schedule 3.

10.4 Neither party shall be entitled to bring an action for specific performance of the other party's obligations under this Licence Agreement where the performance of such obligation would be in breach of third party Intellectual Property Rights.

## 11. **CONFIDENTIALITY**

11.1 The Licensee and the NRW agree to keep Confidential Information in strict confidence and secrecy; to restrict the disclosure of any part of Confidential Information to such of their respective employees, agents and contractors who need access to it to enable them to perform their obligations under or in connection with this Licence Agreement and to bring to the attention of such persons the duty of confidentiality under this paragraph before allowing them access to Confidential Information unless they are already bound by alternative equivalent obligations; and not to disclose any Confidential Information to any other third parties without the prior written consent of the other.

11.2 This paragraph 11 shall survive the expiry or termination of this Licence Agreement

11.3 This paragraph 11 shall not apply to Confidential Information:

11.3.1 which when it was disclosed was in the public domain otherwise than because of a breach of an obligation of confidentiality; or

11.3.2 that a party could be required to disclose by law; or

11.3.3 that has been disclosed in accordance with the Public Interest Disclosure Act 1998, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or the Re-use of Public Sector Information Regulations 2005; or

11.3.4 received by a party from a third party at liberty to disclose it; or

11.3.5 supplied to a third party whose Intellectual Property Rights have been used in connection with the Licensed Content and who has reasonably asked for such Confidential Information in order to verify payments due to them.

## 12. **TERMINATION**

12.1 The Licensee shall be entitled to terminate this Licence Agreement by 20 Working Days' Notice for any reason.

12.2 The NRW shall be entitled to terminate this Licence Agreement by 20 Working Days' Notice identifying the relevant reasons if the Licensee is in material breach of any of the terms of this Licence Agreement, or has not fewer than 5 times in any 12 month period committed a non-material breach of any of the terms of this Licence Agreement



(and, in the case of a breach capable of remedy, the notice period will not commence if the Licensee remedies that breach in such manner as described in the notice within 20 Working Days); or if the Licensee undergoes a change of ownership or control to which the NRW has reasonably objected within 20 Working Days of becoming aware of such change, or if a resolution is passed or an order is made for the winding up of the Licensee (save for the purpose of a bona fide re-construction or amalgamation) or the Licensee becomes subject to an administration order, or a receiver or administrative receiver is appointed over any of the Licensee's property or assets, or the Licensee is dissolved;

12.3 The rights to terminate this Licence Agreement given by this paragraph 12 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

### **13. CONSEQUENCES OF TERMINATION**

13.1 On expiry, Cessation or termination of this Licence Agreement or the Contract the Licensee's entitlement to use the Licensed Content shall cease.

13.2 All copies of the Licensed Content in the Licensee's (or its contractors') possession shall be destroyed unless it has been Process Derived.

13.3 Continued use by an End User of Licensed Content supplied under this Licence Agreement prior to expiry or termination is licensed by NRW for the remainder of the period of any EULA that is compliant with this Licence Agreement.

13.4 This paragraph shall survive termination or expiry of this Licence Agreement or the Contract.

### **14. FORCE MAJEURE AND NRW'S STATUTORY OBLIGATIONS**

14.1 Neither party shall be liable to the other for any delay in or failure of performance of its obligations under this Licence Agreement (other than an obligation to pay money) arising from any cause beyond its reasonable control including, without limitation, any of the following: Act of God, governmental act (including acts of regulatory authorities), statutory obligation, industrial action, war, fire, flood, explosion or civil commotion ("Force Majeure").

14.2 If a party is affected by Force Majeure it shall forthwith give Notice to the other party of the nature and extent of such Force Majeure.

14.3 If Force Majeure prevails for a continuous period in excess of 20 Working Days the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

14.4 The NRW shall not be liable to the Licensee for delay in performing its obligations under this Licence Agreement if such delay arises out of the overriding need to comply with its statutory obligations.

## 15. **ASSIGNMENT**

The Licensee may not transfer or in any other way make over to any third party the benefit of this Licence Agreement either in whole or in part without the express prior written consent of the NRW such consent not to be unreasonably withheld or delayed.

## 16. **WAIVER**

Failure by either party to exercise or enforce any rights available to it, or any forbearance, delay or grant of indulgence, will not (subject to paragraph 17 below) be construed as a waiver of its rights under this Licence Agreement or otherwise.

## 17. **INDEMNITIES**

17.1 Where Commercial Use is licensed herein each party shall indemnify the other against all costs (including reasonable and proper legal costs), claims, damages, demands and expenses arising directly or indirectly out of any Third Party Claim in accordance with the following principles:

17.1.1 the Licensee shall be responsible for any claims which arise from any breach of the Licence Agreement by the Licensee;

17.1.2 the NRW shall, subject to the provisions on defects in ownership in paragraph 8, be responsible for any claims that use of the Licensed Content infringes any United Kingdom Intellectual Property Rights or has been supplied in breach of a legally binding confidentiality;

17.1.3 nothing in these indemnities shall have the effect of requiring one party to indemnify the other to the extent that the other has been negligent or in wilful default;

17.2 The NRW or the Licensee (as the case may be) shall:

17.2.1 forthwith on receipt of a written request from the Licensee or the NRW(as the case may be) give to the other the sole conduct of the defence and settlement of any such claim and at no time admit liability; and

17.2.2 act in such a way as to mitigate their losses; and

17.2.3 act in accordance with the reasonable instructions of the other and give all such assistance as it may reasonably require to defend or settle such claim.

## 18. **ENTIRE LICENCE AGREEMENT**

This Licence Agreement constitutes the entire Licence Agreement between the parties and supersedes all oral or written Licence Agreements, representations, understandings or arrangements relating to its subject matter other than subsequent written alterations to this Licence Agreement mutually agreed by the parties in accordance with paragraph 20 below. The parties irrevocably and unconditionally waive any right to rescind this Licence Agreement by virtue of any misrepresentation and to claim damages for any misrepresentation save in each case where such misrepresentation was made fraudulently.

## 19. **SEVERANCE**

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

## 20. **VARIATION**

Variations must be agreed by both parties in writing signed by or on behalf of the NRW and the Licensee and neither party shall unreasonably refuse or delay such requests for a variation.

## 21. **NOTICES AND CONSENTS**

21.1 Notices under this Licence Agreement shall be written, in English, in advance by at least the period specified in this Licence Agreement and shall be sent to the address and contact of the party as set out in this Licence Agreement (or such other address in the United Kingdom as either party may notify to the other) in accordance with this paragraph).

21.2 Notices may be sent by first class mail (or other comparable and reputable postal services) or by email.

- 21.3 Correctly addressed notices sent by mail shall be deemed to be delivered 2 Working Days after posting.
- 21.4 Correctly addressed emails shall be deemed to be delivered when sent provided that a confirmation copy is sent by first class mail within 24 (twenty four) hours.
- 21.5 Any consent, approval or agreement given pursuant to this Licence Agreement shall be in writing and in the case of the Licensee shall be signed in accordance with the contacts records in Section 1 Schedule 3, or any variation thereof.

## 22. **RELATIONSHIP OF PARTIES**

Nothing in this Licence Agreement shall create a partnership or joint venture between the parties, nor shall this Licence Agreement constitute one party the agent of the other or give either party authority to act or hold itself out as having authority to act on behalf of the other; or confer or purport to confer on any third party any benefit or rights in respect of the terms of this Licence Agreement.

## 23. **DISPUTE RESOLUTION**

- 23.1 All disputes under or in connection with this Licence Agreement shall be referred first to the parties' respective managers with responsibility for the day to day management of this Licence Agreement.
- 23.2 Either party may thereafter initiate, at any time, the other party's standard internal complaints process (or if none exists refer the dispute up to the next level of management).
- 23.3 After the relevant complaints procedure or referral is completed (within the relevant timescales set out therein or in the absence thereof 20 Working Days), the dispute may be referred by either party to the parties' respective Chief Executive Officers or equivalent.
- 23.4 If the parties' respective Chief Executive Officers are unable to resolve the dispute within 10 Working Days, the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 23.5 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations

connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings.

- 23.6 Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 20 Working Days after the appointment of the mediator.
- 23.7 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 23.8 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 23.9 Nothing in this paragraph shall restrict the Parties' rights to seek interim relief.

#### 24. **RIGHTS OF THIRD PARTIES**

Save where this Licence Agreement expressly provides to the contrary, for the purposes of the Contracts (Rights of Third Parties) Act 1999 this Licence Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

#### 25. **Governing Law**

This Licence Agreement shall be governed and construed in accordance with English and Welsh law and the parties submit to the exclusive jurisdiction of the English and Welsh courts in the event of a dispute.

### **SCHEDULE 4**

#### **THE PROCESSING OF PERSONAL DATA**

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].