

THE SOUTH DOWNS NATIONAL PARK AUTHORITY ("SDNPA") GENERAL TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 The terms and expressions as set out in Schedule 1 shall have the meanings ascribed therein.
- 1.2 Clause and paragraph headings shall not affect the interpretation of this agreement.
- 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 clauses are to the clauses of the Agreement.
- 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 Service Order, these terms and conditions or the Special Terms, the conflict shall (unless otherwise specified in the General Terms) be resolved in accordance with the following order of precedence:

- (a) the Special Terms;
- (b) these General Terms;
- (c) the Service Order (which for the purposes of this clause 2 excludes any Special Terms which take precedence by virtue of 2.1(a));
- (d) any other document referred to in the Agreement, unless expressly agreed, or a document varied pursuant to clause 10 shall not take higher precedence than specified here.

3. DURATION

- 3.1 The Agreement shall commence on the date specified in the Service Order and, subject to earlier termination in accordance with the terms of the Agreement, end on the last date of the Contract Period.
- 3.2 No later than three (3) months before the end of the Contract Period (for the avoidance of doubt three (3) years from the Commencement Date), SDNPA may extend the Contract Period by a further period or periods as defined giving written notice to the Contractor of its wish to extend the Contract and the required length of such an extension (an "Extension")
- 3.3 Any such Extension shall be on the same terms and conditions and at the same rates as under this Contract and the parties shall, as soon as practicable after receipt by SDNPA of the Contractor's response, meet to discuss and use all reasonable endeavours to agree any changes to the Contract as necessitated by reason only of such Extension.
- 3.4 If SDNPA does not wish to extend this Contract beyond the Contract Period or an Extension (as appropriate) this Contract shall end on the expiry of the Contract Period in accordance with clause 24 (Expiry) or the expiry of the relevant Extension (as appropriate) and the provisions of clause 25 shall apply.

4. SERVICES

- 4.1 The Scope of Services will be defined in the Special Terms and the Service Order which are subject to this Agreement.
- 4.2 The Services will be provided by the Contractor with all reasonable skill, prudence and foresight and in accordance with clause 5 below.

5. CONTRACTOR'S OBLIGATIONS

- 5.1 The Contractor shall perform its obligations under the Agreement in accordance with the terms and conditions set out in the Agreement, the Special Terms and the Service Order, and shall comply and co-operate with any reasonable instructions given by SDNPA or its Project Officer.
- 5.2 The Contractor shall be responsible for compliance with and ensure that all obligations are performed in accordance with the Health and Safety Requirements.
- 5.3 The Contractor shall ensure that, as an enduring obligation throughout the Contract Period, it shall use the latest versions of anti-virus definitions available and check for and delete any malicious software.
- 5.4 The Contractor shall, in performance of the Services, (and shall procure that any of its Representatives involved in the provision of this Contract) comply with any notification requests under the Data Protection Requirements and both parties will duly observe all their obligations under the data protection requirements, which arise in connection with the Performance of this Contract.
- 5.5 Where the Contractor is processing Personal Data as a Data Processor for SDNPA, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data) as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and
 - 5.5.1 provide SDNPA with such information as SDNPA may reasonably require to satisfy itself that the Contractor is complying with its obligations under the data protection requirements;
 - 5.5.2 promptly notify SDNPA of any breach of the security measures required to be put in place pursuant to clause 5.5; and
 - 5.5.3 ensure it does not knowingly or negligently do or omit to do anything which places SDNPA in breach of SDNPA's obligations under the Data Protection Requirement.
- 5.6 The provisions of clause 5.5 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.
- 5.7 The Contractor is deemed to have satisfied himself as to the scope, extent and location of Services to be carried out under the Agreement.
- 5.8 The Contractor will, unless the Service Order specifically states otherwise, be responsible at its own cost and expense for the provision of all necessary Staff, materials and equipment for the management and execution of any obligation under the Agreement.

- 5.9 The Contractor shall comply with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of Services whose role involves the handling of information of a sensitive or confidential nature or information that is subject to any relevant security measures. The Contractor confirms that, where applicable in accordance with this clause 5.9, all Staff employed or engaged by the Contractor at the commencement of the Agreement were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 5.10 The Contractor 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.

6. INVOICES, PAYMENT, COSTS, INTEREST AND TAX

Invoices

- 6.1 SDNPA shall pay undisputed sums due to the Contractor in accordance with the Contract Price and the Payment Profile within 30 calendar days of receipt and agreement of invoices for services completed to the satisfaction of SDNPA.
- 6.2 Any invoices submitted by the Contractor shall contain the purchase order number (provided by SDNPA from time to time), all appropriate references, and a detailed breakdown of Services and will be supported by any other documents required by SDNPA to substantiate the invoice.
- 6.3 Invoices shall be submitted to Accounts Payable, The South Downs National Park Authority, South Downs Centre, Midhurst, West Sussex, GU29 9DH or such other address as SDNPA may notify the Contractor from time to time.
- 6.4 Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. SDNPA shall pay the Contractor such VAT that may be chargeable by the Contractor in connection with the provision of the Services and the Contractor shall issue a tax invoice in respect thereof.
- 6.5 The SDNPA 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 SDNPA. Within seven (7) days of the receipt of the invoice SDNPA shall advise the Contractor in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Contractor in accordance with the Contract, which shall take into account any adjustments made and SDNPA shall pay to the Contractor such amount as properly due under such invoice no later than a period of thirty (30) days from the date on which SDNPA has determined that the invoice is valid and undisputed.

- 6.6 The Contractor shall, within fourteen (14) days of receiving a request from SDNPA, provide a report on all costs and expenses which it has incurred and are recoverable from SDNPA under the Agreement. 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.
- 6.7 Notwithstanding the obligations to provide the reports set out in clause 6.6, the Contractor shall inform SDNPA prior to it contractually incurring any additional costs or expenses in relation to this Agreement in excess of the quoted contract price.

Dispute Resolution and Interest

- 6.8 Where SDNPA fails to comply with clause 6.1 and 6.5 above, the Contractor shall be entitled to charge interest on any amount outstanding in accordance with clause 6.10.
- 6.9 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be referred to Clause 42 **Dispute Resolution**.
- 6.9.1 Interest due on any sums in dispute shall not accrue until the earlier of 30 days after:
- 6.9.1.1 resolution of the dispute between the parties; or
 - 6.9.1.2 receipt of the decision of the adjudicator in accordance with clause 42 **Dispute Resolution**.
- 6.10 Either party shall pay interest on any overdue undisputed sum properly invoiced under this Contract at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 6.11 Where the Contractor enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
- 6.11.1 provisions having the same effect as clauses 6.1, 6.2, 6.4, 6.5, 6.8 and 6.10 of this Contract;
 - 6.11.2 a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions having the same effect as the clauses referred to in clause 6.11.1 above.

7. PERFORMANCE MONITORING

- 7.1 The Services shall be subject to such monitoring systems as SDNPA considers appropriate to undertake.
- 7.2 The Contractor shall cooperate, and shall procure that its Sub-Contractors shall cooperate, with SDNPA in carry out the monitoring referred to in clause 7.1 at no additional cost to SDNPA.

8. WARRANTIES AND REPRESENTATIONS

The Contractor warrants and represents that:

- 8.1 It has the full capacity and authority and all necessary consents to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
- 8.2 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;
- 8.3 the Services shall be to the reasonable satisfaction of SDNPA and meet any requirements made known to the Contractor by SDNPA;
- 8.4 the Services shall correspond with the requirements of the Service Order and any other specification within the Agreement;
- 8.5 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) regulatory approvals from any Regulatory Body necessary to perform the Contractor's obligations under the Agreement;
- 8.6 it has and will continue to have all necessary rights in and to any software or Intellectual Property Rights or any other materials made available by the Contractor to SDNPA necessary to perform the obligations under this Agreement;
- 8.7 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 Agreement.
- 8.8 The Contractor shall indemnify SDNPA and keep SDNPA indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:

8.8.1 any claim by a third party for damage occurring as a result of the Contractor's performance of the Services;

8.8.2 any breach of Law,

to the extent that any such loss, claim or liability is due to the breach of contract, negligence, wilful default or fraud of itself or its employees or of any of its Representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or Law by SDNPA.

9. **INTELLECTUAL PROPERTY RIGHTS ("IPR")**

9.1 All IPR in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) furnished to or made available to the Contractor by SDNPA shall remain the property of SDNPA;
- (b) created by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to SDNPA.

9.2 The Contractor grants SDNPA a non-exclusive licence to use the Existing IPR in order to make use of the Services.

9.3 In so far as is necessary to comply with clause 9.1, and in particular 9.1(b), the Contractor hereby assigns to SDNPA all future and Resulting IPR 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 SDNPA may require to evidence such assignment.

9.4 The Contractor undertakes:

- a) to notify to SDNPA in writing full details of any IPR promptly on their creation; and
- b) whenever requested to do so by SDNPA and in any event on the termination of a Service Order, promptly to deliver to SDNPA all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the IPR and the process of their creation which are in its possession, custody or power.

9.5 The Contractor shall not, and shall procure that the Contractor's Staff and suppliers shall not (except when necessary for the implementation of the Agreement) without prior consent from SDNPA, use or disclose any such IPR, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

- 9.6 The Contractor waives, or shall procure the waiver, of any moral rights in the IPR, owned or assigned to SDNPA pursuant to this clause 9, 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 IPR or other materials, infringes the Contractors moral rights.
- 9.7 The Contractor warrants and represents that any materials, products, information or service supplied or licensed by the Contractor will not infringe any IPR of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and shall keep indemnified SDNPA against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which SDNPA 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 SDNPA or the use of data supplied by SDNPA which is not required to be verified by the Contractor under any provision of the Agreement.

10. **VARIATIONS TO THE SERVICES**

- 10.1 No variation of the Agreement or of any document referred to in it by the Contractor shall be effective unless the costs of the variation shall be agreed and details of the variation are agreed in writing and signed by the Parties.

11. **DUE DILIGENCE AND RELIANCE ON REPRESENTATIONS**

- 11.1 The Contractor shall be deemed to have satisfied itself before submitting its tender for the Services, as to the accuracy and sufficiency of any information provided SDNPA. The Contractor agrees that it has ascertained for itself the accuracy of the information and shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Contractor's tender. The Contractor shall be deemed to have satisfied itself as to the nature and extent of the risks assumed by it under the Contract including the accuracy of the Contract Price.
- 11.2 Each of the parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the Contract save for any such representation, warranty or undertaking expressly set out in the Contract. This clause 11 shall not apply so as to restrict the liability of any party hereunder in respect of any fraud or fraudulent misrepresentation.

- 11.3 Subject to clause 11.4, the Contractor acknowledges that SDNPA and its Representatives shall not be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to the Contract or not).
- 11.4 Clause 11.3 shall not apply to any statement, representation or warranty made fraudulently or to any provision of the Contract which was induced by fraud, for which the remedies available shall be all those available under law.

12. **CONFLICT OF INTEREST**

- 12.1 The Contractor confirms that at the date of the Agreement, 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 SDNPA under the provisions of the Agreement and that it shall take appropriate steps to ensure that there is no such conflict throughout the Contract Period. The Contractor will disclose to SDNPA full particulars of any such conflict of interest which may arise.
- 12.2 The provisions of this clause 12 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

13. **FRAUD AND WHISTLE-BLOWING POLICY**

- 13.1 If the Contractor or anyone acting on its behalf or to its knowledge (whether such person is a Contractor Representative or a SDNPA Representative) commits any Prohibited Act in relation to this Contract or any other agreement with SDNPA or in relation to any matter or activity pertaining to any public body in the United Kingdom, the Contractor shall promptly inform SDNPA of the occurrence of such Prohibited Act and render all such assistance to SDNPA as SDNPA may reasonably require in investigating such acts.
- 13.2 The Contractor agrees and confirms that the SDNPA's Chief Operating/Executive Officer, SDNPA's Monitoring Officer and SDNPA's Chief Internal Auditor are authorised as persons to whom the Contractor's Representatives may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Representatives making a protected disclosure (as defined by that Act) shall not for that reason be subjected to any detriment or disadvantage.

13.3 To the extent necessary, the Contractor shall itself and shall procure that its Representatives familiarise themselves with SDNPA's Anti-fraud and Corruption Strategy (both as may be in force from time to time), SDNPA's Confidential Reporting Policy, and SDNPA's dedicated whistle-blowing and fraud reporting hotline all of which are available and accessible from SDNPA's website or may otherwise be obtained during normal working hours by prior arrangement from the Contract Manager at SDNPA's offices.

14. CORRUPT GIFTS AND PAYMENTS

14.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of SDNPA any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with SDNPA, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

14.2 The Contractor shall not enter into the Agreement if, in connection with it, commission has been paid or is agreed to be paid to any employee or representative of SDNPA by the Contractor or on the Contractor's behalf, unless, before the Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to SDNPA.

14.3 In this clause "associated with" has the meaning set out in s 8 of the Bribery Act 2010 and Prohibited Act means:

(a) engaging in any activity, practice or conduct which could constitute, facilitate or cause (in whole or in part) the commission (whether on the part of SDNPA, any officer, employee, agent or representative of SDNPA, including the Project Manager and the Supervisor, any UK NPA or the Contractor or any third party) of an offence under the Bribery Act 2010 and

(b) offering, promising or giving any person connected with this agreement (including SDNPA, any officer, employee, agent or representative of the SDNPA, including the Project Manager and the Supervisor, UK NPA, any Statutory Authority or any officer, employee, agent or representative of any Statutory Authority) any financial or other advantage, which is intended either to induce that person to "improperly perform a relevant function or activity" (within the meaning set out in the Bribery Act 2010) or to reward that person for any such improper performance.

- 14.4 SDNPA may terminate this Contract and recover all its losses if the Contractor, its employees or anyone acting on the Contractor's behalf:
- (a) commits a Prohibited Act as set out in clause 14.3;
 - (b) commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972.
- 14.5 Any clause limiting the Contractor's liability shall not apply to this anti-corruption clause.
- 14.6 If the Contractor commits an act under clause 14.4 (a) and/or (b) above, SDNPA may without prejudice to any accrued rights or remedies under this Contract, terminate this Contract forthwith by written notice having immediate effect. Any notice of termination under this clause 14.6 shall specify the nature of the act, the identity of the party who SDNPA believes has committed the act and the date on which the Contract will terminate.
- 14.7 The Contractor warrants and undertakes that he has not committed and does not commit (and that each person associated with the Contractor has not committed and does not commit) any Prohibited Act.
- 14.8 The Contractor procures that provisions equivalent to the preceding paragraphs of this Clause 14 are included within each subcontract under which a Subcontractor is appointed.

15. **EQUALITY AND EQUAL OPPORTUNITIES**

- 15.1 The Contractor shall have in place an equal opportunities policy. This policy must specify that the Contractor will not treat staff less favourably on the grounds of their colour, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief, age or because they have a disability. The policy must also specify that the Contractor will not tolerate behaviour, which is inconsistent with it, and detail the measures it will take if this occurs.
- 15.2 The Contractor shall take all reasonable steps to ensure that all of its Representatives do not unlawfully discriminate and comply with the Contractor's obligations under this clause 15.
- 15.3 In the performance of the Services and in its dealings with Service Users, SDNPA employees and members of the general public, the Contractor shall comply and shall ensure that its Representative's comply with;
- 15.3.1 the Human Rights Act 1998 as if the Contractor were a public body (as defined in the Human Rights Act 1998);
 - 15.3.2 all Laws relating to equal opportunities, and

15.3.3 SDNPA's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Contractor.

16. SDNPA DATA

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

16.2 The Contractor shall not store, copy or disclose or use SDNPA Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by SDNPA.

16.3 To the extent that SDNPA Data is held and/ or processed by the Contractor, the Contractor shall supply that SDNPA Data to SDNPA as requested by SDNPA in the format specified in the request.

16.4 The Contractor shall take responsibility for preserving the integrity of SDNPA and preventing the corruption or loss of SDNPA data.

16.5 The Contractor shall perform secure back-ups of all SDNPA Data and shall ensure that up to date back-ups are stored off-site and in accordance with any business continuity and disaster recovery plans SDNPA have in place or requires the Contractor to have in place. The Contractor shall ensure that such back-ups are available to SDNPA at all times upon request and are delivered to SDNPA at no less than 3 monthly intervals or as requested by SDNPA.

16.6 The Contractor shall ensure that any system on which the Contractor holds any SDNPA data, including back-up data, is a secure system that complies with any SDNPA security policy and that it has in place appropriate technical and organisational measures to ensure the security of the same.

16.7 If SDNPA data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, SDNPA may:

(a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of SDNPA Data to the extent and in accordance with the requirements specified by SDNPA; and/or

(b) itself restore or procure the restoration of SDNPA 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 SDNPA.

16.8 If at any time the Contractor suspects or has reason to believe that SDNPA Data has or may become corrupted, lost or sufficiently degraded in any

way for any reason then the Contractor shall notify SDNPA immediately and inform SDNPA of the remedial action the Contractor proposes to take.

16.9 For the avoidance of doubt, the Contractor shall ensure that it and its Staff understand the definition of SDNPA Data and the following associated obligations in relation to SDNPA Data:

16.9.1 Any Data processed and/or collected by the Contractor in order to perform its obligations under this agreement, and in accordance with applicable law, will be treated as SDNPA Data and should not be processed and/or collected without the written permission of SDNPA (such permission not to be unreasonably withheld by SDNPA);

16.9.2 On or before the Expiry Date, the Contractor will ensure that all documents and/or computer records and Personal Data or SDNPA Data in its possession, custody or control and which contain information relating to any of SDNPA's Representatives or SDNPA Premises including any documents in the possession, custody or control of any Sub-Contractor, are delivered up to SDNPA or securely destroyed. The Contractor will provide to SDNPA all documentation and evidence to confirm that the data has been securely destroyed.

17. **DATA PROTECTION**

17.1 Both parties shall, and the Service Provider shall procure that its Representatives shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Contract.

17.2 The Service Provider shall perform its obligations under this Contract in such a way as to ensure that it does not cause the Authority to breach any of its applicable obligations under the Data Protection Legislation .

17.3 The Service Provider shall be liable for and shall indemnify (and keep indemnified) the Authority against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Authority which arise directly from a breach by the Service Provider of its obligations under the Data Protection Legislation , including without

limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Service Provider or its employees, servants, agents or Sub-Contractors.

17.4 [The Service Provider agrees that it shall enter into a data sharing agreement with the Authority if required to do so at the Authority's absolute discretion so as to set out the parties obligations in relation to any Personal Data which may be shared between the parties.]

17.5 The provisions of this schedule and Clause 17 to the General Terms and Conditions (Data Protection) shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

17.6 DATA PROCESSOR OBLIGATIONS

17.6.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the Authority is the Data Controller and that the Service Provider is the Data Processor. A description of the Personal Data processed by the Service Provider and the processing activities undertaken by the Service Provider is set out in Schedule A (Data Processing Activities).

17.6.2 In respect of Personal Data that the Service Provider processes on behalf of the Authority in connection with this Contract, the Service Provider shall and shall procure that its Representatives shall:

17.6.3 solely process the Personal Data for the purposes of fulfilling its obligations under this Contract and in compliance with the Authority's written instructions as set out in this Contract and as may be specified from time to time in writing by the Authority;

17.6.4 notify the Authority immediately if any instructions of the Authority relating to the processing of Personal Data are unlawful;

- 17.6.5 not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Authority;
- 17.6.6 comply with the Authority's instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Service Provider is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Service Provider shall inform the Authority in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;
- 17.6.7 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data and ensure that all Staff used by the Service Provider to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;
- 17.6.8 ensure that none of the Service Provider's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 17.6.9 not engage any Sub-Contractor to carry out any processing of Personal Data without the prior written consent of the Authority provided that notwithstanding any such consent the Service Provider shall remain liable for compliance with all the requirements of this Contract including in relation to the processing of Personal Data;
- 17.6.10 ensure that obligations equivalent to the obligations set out in this clause are included in all contracts between the Service Provider and permitted Sub-Contractors who will be processing Personal Data and who have been approved in accordance with the Authority's general terms and conditions;
- 17.6.11 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking

into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;

- 17.6.12 upon request provide a written description of the technical and organisational measures employed by the Service Provider pursuant to the Authority's general terms and conditions (within the timescales required by the Authority) and if the Authority does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Authority (acting reasonably) to ensure compliance;
- 17.6.13 taking into account the nature of the data processing activities undertaken by the Service Provider, provide, at no cost to the Authority, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Authority to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):
- 17.6.14 notifying the Authority within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;
- 17.6.15 complying with the Authority's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Authority, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Authority;

- 17.6.16 maintain a record of the Service Provider's processing activities in accordance with the requirements of the Data Protection Legislation;
- 17.6.17 assist the Authority, at no cost to the Authority, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Service Provider and the information available to the Service Provider, including (without limitation):
- 17.6.18 providing information and assistance upon request to enable the Authority to notify Data Security Breaches to the Information Commissioner's and/or to affected individuals and/or to any other regulators to whom the Authority is required to notify any Data Security Breaches; and
- 17.6.19 providing input into and carrying out Data Protection Impact Assessments in relation to the Service Provider's data processing activities;
- 17.6.20 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Service Provider in connection with this Contract meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;
- 17.6.21 notify the Authority immediately and in any event within twenty four (24) hours in writing if:
- 17.6.22 the Service Provider or any Sub-Contractor engaged by or on behalf of the Service Provider suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or
- 17.6.23 the Service Provider or any Sub-Contractor engaged by or on behalf of the Service Provider receives any Data Security Breach

notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation, and in each case the Service Provider shall provide full co-operation, information and assistance to the Authority in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Authority;

17.6.24 upon termination of this Contract, at the discretion of and at no cost to the Authority, delete securely or return all Personal Data to the Authority and delete all existing copies of the Personal Data unless and to the extent that the Service Provider is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Service Provider shall notify the Authority in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Service Provider, the Service Provider shall provide the Authority with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.

17.6.25 make available to Authority at no cost to the Authority all information necessary to demonstrate compliance with the obligations set out in this clause and, upon request, allow the Authority, the Information Commissioner's Office and its representatives access to the Service Provider's Premises, records and Personnel for the purposes of assessing the Service Provider's compliance with its obligations under this clause; and

17.6.26 indemnify the Authority from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities or whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Authority and arising out of or in connection with any breach by the Service Provider or any Sub-Contractors of this clause.

17.7 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

AUTHORITY DATA ON SERVICE PROVIDER'S IT SYSTEM(S)

17.8 The Service Provider shall:

- 17.8.1 take all reasonable precautions and use all reasonable endeavours to preserve the integrity of any Authority Data or other data which it stores and/or processes on behalf of the Authority and to prevent any corruption or loss of such data and to have in place an appropriate archiving and back-up policy;
- 17.8.2 follow its detailed archiving procedures for Authority Data as set out in its archiving and back-up policy, a copy of which is to be provided to the Authority and as such policy may be updated by the Service Provider from time to time, which shall include as a minimum, the Service Provider making a back-up copy of Authority Data at the intervals and following the process detailed in its archiving and back-up policy and recording the copy on media form which the Authority Data can be reloaded if there is any corruption or loss of the Authority Data;
- 17.8.3 in the event of any corruption of or loss or damage to the Authority Data, use all reasonable endeavours to restore the lost or damaged Authority Data, at its own expense, from the latest back-up of such Authority Data maintained by the Service Provider in accordance with the archiving procedure described in its archiving and back-up policy or, where the Authority Data has not been restored by the Service Provider within [ten (10)] Working Days, at the Authority's option, promptly reimburse the Authority for any reasonable expenses it incurs in having the Authority Data restored by a third party;
- 17.8.4 be responsible for any loss, destruction, alteration or disclosure of Authority Data caused by itself and any of its Sub-Contractors, including (but not limited to) any third parties sub-contracted by the Service Provider to perform services related to Authority Data maintenance and back-up; and
- 17.8.5 in providing the Services, have in place and comply with its privacy and security policy relating to the privacy and security of the Authority Data [,such policy to include measures equal to or broadly comparable with the relevant provisions of the Authority's Data in Transit Policy]. The Service Provider shall provide a copy of its

privacy and security policy to the Authority upon request and wherever such policy is updated by the Service Provider from time to time and shall take into account any comments the Authority has on such policy.]

18. **CONFIDENTIALITY**

18.1 Subject to clause 18.2, the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

18.2 Clause 18.1 shall not apply to any disclosure of information:

- 18.2.1 required by Law, provided that clause 18 shall apply to any disclosures required under the Information Laws;
- 18.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
- 18.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 18.1;
- 18.2.4 by SDNPA of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
- 18.2.5 to enable a determination to be made under Clause 42 (Dispute resolution);
- 18.2.6 which is already lawfully in the possession of the receiving party prior to this disclosure by the disclosing party;
- 18.2.7 by SDNPA to any other department, office or agency of the Government; and
- 18.2.8 by SDNPA relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure.

18.3 The Contractor acknowledges that SDNPA is subject to transparency obligations which require SDNPA to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Contract, the Contractor hereby gives its consent for SDNPA to publish this Contract and its schedules in its entirety, including from time to time agreed changes to the Contract (save and except such matters as

SDNPA is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form SDNPA decides. The Contractor shall render such assistance and cooperate with SDNPA to enable such publication, including, if SDNPA so requires, assisting SDNPA at no additional costs to SDNPA in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.

- 18.4 On or before the Expiry Date the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which contain information relating to any of SDNPA's Representatives or SDNPA Premises including any documents in the possession, custody or control of any Sub-Contractor, are delivered up to SDNPA or securely destroyed.

19. FREEDOM OF INFORMATION AND ENVIRONMENTAL REGULATIONS

- 19.1 The Contractor acknowledges that SDNPA is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and co-operate with SDNPA (at the Contractor's expense) to enable SDNPA to comply with these requirements.

19.2 The Contractor shall and shall ensure that all Staff shall:

- (a) transfer SDNPA all requests for information that it receives as soon as practicable and in any event within two (2) working days of receiving a request for information;
- (b) provide SDNPA with a copy of all information in its possession or power in the form that SDNPA requires within five (5) working days (or such other period as SDNPA may specify) of SDNPA's request; and
- (c) provide all necessary assistance as reasonably requested by SDNPA to enable SDNPA to respond to a request for information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

- 19.3 SDNPA shall be responsible for determining at its absolute discretion whether any information, whether commercially sensitive information or otherwise, is exempt from disclosure in accordance with the provisions of the Code of Practice on Governmental Information, 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 SDNPA.

- 19.4 In responding to a request for information, including information in connection with the Agreement (including but not limited to tender documents, subsequent contractual information or information classified as confidential or sensitive) SDNPA will, where in its absolute discretion it deems necessary, use reasonable endeavours to consult the Contractor. Notwithstanding this the Contractor acknowledges that SDNPA may, in accordance with the Code, disclose information concerning the Contractor or the Services without consulting the Contractor, or following consultation with the Contractor having taken its views into account provided that SDNPA shall take reasonable steps where appropriate to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 19.5 The Contractor shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall provide all necessary assistance as reasonably requested by SDNPA to enable SDNPA to respond to a request for information within the time for compliance and shall permit SDNPA to inspect such records as requested from time to time.
- 19.6 The Contractor acknowledges that any commercially sensitive information identified by the Contractor is of indicative value only and that SDNPA may be obliged to disclose it in accordance with clause 19.4.

20. **SECURITY**

- 20.1 The Contractor acknowledges that SDNPA 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 SDNPA's Data.
- 20.2 The Contractor shall be responsible for the security of any of its systems and shall at all times provide a level of security which:
- (a) is in accordance with Good Industry Practice and Law;
 - (b) complies with any security policy of SDNPA or any policy SDNPA require the Contractor to develop, implement and maintain;
 - (c) meets any specific security threats to any of the Contractor's systems;
 - (d) complies with ISO/IEC27002 and ISO/IEC27001;
 - (e) the minimum set of security measures and standards required where the system will be handling "protectively marked" or sensitive information (as determined by the Cabinet Office Manual of Protective Security); and

- (f) any other extent national information security requirements and guidance issued from time to time.

20.3 The Contractor should avoid the use of removable media to store SDNPA Data or information wherever possible. In the event that removable media is used the Contractor shall ensure:

- (a) the SDNPA 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; and
- (b) the removable media should be encrypted to a standard of at least FIPS 140-2 or equivalent and must be protected by an authentication mechanism;
- (c) user rights to transfer SDNPA Data to removable media should be strictly limited to staff for whom it is absolutely necessary.

20.4 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.

20.5 Without limiting clause 20.2 and 20.3, 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):

- (a) loss of integrity of SDNPA Data;
- (b) loss of confidentiality of SDNPA Data;
- (c) unauthorised access to, use of, or interference with SDNPA Data by any person or organisation;
- (d) unauthorised access to network elements, Premises and tools used by the Contractor in the provision of the Services;
- (e) use of the Contractor's systems or Services by any third party in order to gain unauthorised access to any computer resource or SDNPA Data; and
- (f) loss of availability of SDNPA Data due to any failure or compromise of the Services.

20.6 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 SDNPA have in place or may require the Contractor to develop and put in place.

20.7 Upon becoming aware of any circumstances referred to in 20.5 the Contractor shall immediately take all reasonable steps necessary to:

- (a) remedy such breach or protect the Contractors systems against any such potential or attempted breach or threat; and
- (b) prevent an equivalent breach in the future,

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

20.8 In the event of any circumstances referred to in 20.5 the Contractor shall as soon as reasonably practicable provide to SDNPA full details (using such reporting mechanism as may be specified by SDNPA from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

21. **PERSONNEL**

21.1 The Contractor shall ensure that all Staff are of suitable character and are appropriately qualified, trained and experienced in the area of work which they are to perform.

21.2 The Contractor shall not employ, engage or use the service of any person who :

21.2.1 is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or Vulnerable Adults or any other person, in the provision of any part of the Services involving a Regulated Activity or access to or unsupervised contact with children or Vulnerable Adults without the SDNPA's prior and express written consent; or

21.2.2 discloses that he or she has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (or any successor body) procedures or otherwise), in the provision of any part of the Services involving access to or processing of financial data, or access to or processing of sensitive personal data without SDNPA's prior and express written consent.

[and, where applicable, SDNPA acknowledges and agrees that with regard to the provisions of this clause 21 the Transferring Employees and Third Party Employees have been appropriately checked as at the Commencement Date].

21.3 The Contractor shall (and shall procure that the relevant Sub-Contractor shall):

21.3.1 ensure that all Staff who, in providing the Services, will be engaged in the provision of Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list or the children's barred list, as appropriate; and

21.3.2 monitor the level, frequency and validity of the checks required under this clause 21.3 for each member of Staff.

21.4 The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services:

21.4.1 has a Relevant Conviction; or

21.4.2 is barred from carrying out Regulated Activity.

21.5 The Contractor shall immediately notify SDNPA of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 21 have been met.

21.6 The Contractor shall refer information about any person carrying out the Services to the Disclosure and Barring Service (or any successor body) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.

21.7 The Contractor shall ensure that its Representatives :

21.7.1 are adequately supervised and informed of the aspects of the Contract applicable to them so that they can comply with the Contract;

21.7.2 where specifically identified to the SDNPA, will be assigned to provide the Services;

21.7.3 are appropriately attired for the duties they are undertaking including, (where necessary) wearing protective clothing and footwear;

21.7.4 on request, disclose their identity to SDNPA or any third party;

21.7.5 other than as permitted by the Contract, do not solicit or act in such a manner as to induce payment for performance of the Services;

- 21.7.6 act in a courteous considerate manner and do not use foul or offensive language, bring offensive materials onto or consume intoxicating liquor or illegal drugs whilst on SDNPA Premises or providing the Services; and
- 21.7.7 do not bring animals or unauthorised persons onto SDNPA Premises except as expressly authorised by the Contract Manager.
- 21.8 The Contractor shall provide, maintain and permit access to records of its Representatives in accordance with the Contract.
- 21.9 Subject to clause 21.10, the Contract Manager may require the Contractor, by notice in writing, which shall include his reasons for the same, to reprimand or remove from the provision of Service any Representatives specified by such notice (including without limitation the Contractor's Manager). Where required the Contractor shall forthwith remove such Representatives from the provision of the Services and provide a replacement as appropriate to ensure that the Services is carried out in accordance with the Contract. Any Representatives removed from work under the provisions of this clause 40.9 may not be employed subsequently in the provision of the Services without the written consent of the Contract Manager.
- 21.10 The Contract Manager shall not require removal of personnel under clause 21.9 unless he has given due consideration as to whether SDNPA would (if the individual concerned were an employee of SDNPA) take the same action against such employee in the same or similar circumstances.
- 21.11 SDNPA shall not be liable either to the Contractor or to any Representatives in respect of any liability loss or damage occasioned by the operation of clause 21.9.

22. **HEALTH AND SAFETY**

- 22.1 The Contractor shall comply and ensure its Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999. The Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 and all other health, safety and welfare requirements applicable to the Services including those detailed in the Specification.
- 22.2 The Contractor shall nominate a suitably competent person to have overall responsibility for its compliance with the obligations under clause 22.1 and for ensuring that all health and safety matters concerning the Contract are dealt with in accordance with the parties' health and safety policies, including the SDNPA's Health and Safety Information for Contractors.

22.3 Whilst on SDNPA Premises:

22.3.1 the Contractor shall ensure that its Representatives comply with the lawful requirements of the Contract Manager, including a requirement to monitor the Contractor's health and safety practices periodically; and

22.3.2 the Contractor shall ensure that its Representatives observe any local arrangements for fire, health, safety, welfare, hygiene and security.

22.4 When performing the Services the Contractor shall:

22.4.1 where the Contractor is the 'Responsible Person for the purposes of the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 ("RIDDOR"), he shall promptly inform SDNPA if the Contractor makes a report as required of him by RIDDOR and the Contractor shall keep records of any such reportable incident as required under RIDDOR; and

22.4.2 immediately inform SDNPA in respect of any injury or dangerous occurrence which arises in connection with the performance of the Services on SDNPA Premises.

22.5 Without prejudice to Section 24 (Termination), the Authority shall be entitled to suspend the provision of the Services where the Service Provider fails to comply with this clause 22 and the provisions of clause 7 (Performance monitoring) shall apply.

22.6 Where SDNPA has exercised its powers under clause 22.5:

22.6.1 the Contractor shall not resume provision of the Services until the Contract Manager is satisfied that such non-compliance has been rectified; and

22.6.2 SDNPA shall not incur any liability for any such suspension of the Services.

For class 3, 4 and 5 contracts also include:

22.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to SDNPA on request.

22.8 The Contractor shall have in place and comply with a health and safety policy and safe working procedures as well as appropriate risk assessments (the "Safe Working Arrangements") which comply with clause 23.1 and such Safe Working Arrangements shall, once approved by

SDNPA, form part of the Contract and the Contractor shall be required to review and agree an update to the same with SDNPA from time to time.

- 22.9 The Contractor and its Representatives shall be entitled to refuse entry or evict from the SNDPA Premises any vehicle or persons, excluding SDNPA Representatives, where the Contractor, acting reasonably, considers that such vehicles and/or persons are unsafe or are likely to cause damage or injury to or constitute a breach of Law or the Health & Safety Policy.
- 22.10 [As soon as practicable following a request by the Contract Manager, the Contractor shall provide substance data sheets setting out as a minimum details of any hazards associated with products used in providing the Services].

23. **PREMISES AND ASSETS**

ASSETS

- 23.1 Except as otherwise specified in the Specification, the Contractor shall be responsible at its own cost for providing all equipment, vehicles, plant and materials necessary and/or used for the proper and efficient performance of the Services during the Contract Period (the "Contractor's Assets").
- 23.2 The Contractor shall maintain all Contractor's Assets in a safe condition so that they are fit for the purpose of delivering the Services and as a minimum comply with the requirements of the Contract and any manufactures servicing and maintenance requirements.
- 23.3 The Contractor shall keep, operate, prepare and use all Contractor's Assets:
- 23.3.1 with due regard for fuel economy and energy saving.
 - 23.3.2 in a safe manner and under proper control, which shall include clearly and accurately labelling containers to indicate their contents;
- and ensure that its Representatives are properly instructed in such matters.
- 23.4 The Contractor shall:
- 23.4.1 use all reasonable endeavours to provide materials for the provision of the Services which at least meet the standard indicated in the Contractor's Tender and in particular the environmental schedule included therein;
 - 23.4.2 be responsible for the security of all equipment and materials used by the Contractor in connection with the provision of the Services and SDNPA shall not (as far as permitted by law) be liable for loss, damage or injury in respect of the same;

- 23.4.3 only use in the provision of the Services equipment owned by the Contractor or hired under a hire agreement containing a provision permitting SDNPA (on a request in writing by SDNPA undertaking to pay all hire charges in respect thereof from such date) to hire such equipment on the same terms as the equipment was hired to the Contractor, with provision that SDNPA can permit any Replacement Contractor employed for the purpose of providing the Services to use the same. From the Expiry Date the Contractor shall do all things necessary to enable SDNPA to hire such equipment and will pay all outstanding monies due to the owner of the equipment up to the date on which it is hired to SDNPA; and
- 23.4.4 ensure that on the Expiry Date (or as otherwise agreed) any of the Contractor's Assets stored or remaining at SDNPA Premises are removed from the same.

SDNPA PREMISES

- 23.5 [SDNPA Premises shall be made available to the Contractor for the Contract Period in accordance with the Lease which shall be entered into between the parties on or before the Commencement Date. OR The Contractor shall have access to and use of SDNPA Premises only to the extent as set out in the Specification or as otherwise agreed in writing with the Contract Manager.]
- 23.6 The Contractor shall not use SDNPA Premises for any purpose other than to provide the Services or as permitted by the Contract [or as otherwise provided by the Lease].
- 23.7 The Contractor shall comply with any reasonable directions of the Contract Manager or Representatives of SDNPA regarding security arrangements, vehicular access arrangements, parking instructions and/or procedures at SDNPA Premises.
- 23.8 [Except as otherwise provided in the Lease,] the Contractor shall only make use of the available utilities at SDNPA Premises to a reasonable extent, such level to be determined by the Contract Manager. Any unreasonable or excessive use of utilities shall give rise to a right for SDNPA to estimate the costs incurred through the usage and charge the Contractor accordingly.
- 23.9 The Contractor shall be responsible for obtaining the consent required to use SDNPA Premises for the purpose of the Services.
- 23.10 SDNPA shall be responsible for any Environmental Liability arising from or in relation to SDNPA Premises except to the extent that such liability arises from any act, omission, default or negligence of the Contractor.

23.11 SDNPA or its Representatives shall be entitled to refuse entry or evict from the SDNPA Premises any vehicle or persons where it reasonably considers that such vehicles and/or persons are unsafe or are likely to cause damage or injury to or constitute a breach of Law or the Authorities health & safety policy.

23.12 The Contractor shall ensure that:

23.12.1 where using SDNPA Premises and equipment provided by SDNPA they are kept properly secure and will comply and cooperate with the Contract Manager's reasonable directions regarding the security of the same;

23.12.2 only its Representatives duly authorised to enter upon SDNPA Premises for the purposes of providing the Services, do so;

23.12.3 any materials, plant or equipment owned or held by SDNPA (including those of its Representatives, excluding the Contractor) ("SDNPA Assets") and used by the Contractor are maintained (or restored at the Expiry Date) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from SDNPA Premises unless expressly permitted under the Contract or by the Contract Manager.

23.13 SDNPA shall maintain and repair SDNPA Assets, however where such maintenance or repair arises directly from the act, omission, default or negligence of the Contractor or its Representatives (fair wear and tear excluded) the costs incurred by SDNPA in maintaining/repairing the same shall be recoverable from the Contractor as a debt.

23.14 The Contractor's Manager shall immediately inform the Contract Manager of any defects, loss or damage appearing in or occurring to any SDNPA Assets as a result of the provision of the Services.

[Keys

23.15 Where the Contractor is provided with keys or security cards to access SDNPA Premises ("Keys"), the Contractor shall be responsible for the safe custody of the Keys and ensure that they are returned to the Contract Manager at the end of the Contract Period or as reasonably requested.

23.16 A designated person must retain the Keys and the Service Provider shall provide that person's contact details in writing to the Contract Manager to ensure that SDNPA may contact such person 24 hours a day.

23.17 The Contractor shall immediately report the loss or misplacement of any Keys to the Contract Manager.

- 23.18 A system for the handing over and return of Keys, where applicable and as necessary during vacation periods, shall be agreed between the Contractor's Manager and the Contract Manager prior to the Commencement Date and such system shall be maintained throughout the Contract Period.
- 23.19 Where the Contractor loses or damages any Keys, SDNPA may replace such Keys and arrange for the replacement of locks, forcing and subsequent replacement of doors/gates (as appropriate) and SDNPA's costs in dealing with the same shall be recoverable from the Contractor as a debt.]

SERVICE PROVIDER PREMISES

- 23.20 Except for SDNPA Premises, the Contractor shall provide all other premises and/or sites necessary to provide the Services (the "Contractor Premises")expenses in relation to the Contractor Premises;
- 23.21 be responsible for any Environmental Liability arising from or in relation to the Contractor Premises except to the extent that such liability arises from any act, omission, default or negligence of SDNPA;
- 23.22 operate, repair and maintain the Contractor Premises in accordance with all Laws and Good Industry Practice including obtaining and maintaining any consent for provision of the Services at the Contractor Premises;
- 23.23 use all reasonable endeavours to ensure that its provision of the Services does not lead to any unnecessary nuisance or annoyance to SDNPA or third parties, including without limitation in relation to emissions of dust, smells, noise and vermin.

RIGHT OF ACCESS

- 23.24 The Contractor shall at all times during the Contract Period permit SDNPA and its Representatives access on reasonable notice during Working Hours (save in the case of emergency where no notice shall be required) to SDNPA Premises and Contractor Premises for the purpose of:
- 23.24.1 monitoring and inspecting work being performed to provide the Services;
- 23.24.2 interviewing the Contractor's Representatives engaged in connection with the provision of the Services; and
- 23.24.3 inspecting the Contractor's Assets and SDNPA Assets and systems and procedures used by the Contractor to provide the Services.

24. TERMINATION

- 24.1 This contract shall terminate automatically at the end of the Contract Period (the Expiry Date) unless it shall have been terminated earlier in accordance with the provisions of the Contract. For the avoidance of doubt the Contractor shall not be entitled to any compensation on expiry.
- 24.2 Without prejudice to any other rights or remedies which SDNPA may have, SDNPA may terminate this Agreement by giving three months' written notice to the Contractor if it reasonably believes that any of the circumstances set out in regulation 73(1)(a) or 73(1)(c) of the Public Contracts Regulations 2015 applies, such notice to expire at any time.
- 24.3 SDNPA may terminate the Agreement by notice in writing with immediate effect with no liability to make any further payment to the Contractor where the Contractor:
- (a) undergoes a change of control, within the meaning of section 1124 of the Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Agreement; or
 - (b) 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
 - (c) is guilty of any fraud or dishonesty or acts in any manner which in the opinion of SDNPA brings or is likely to bring the Contractor or SDNPA into disrepute or is materially adverse to the interests of SDNPA; or
 - (d) if there is an Insolvency Event; or
 - (e) commits any serious or repeated breach of non-observance of any of the provisions of the Agreement or refuses or neglects to comply with any reasonable and lawful directions of SDNPA; or
 - (f) the Contractor makes an assignment or novation of this Contract in breach of this Agreement or sub-contracts the Services or any part of the Services in breach of this Agreement; or
 - (g) The Contractor breaches any of its obligations under the Insurance Clause in this Agreement; or
 - (h) SDNPA reasonably believes that the circumstances set out in regulations 73(1)(b) of the Public Regulations 2015 apply; or
 - (i) The Contractor commits a breach that results in material damage to the reputation of SDNPA.

- 24.3 SDNPA may only exercise its right under clause 24.2(a) 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 SDNPA immediately when any change of control occurs.
- 24.4 Either Party may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the other Party with immediate effect if that other Party commits a Default and if:
- (a) 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
 - (b) the Default is not capable of remedy; or
 - (c) the Default is a fundamental breach of the Agreement.
- 24.5 SDNPA may, without prejudice to any accrued rights or remedies under the Contract, terminate the Contract forthwith by written notice having immediate effect if:
- (a) a Prohibited Act is committed by the Contractor or any of its Representatives, not acting independently of the Contractor;
 - (b) the Contractor is in material breach of any of its representations and warranties under this Agreement (notwithstanding that such warranties and representations are expressed to be warranties).
- 24.6 Any notice of termination under this clause 24 shall specify:
- 24.6.1 the warranty breached or the nature of the Prohibited Act;
 - 24.6.2 if a Prohibited Act, the identity of the party whom SDNPA believes has committed the Prohibited Act; and
 - 24.6.3 the date on which the Contract will or is deemed to have terminated, in accordance with the applicable provision of this clause 24.

25. CONSEQUENCES OF TERMINATION

- 25.1 On termination of the Agreement pursuant to clause 25.1-25.3 or 37 **Force Majeure** SDNPA shall:
- (a) pay to the Contractor sums due and reasonably incurred up to the date of termination where SDNPA has received Goods or Services to

the equivalent value (and properly invoiced in accordance with the Payment terms at clause 6;

- (b) 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 clause 25.1 shall only be payable by SDNPA if it would have been payable in accordance with this Agreement if it had not been terminated.

25.2 SDNPA shall not be liable under clause 25.1(b) 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 Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Contract Period.

25.3 Notwithstanding that a party may have a right to terminate the Contract, that party may elect to treat the Contract as being in full force and effect and to enforce its rights under the Contract.

26. **DUTY TO CO-OPERATE**

26.1 The Contractor shall co-operate fully with the transfer of responsibility for the Service (or any of the Service) to any Replacement Contractor undertaking such service, the same or similar to the Service in accordance with clause 26:

- (a) during the final three (3) months of the Contract Period (where this expires under clause 24 (Expiry)) or during the period of any notice of termination of this Contract and
- (b) for a period of three (3) months thereafter.

26.2 Such co-operation referred to in clause 26.1 shall include:

- (a) liaising with the SDNPA and/or a Replacement Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the SDNPA or to such Replacement Contractor;
- (b) Subject to the provisions of clause 18 (Confidentiality), providing to SDNPA and/or to a Replacement Contractor all and any

information concerning the Services which is required for the efficient transfer of responsibility for their performance; and

- (c) using all reasonable endeavours to assign or otherwise transfer the benefit of any sub-contract or other contract related to the performance of the Services, if so required by SDNPA and so permitted by other parties to the relevant Sub-Contract or other contract.

26.5 The Contractor shall use all reasonable endeavours to facilitate the smooth transfer of responsibility for the Service to a Replacement Contractor or SDNPA, as the case may be, and the Contractor shall not act at any time during the Contract Period or thereafter in a way calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer (but this clause shall not prevent the enforcement by the Contractor of any of its rights under whether the Contract or otherwise).

26.6 The Contractor shall (and shall procure that the Sub-Contractors will) subject to clause 17 (Date Protection) and clause 18 (Confidentiality) comply with all reasonable requests of SDNPA to provide information relating to the Contractor's costs of operating and maintaining the Services.

27. EMPLOYMENT REGULATIONS

27.1 In the event that the termination of this Agreement could constitute a "relevant transfer" within the meaning of TUPE, the Contractor undertakes to SDNPA:

- a) to comply with any of its obligations under the Employment Regulations and to co-operate with SDNPA and or any Replacement Contractor in the event of a relevant transfer;
- b) 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 Agreement;
- c) to indemnify and keep SDNPA 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 Agreement 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 TUPE);

- d) that all amounts payable to or in relation to its Staff engaged in the performance of this Agreement (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 Agreement shall be discharged by the Contractor and the Contractor undertakes to indemnify SDNPA against any and all costs, charges and expenses arising out of or in connection with such amounts; and
- e) to indemnify SDNPA 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 Agreement.

27.2 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause 27 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.

28. LIABILITY AND INSURANCE

28.1 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 any such liability which it is not permissible to exclude by Law.

28.2 The Contractor shall indemnify and keep indemnified SDNPA 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 Agreement 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 clause 28.2 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.

28.3 The Contractor shall at its own cost take out and maintain the insurance listed at clause 28.4 (the "the Required Insurances") and any other insurances required by Law with reputable insurers who are authorised by

the Financial Services Authority to conduct insurance business or equivalent.

- 28.5 The required Insurances must remain in place for the Contract Period and be effective in each case not later than the date on which the relevant risk commences.
- 28.4 Where the Contractor is in breach of clause 28.1, SDNPA may pay any premiums necessary to keep the Required Insurances in force or procure such insurances itself and may in either case recover such sums from the Contractor in addition to a charge to cover SDNPA's administrative costs of arranging the same of up to [£100] by way of deductions from amounts payable by SDNPA to the Contractor under the Contract or by recovering the same as a debt due to SDNPA from the Contractor.
- 28.5 As and when reasonably required in writing by SDNPA, the Contractor shall provide SDNPA with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Authority that the requirements of this clause 28 are being met.
- 28.6 Neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.
- 28.7 Within 30 days of any claim arising in excess of £50,000 on any of the insurances referred to in this clause 28, the Contractor shall notify SDNPA of the same including full details of the incident giving rise to such claim.
- 28.8 The Contractor shall notify SDNPA 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 SDNPA shall reasonably require.
- 28.9 The Contractor shall fully and promptly indemnify SDNPA 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 SDNPA arising out of or in consequence of the performance of the Agreement or the performance of the Services.

29. LIMITATION OF LIABILITY

- 29.1 Subject to clause 29.1, SDNPA's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:

- (a) for non-payment of invoices for Services purchased, to the amount unpaid; or
- (b) for any other type of liability, to the amount paid for the Services under the Agreement.

For the avoidance of doubt, each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to the Contract.

29.2 Subject to clause 29.1, the Contractor's total liability arising under, or in connection with, this Agreement, 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.

29.3 Subject to clause 29.1, neither Party will be liable to the other Party for:

- (a) any indirect, special or consequential loss or damage; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

29.4 Subject to clause 29.2 SDNPA may, amongst other things, recover as a direct loss:

- (a) any additional operational and/or administrative costs and expenses arising from the Contractor's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by The South Downs National Park Authority arising from the Contractor's Default;
- (c) the additional cost of procuring replacement Services for the remainder of the Contract Period; and
- (d) any anticipated savings.

30. **ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS**

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

- 30.2 The Contractor shall be responsible for the acts and omissions of its subcontractors as though they are its own.
- 30.3 SDNPA 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 Agreement and may sub-contract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.
- 30.4 The Contractor must ensure that the Sub-Contract contains identical provisions for (but not limited to) payment, insurance, scope of services as per this Agreement and the Contractor must not unilaterally vary the scope of the services and/or the price agreed under the Sub-Contract.

31. **ENVIRONMENTAL OBLIGATIONS**

- 31.1 The Contractor shall provide the Services with due consideration of the Environmental Targets.
- 31.2 In provision of the Services the Contractor will use reasonable endeavours to contribute to the Environmental Targets.
- 31.3 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 be able to provide proof of so doing to SDNPA on demand.
- 31.4 The Contractor confirms that:
- a) the process used in the manufacture of Goods and the provision of Services minimises the use of ozone depleting substance and formaldehyde;
 - b) alternatives to non-renewable natural resources have been sought and used as a preference wherever possible;
 - c) in the manufacture of Goods and in the choice of any associated packaging and the provision of Services, it has given preference to materials that contain maximum recycled content and capacity for recycling or, where cost-effective recycling is impracticable, maximum biodegradability.

32. **PRECAUTIONARY PRINCIPLE**

- 32.1 Where there is good reason to believe there is a potential health or environmental risk in connection with the use of materials, even if the data remains unconfirmed or scientifically unproven, uncertain or the use of the material remains legally permitted, the Contractor should:

- (a) notify SDNPA of the risk and identify the source of the information or scientific data in which the risk is identified; and
- (b) strive to identify any alternative materials that could be used as a substitute for the material. Any alternative materials should have a low environmental or health impact and continue to meet any requirements in relation to quality.

32.2 Prior to substitution of any material under this provision the Contractor will provide SDNPA with details of:

- (a) any cost or quality implications of the use of any other alternative material; and
- (b) any other relevant information in relation to alternative materials.

32.3 Following receipt of the information above, SDNPA shall decide, at its absolute discretion, if it wishes the Contractor to substitute the current material with any alternative materials proposed by the Contractor or otherwise identified by SDNPA itself.

33. **PREVENT DUTY**

33.1 The Contractor acknowledges that SDNPA has a duty under the Counter Terrorism and Security Act 2015 ("CTSA 2015") to have due regard to the requirement to prevent people from being drawn into terrorism ("Prevent Duty"). The Contractor shall, and shall procure that its Associates, Representatives and Sub-Contractors shall, give all reasonable assistance and support to SDNPA in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Contractor shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.

34. **AUDIT**

34.1 The Contractor shall allow SDNPA, its agents, representatives and auditors, and/or a Regulatory Body access at all times to:

- (a) records and other materials and assets used in the Contractor's provision of the Services;
- (b) the Contractor's Staff involved in the provision of the Services;
- (c) 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

(d) witness, conduct of access results of any tests of security processes and counter-measures required to be in place in accordance with clause 34.

34.2 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.

34.3 Without prejudice to any other rights or remedies SDNPA may have, if an audit identifies that the Contractor has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a remedial plan.

35. WAIVER

35.1 No term or provision of the Contract shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, clauses or provisions of this Contract unless (and then only to the extent that) it is expressly stated in that waiver.

36. SEVERABILITY

36.1 If any provision (or part of a provision) of the Agreement 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 Agreement had been executed with such invalid, illegal or unenforceable provision eliminated.

37. FORCE MAJEURE

37.1 If any party is delayed in or prevented from performing any of its obligations under the Contract by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligations to the extent it is so delayed or prevented, and the time for performance of such obligation shall be delayed accordingly.

37.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. Such notification shall contain details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.

37.3 As soon as practicable following such notification, the parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate of the impact of the Force Majeure Event and facilitate continued performance of the Contract.

- 37.4 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected party from complying with its obligations under the Contract. Following such notification (subject to the termination clauses of this Agreement), the contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 37.5 For the duration of any suspension of the Contractor's obligations under this clause 37, SDNPA shall only be liable to pay the Contractor an amount that reflects the reduced Services (if any) being performed.

38. FRAUD

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

39. RECOVERY OF SUMS DUE

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

40. PUBLICITY

- 40.1 Each party shall use all reasonable endeavours to ensure that any formal public statements made by a party as to each other's activities or the performance of the Contract shall only be made after consultation with the other party.
- 40.2 Neither party shall make use of the other party's logo without their express permission.

41. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 41.1 Unless expressly set out in this Agreement to the contrary, a person who is not a Party to the Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

42. DISPUTE RESOLUTION

42.1 Any disputes arising in connection with this Agreement will normally be resolved amicably at working level. In the event of failure to reach consensus between the Parties then such failure shall be handled in the following manner:

- (a) the dispute shall in the first instance be referred to SDNPA's Project Officer or manager in the organisation of similar standing and the Contractor's nominated equivalent officer for resolution at a meeting to be arranged as soon as practicable after the failure to reach consensus arises, but in any event within ten Business Days;
- (b) if the dispute cannot be resolved in accordance with 42.1(a) above within ten Business Days after such referral, or within any other period agreed between the Parties then the dispute shall be referred to The South Downs National Park Authority's Head of Legal at West Sussex County Council, County Hall, West Street, Chichester, PO19 1RG and to the Contractor's nominated equivalent officer for resolution at a meeting to be arranged as soon as practicable after such referral, but in any event within ten Business Days;
- (c) if the dispute has not been resolved following a referral in accordance with 42.1(b) the Parties shall settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR;
- (d) if the dispute has not been resolved in accordance with the procedure set out at clauses 42.1(a)-(c) to the satisfaction of both parties either party may refer any dispute to an adjudicator.

42.2 If the parties are unable to agree the appointment of such adjudicator within seven (7) Working Days of the request by either party for such an appointment then an appropriate expert (willing to act in that capacity hereunder) shall be appointed by the President of the Centre for Effective Dispute Resolution and the parties agree to accept such appointment.

42.3 Each party shall provide the adjudicator with such information as he may reasonably require for the purposes of his determination; if either party claims any such information to be confidential to it then, provided that in the opinion of the adjudicator that party has properly claimed the same as confidential, the adjudicator shall not disclose the same to the other party or to any third party.

- 42.4 Disputes shall be decided by such adjudicator in accordance with the latest Rules of Adjudication of the Centre for Effective Dispute Resolution as in place at the time of the Dispute being referred to such adjudicator.
- 42.5 The costs of any adjudicator shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances or, if the adjudicator makes no such determination, by the parties in equal proportions.
- 42.6 Nothing in this clause 42 shall prevent either party from applying to a court for interim measures.

43. **ASSISTANCE IN LEGAL PROCEEDINGS**

- 43.1 Where requested by the Contract Manager, the Contractor shall give all reasonable assistance and co-operation and provide to SDNPA any relevant information which is not confidential in connection with any legal inquiry, arbitration or court proceedings in which SDNPA may become involved, or any relevant disciplinary hearing internal to SDNPA, or any inquiry by the Local Government Ombudsman, arising out of the provision of the Service.
- 43.2 Where the Contractor becomes aware of any incident, accident or other matter which may lead to a complaint to the Local Government Ombudsman or a claim or legal proceedings, in respect of the provision of failure to provide the Services, it shall notify SDNPA by telephone and in writing as soon as practicable and in any event within 48 hours of becoming aware of the same. Such written notification shall include all relevant information that is not confidential to enable SDNPA to investigate the matter fully.
- 43.3 Such information provided or assistance rendered pursuant to the obligations in this clause 43, in whatever form, shall be at no additional cost to SDNPA.

44. **GOOD FAITH**

- 44.1 The parties shall, and shall procure that their Representatives shall, at all times in relation to the Contract and the performance of the Services, act reasonably and in good faith.
- 44.2 Except where expressly stated otherwise, any decision, agreement, request, consent, approval (including whether performance is to the satisfaction of a party), action or other step of a similar nature required to be taken by a party shall be taken reasonably and in good faith and it shall be reasonable to withhold or delay such decision, agreement et cetera on the grounds of:

- 44.2.1 non-compliance by the other party with the Laws; or
- 44.2.2 a materially adverse effect on the proper performance of the Services.

45. **ENTIRE AGREEMENT**

45.1 The Contract constitutes the entire agreement and understanding of the parties in connection with its subject matter and supercedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

46. **COUNTERPARTS**

46.1 The Contract may be executed in one or more counterparts and any party may enter into the Contract by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the parties shall constitute one and the same agreement and a full original of the Contract for all purposes.

47. **SCOPE OF AGREEMENT**

47.1 Nothing in the Agreement 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.

48. **NOTICE**

48.1 Any notice required to be given under the Agreement 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 Service Order or at such other address as the relevant Party may specify by notice in writing to the other.

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

- (a) if delivered personally, when left at the address referred to in the Service Order; or
- (b) if delivered by commercial courier, on the date of signature of the courier's receipt.

48.3 The provisions of this clause shall not apply to the service of any process in any legal action or proceedings where the normal legal rules as to delivery will apply.

49. LAW AND JURISDICTION

- 49.1 The Agreement 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.
- 49.2 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 Agreement or its subject matter.

SCHEDULE 1

DEFINITIONS:

Agreement: means the agreement between SDNPA and the Contractor consisting of these General Terms, the

Service Order, the Special Terms and any other documents (or parts thereof) specified by SDNPA.

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.

CDM Regulations: means the Construction (Design and Management) Regulations 2015 and any amendments, consolidation or re-enactment of the same.

Code: means the Department for Constitutional Affairs Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of FOIA.

Confidential

Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

Contract Period: means the period of duration of the Agreement from the commencement date in accordance with the Service Order.

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

Contracting Authority: has the meaning given to it in Regulation 3 of the Public Contracts Regulations 2006 (as updated by the Public Contracts Regulations 2015).

Contractor: means the person, firm or company with whom The SDNPA enters into the Agreement the details of the Service Order.

Default: means any breach of the obligations of either Party (including but not limited to fundamental or persistent breach or breach of a fundamental term) or and 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 Agreement and in respect of which such Party is liable to the other.

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

Employment

Regulations: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and any amendments, consolidation or re-enactment of the same).

Engagement: means the engagement of the Contractor by SDNPA to provide the Services on the terms of the Agreement.

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 Intellectual

Property 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 Agreement.

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) mandatory compliance with any governmental regulations, acts of God (including fire, flood, earthquake or other natural disaster), war or terrorist attack. For the avoidance of doubt, it does not include any strikes, lock outs or other industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation or any non-performance by the Contractor's suppliers and subcontractors.

General Terms: these terms and conditions.

Good Industry

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

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

Health and Safety

Requirements: all applicable health and safety legislation, rules, policies and regulations and other reasonable security requirements that SDNPA has in force from time to time.

Intellectual Property

Rights: means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

Law: means applicable law, statute, bye-law, regulations, order, regulatory policy, guidance or industry code,

rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

SDNPA: means The South Downs National Park Authority of 1 East Parade, Sheffield, S1 2ET.

The **SDNPA** Data: means:

a) the data text drawings diagrams images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:

- i. supplied to the Contractor by or on behalf of SDNPA; or
- ii. which the Contractor is required to generate, process, store or transmit pursuant to the Agreement; or

b) any personal data for which SDNPA is the data controller.

Party: means any party to this Agreement individually and "Parties" refers to all of the parties to this Agreement 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 Service Order.

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

Project Officer: means the person for the time being appointed by SDNPA as being authorised to administer the Agreement on behalf of SDNPA or such person as may be nominated by the Project Officer to act on its behalf.

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 Agreement or any other affairs of SDNPA.

Replacement

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

Resulting

Intellectual Property: 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 sub-contractors acting either on their own or jointly with one or more employees of SDNPA in performance of the Services.

Service Order: the order form (being either in the form of the engagement letter, service order form or framework agreement and work package order) from SDNPA to the Contractor setting out the specification and requirements.

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

Special Terms: the special terms of SDNPA applicable to the type of Services to be provided by the Contractor, including the additional terms agreed and included in the "special terms" section of the Service Order.

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

Staff Vetting: SDNPA procedures and departmental policy for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989. For the avoidance of doubt, unless otherwise notified by SDNPA, only Staff members involved in handling confidential or sensitive information as part of the Services or who will be required to have unsupervised access to SDNPA's

Premises will need to be subject to the full Staff Vetting Procedures.

Timetable:

the timetable for the provision and completion of the Services as specified in the Service Order for the Services.