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THE HEALTH AND SAFETY EXECUTIVE (HSE)

TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

A GENERAL PROVISIONS

A1 Definitions and Interpretations

A1.1 In these Terms and Conditions of Contract the following definitions shall apply:

“Condition” means a condition of this contract;

“Confidential Information” means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

“Contract” means the agreement between HSE and the Contractor consisting of the specification, the HSE Form of Agreement or Purchase Order, these Conditions and any other documents or parts of documents relating to the Contract;

“Contract Manager” means the person for the time being appointed by HSE as being authorised to administer the Contract on behalf of HSE or such person as may be nominated by the Contract Manager to act on its behalf.

“Contractor” means the person, firm or company to whom the Contract is issued;

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“HSE” means the Health and Safety Executive;

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000;

“Parties” means HSE and the Contractor;

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2nd Edition);

“Services” means the services to be provided and shall include any materials, articles and/or goods necessary to provide the Services;

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

In all cases the masculine includes the feminine and the singular includes the plural and vice versa.

A2 Interpretation

A2.1 The interpretation and construction of this Contract shall be subject to the following provisions:

The terms and expressions set out in A1.1 shall have the meanings ascribed therein;

Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

Words importing the masculine include the feminine and the neuter;

Reference to a Condition is a reference to the whole of that Condition unless stated otherwise;

Reference to a Condition is a reference to a paragraph within a Condition unless stated otherwise;

References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted

The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

A3 Contract Period

A3.1 The Services shall finish on a date agreed between HSE and the Contractor.

A3.2 If completion of the Services is delayed by reason of any act or default of HSE or any other circumstance which is beyond the control of the Contractor, the time for completion shall be extended by such period as may be reasonable, provided that:

A3.2.1 on being aware of the nature and extent of the delay the Contractor shall forthwith notify HSE of such nature and extent;

A3.2.2 the delay was unforeseeable when the Contract commenced; the Contractor takes all reasonable steps to minimise the delay.

A3.3 The Contractor shall not be entitled to an extension of time where such delay is attributable to any negligence, default, acts or omissions on his part.

A4 Contractor’s Status

A4.1 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between HSE and the Contractor.

A5 Entire Agreement

A5.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, understandings and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

A6 Notices

A6.1 Any notice given in connection with the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or facsimile transmission, or other agreed telecommunication or electronic means. When it is sent or transmitted to the address of the party shown in the Contract, or to any other address agreed between the parties, it shall be deemed to have been received:

A6.1.1 if delivered by hand, on the day of delivery if it is the recipient's business day and otherwise on the first business day of the recipient immediately following the day of delivery;

A6.1.2 if sent by first class prepaid post (or airmail if appropriate) on the third business day (or on the tenth business day in the case of airmail) after the day of posting;

A6.1.3 if sent by facsimile or other agreed telecommunication or electronic means:

A6.1.4 if transmitted between 09.00 and 17.00 on a business day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument;

A6.1.5 if transmitted at any other time, at 09.00 on the first business day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

A7 Conflicts of Interest

A7.1 It shall be the Contractor's responsibility to ensure that no conflict of interest arises in connection with the Services. HSE shall be consulted if there is any uncertainty about whether any such conflict of interest may exist or arise.

A8 Fraud

A8.1 The Contractor shall safeguard HSE's funding of the Contract against fraud generally and, in particular, fraud on the part of the staff, or the Contractor's directors and suppliers. The Contractor shall notify HSE immediately if it has any reason to suspect that any fraud has occurred or is occurring or is likely to occur.

B PROVISION OF THE SERVICES

B1 The Services

B1.1 The Services shall be in accordance with the Contract specification and shall be performed with reasonable skill, care and diligence and to the reasonable satisfaction of HSE or its authorised representative. During the course of the Contract HSE or its authorised representative shall have the power to inspect and examine any work being performed under the Contract at any reasonable time. The Contractor shall give all such facilities as HSE or its authorised representative may reasonably require for such inspection and examination.

B1.2 Where the Services are to be carried out on HSE premises, on completion of the Services the Contractor shall remove his plant, equipment, unused materials and waste and leave the premises in the condition as found.

B2 Contractor's Personnel

B2.1 If the Contract relates to the engagement of personnel provided by an agency, Annex 1 to these terms and conditions includes the relevant details.

B2.2 The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the specification.

B2.3 All persons employed on work relating to the Contract must have appropriate qualifications and competencies and be acceptable to HSE in all respects. Where requested full particulars of all personnel to be used shall be forwarded in advance to HSE for confirmation of their acceptability.

B2.4 Where requested the Contractor shall provide HSE with a list of names and official addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are to be employed and giving such other particulars and evidence of identity and any other supporting information which HSE may reasonably require.

B2.5 The Contractor shall take all reasonable steps to avoid changes of original personnel assigned to and accepted for the work under the Contract except where changes are unavoidable or of a temporary nature caused by sickness, holidays or any other reasonable absence. The Contractor shall give at least one month's notice to HSE of proposals to change key personnel and Conditions B2.2 to B2.3 and E12.1 shall apply to the replacement personnel.

B2.6 The Contractor shall take the steps reasonably required by HSE to prevent unauthorised persons being admitted to HSE premises. Where HSE gives the Contractor notice that any person is not to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if requested by HSE the Contractor shall replace any person removed under this Condition with another suitably qualified person and ensure that any pass issued to the person removed is surrendered.

B2.7 The decision of HSE as to whether any person is to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required in Conditions B2.3 to B2.6 shall be final and conclusive.

B2.8 The Contractor shall bear the cost of any notice, instruction or decision of HSE under Conditions B2.3 to B2.7 and E12.1.

B3 Legitimacy of the Workforce

B3.1 The Contractor shall take all reasonable steps to ensure that any servants, employees or agents of the Contractor and any sub-contractors, their servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming Unemployment Benefit or any other benefit payable to persons registered as unemployed.

B4 Inspection of Premises and Nature of Services

B4.1 Where Services are to be carried out on HSE premises the Contractor is deemed to have inspected the premises before tendering so as to have understood the precise nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and premises. HSE shall grant such access as may be reasonable for this purpose.

B5 HSE Property

B5.1 Where the Contract requires HSE to issue materials free of charge to the Contractor such materials shall be and shall remain the property of HSE. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify HSE of any surplus materials remaining after completion of the Services and shall dispose of them as HSE may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights and remedies of HSE the Contractor shall deliver up such materials to HSE on demand, whether processed or not.

B6 Purchasing on behalf of HSE

B6.1 In the event that the Contractor procures Goods or Services including equipment from third parties on behalf of HSE then they shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2006 S.I. 2006 No. 5 as though the Contractor were a Contracting Authority within the meaning of the said Regulations.

B7 Equipment

B7.1 All equipment, including information technology equipment, used by the Contractor during the performance of the Contract shall be risk assessed, free from defect, and shall be fit for purpose.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 The price of the Services and Equipment shall be as stated in the Contract and shall be exclusive of VAT.

C2 Invoicing and Payment

C2.1 Invoices for the provision of Services shall be submitted at agreed intervals during the Contract period in a format agreed between the parties.

C2.2 Payment shall be made within 30 days of receipt and agreement of invoices for Services provided to the satisfaction of HSE. HSE's usual method of payment is through the Banks Automated Clearing System (BACS). All payments made by HSE to the Contractor shall be through BACS unless the Contractor provides advance written notice to HSE that this method of payment is not possible or shall cause undue inconvenience.

C2.3 Any complaints which may arise concerning late payment of invoices should be addressed in the first instance to the Contract Manager. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract H2.5 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by HSE on the late payment of any undisputed sums of

money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C3 Value Added Tax (VAT)

C3.1 Where applicable the prevailing rate and total of Value Added Tax (VAT) shall be shown separately on all invoices.

C4 Prompt Payment to Sub-Contractors

C4.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice.

C5 Recovery of Sums Due

C5.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to HSE in respect of any breach of this Contract) HSE may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with HSE.

C5.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C5.3 The Contractor shall make all payments due to HSE without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by HSE to the Contractor.

C5.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

D STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

D1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of HSE any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with HSE, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

D1.2 The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of HSE by the Contractor or on the Contractor's behalf, unless before this Contract 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 HSE.

D1.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct

prohibited by Conditions D1.1 or D1.2 in relation to this or any other contract with HSE, HSE has the right to:

D1.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by HSE resulting from the termination; or

D1.3.2 recover in full from the Contractor any other loss sustained by HSE in consequence of any breach of this Condition, whether or not the Contract has been terminated.

D1.4 In exercising its rights or remedies under this Condition, HSE shall:

D1.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

D1.4.2 give all due consideration, where appropriate, to action other than termination of the Contract.

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate on the grounds of race, sex, disability, sexual orientation, religious belief or age, within the meaning and scope of the provisions of the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995, the Sex Discrimination Act 1975, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

D3 The Contracts (Rights of Third Parties) Act 1999

D3.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either HSE or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both HSE and the Contractor, which agreement should specifically refer to this Condition D3. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

D3.2 The Contractor shall not make any disposition of its rights that would prevent compliance with the conditions of this Contract, nor shall it accept any financial contribution from any third party for any part of the Work without the prior agreement in writing of HSE.

D4 Environmental Requirements

D4.1 The Contractor shall perform the Services in accordance with the government's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.

D4.2 Throughout the term of the Contract the Contractor shall provide information on new or improved environmentally preferable products when they become

available and, where reasonably required, promote their use. Samples of such products shall be provided to the Contract Manager for evaluation and for written agreement before wider use within HSE.

D4.3 The Contractor shall co-operate with HSE, without charge, in Supplier Environmental Audits or Product Audits which the Contractor or his representative may undertake, such audits to be restricted to claims made by the Contractor for products made by the Contractor, for products supplied by the Contractor, or by the Contractor's environmental policy.

D4.4 The Contractor shall maintain, and provide proof, at reasonable notice by HSE, of carrying out an environmental management system conforming to ISO 14001 or any subsequent or equivalent standards.

D5 Health and Safety

D5.1 The Contractor shall promptly notify HSE of any health and safety hazards which may arise in connection with the performance of the Contract.

D5.2 HSE shall promptly notify the Contractor of any health and safety hazards which may exist or arise at HSE's premises and which may affect the Contractor in the performance of the Contract.

D5.3 Where the Services are to be performed on HSE premises the Contractor and the HSE Contract Manager shall undertake a joint risk assessment and take action to minimise the risk, and such actions shall be recorded in the premises' Health and Safety Manual.

D5.4 While on HSE premises, the Contractor shall comply with any health and safety measures implemented by HSE in respect of personnel and other persons working on those premises.

D5.5 The Contractor shall notify HSE immediately in the event of any incident or "near miss" occurring in the performance of the Contract on HSE premises where that incident or "near miss" causes, or may cause, any personal injury or damage to property which could give rise to personal injury.

D5.6 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Contract.

D5.7 The Contractor shall ensure that his health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc Act 1974) are kept up to date and made available to HSE on request.

D6 TUPE

D6.1 Both HSE and the Contractor recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract.

D6.2 During the period of six months preceding the expiry of the Contract or after HSE has given notice to terminate the Contract or the Contractor stops trading, and within 20 working days of being so requested by HSE, the Contractor shall fully and accurately disclose to HSE for the purposes of TUPE all information relating to its

employees engaged in providing the Services under the Contract, in particular, but not necessarily restricted to, the following:

D6.2.1 the total number of staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and

D6.2.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and

D6.2.3 full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and

D6.2.4 details of pension entitlements, if any; and

D6.2.5 job titles of the members of staff affected and the qualifications required for each position.

D6.3 The Contractor shall permit HSE to use the information for the purposes of TUPE and re-tendering. The Contractor shall co-operate with the re-tendering of the Contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

D6.4 The Contractor agrees to indemnify HSE fully and hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Condition D6.2.

D6.5 The Contractor agrees to indemnify HSE from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

D6.6 In the event that such information provided by the Contractor in accordance with Condition 6.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify HSE of the inaccuracies and provide the amended information.

D6.7 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

D7 Welsh Language Scheme

D7.1 Where the Services are to be provided to Wales, the service provider shall adhere to the Welsh Language Scheme and the Welsh and English Languages shall be treated on a basis of equality.

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 For the purposes of this Clause E1, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.

E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

E1.3 Notwithstanding the general obligation in clause E1.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for HSE the Contractor shall:

1.3.1 process the Personnel Data only in accordance with instructions from HSE (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by HSE;

1.3.2 comply with all applicable laws;

1.3.3 process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under this Contract or as is required by Law or any Regulatory Body;

1.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

1.3.5 take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;

1.3.6 obtain prior written consent from HSE in order to transfer the Personal Data to any sub-contractor for the provision of the Services;

1.3.7 not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of HSE;

1.3.8 ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E1;

1.3.9 ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by HSE;

1.3.10 not disclose Personnel Data to any third parties in any circumstances other than with the written consent of HSE or in compliance with a legal obligation imposed upon HSE.

E1.4 The Contractor shall notify HSE (within five Working Days) if it receives:

1.4.1 a request from a Data Subject to have access to that person’s Personal Data; or

1.4.2 a complaint or request relating to HSE's obligations under the DPA.

E1.5 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.

E2 Official Secrets Acts 1911, 1989, Section 182 of the Finance Act 1989

E2.1 The Contractor undertakes to abide by, and ensure that its Staff abide by the provisions of:

E2.1.1 the Official Secrets Acts 1911 to 1989; and

E2.1.2 Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor and its Staff fail to comply with this Condition, HSE reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E2.3 The provisions of Condition E2.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

E3 Confidentiality

E3.1 Each Party:

E3.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

E3.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

E3.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from HSE under or in connection with the Contract:

E3.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

E3.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Contract.

E3.3 Where it is considered necessary in the opinion of HSE, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.

E3.4 The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Contract.

E3.5 The provisions of Conditions E3.1 to E3.4 shall not apply to any Confidential Information received by one Party from the other:

E3.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

E3.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

E3.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

E3.5.4 is independently developed without access to the Confidential Information; or

E3.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 74 (Freedom of Information).

E3.6 Nothing in this Condition shall prevent HSE:

E3.6.1 disclosing any Confidential Information for the purpose of:

E3.6.1.1 the examination and certification of HSE's accounts; or

E3.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources; or

E3.6.2 disclosing any Confidential Information obtained from the Contractor:

E3.6.2.1 to any other department, office or agency of the Crown; or

E3.6.2.2 to any person engaged in providing any services to HSE for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under Condition E3.6 HSE discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E3.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

E3.8 In the event that the Contractor fails to comply with this Condition E3, HSE reserves the right to terminate the Contract by notice in writing with immediate effect.

E3.9 The provisions under this Condition E3 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4 Publication

E4.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. HSE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E4.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

E4.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.

E4.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

E5 Freedom of Information

E5.1 The Contractor acknowledges that HSE is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate HSE's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses E5.2-6 (inclusive) below.

E5.2 Where HSE receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the HSE does not hold itself HSE shall refer such Request for Information to the Contractor as soon as practicable and in any event within 5 Working Days of receiving a Request for Information and the Contractor shall:

E5.2.1 provide HSE with a copy of all such Information in the form that HSE requires as soon as practicable and in any event within 10 Working Days (or such other period as HSE acting reasonably may specify) of HSE's request; and

E5.2.2 provide all necessary assistance as reasonably requested by HSE in connection with any such Information, to enable HSE to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information.

E5.3 Following notification under clause E5.2, and up until such time as the Contractor has provided HSE with all the Information specified in clause E5.2.1, the Contractor may make representations to HSE as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that HSE shall be responsible for determining at its absolute discretion:

5.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

5.3.2 whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by HSE.

E5.4 In the event of a request from HSE pursuant to clause E5.2, the Contractor shall as soon as practicable, and in any event within 5 Working Days of receipt of such request, inform HSE of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by HSE under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with HSE's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") HSE shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as HSE is entitled to under Section 10 of the FOIA. In such case, HSE shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to

reimbursement of such costs in accordance with its own FOIA policy from time to time.

E5.5 The Contractor shall ensure that all Information held on behalf of HSE is retained for disclosure for at least six years (from the date it is acquired) and shall permit HSE to inspect such Information as requested from time to time.

E5.6 The Contractor shall transfer to HSE any Request for Information received by the Contractor as soon as practicable and in any event within 2 Working Days of receiving it.

E5.7 The Contractor acknowledges that (notwithstanding the provisions of clause E4) HSE may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "Code"), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:

5.7.1 in certain circumstances without consulting the Contractor, or

5.7.2 following consultation with the Contractor and having taken its views into account,

provided always that where 5.7.1 above applies HSE shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

E5.8 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that HSE may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

E6 Publicity, Media and Official Enquiries

E6.1 Without prejudice to HSE's obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E6.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by its sub-contractors.

E6.3 HSE undertakes not to arrange press releases or other forms of publicity about work undertaken under the Contract which contains the name of the Contractor without the prior consent of the Contractor.

E6.4 HSE reserves the right to publish, after discussion with the Contractor, the results of the Services carried out under the Contract with appropriate acknowledgement of the work contributed by the staff of the Contractor.

E6.5 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E7 Security

E7.1 Where the services are to be carried out on HSE premises the Contractor shall comply with the security requirements of HSE and the premises manager, and shall ensure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

E8 Foreground Intellectual Property

E8.1 Copyright in any reports or test results or other copyright work arising out of the Services done for the purposes of this Contract shall belong to HSE except to the extent that it contains pre-existing copyright belonging to the Contractor or third parties.

E8.2 Subject to the terms of this Contract, and the rights of third parties arising otherwise than by virtue of this Contract, all rights in the Services by or on behalf of the Contractor for the purposes of this Contract, including inventions and designs shall vest in and be the property of HSE.

E9 Background Intellectual Property

9.1 The Contractor shall grant HSE, or any third party or parties nominated by the Executive, a royalty-free perpetual, worldwide and non-exclusive licence in respect of any technical information (including but not limited to inventions, designs and drawings whether or not patented or patentable) owned or controlled by the Contractor necessary to enable HSE, or the said third party or parties, to use and exercise, and to manufacture use and sell articles embodying any of the information generated under this present Contract. The grant of such a licence shall be to the extent that the Contractor has the right to do so.

E10 Retention of Documentation and Right of Audit

E10.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such shorter period as may be agreed between HSE and the Contractor, full and accurate records of the Services, all expenditure reimbursed by the Contractor and all payments made by HSE.

E10.2 The Contractor shall:

E10.2.1 produce such records retained pursuant to Condition E10.1 as HSE may reasonably require;

E10.2.2 afford such facilities as HSE may reasonably require for its representatives to inspect the records retained pursuant to Condition E10.2.1. Provided that the Contractor takes all reasonable steps to prevent this exception from applying, the right granted by this Condition E10.2.2 shall not apply to the extent that the confidentiality of information relating to the Contractor's other clients would be jeopardised by such inspection; and

E10.2.3 provide such explanations of records produced pursuant to Condition E10.2.1 or inspected pursuant to Condition E10.2.2 as HSE may reasonably require.

E10.3 For the purpose of:

E10.3.1 the examination and certification of HSE's accounts; or
any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources,

the Comptroller and Auditor General may examine such records as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the

accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

E11 Security of Confidential Information

E11.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain security systems and procedures approved by HSE.

E11.2 The Contractor will immediately notify HSE of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Condition E11.3. The Contractor will co-operate with HSE in any investigation that HSE considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E11.3 HSE may require the Contractor to alter any security systems and procedures at any time during the Contract Period at the Contractor's expense.

E12 Baseline Personnel Security Standard

E12.1 It shall be the Contractor's responsibility to ensure that, where access to HSE premises or confidential HSE information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Personnel Security Standard.

E12.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out.

F CONTROL OF THE CONTRACT

F1 Assignment and Sub-contracting

F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where HSE has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of HSE, be sent by the Contractor to HSE as soon as reasonably practicable.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which HSE incurs under clause C2.3). Any assignment under this clause F1.4 shall be subject to:

1.4.1 reduction of any sums in respect of which HSE exercises its right of recovery under clause C5 (Recovery of Sums Due);

1.4.2 all related rights of HSE under the contract in relation to the recovery of sums due but unpaid; and

1.4.3 HSE receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify HSE in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies HSE of the Assignee's contact information and bank account details to which HSE shall make payment.

F1.7 The provisions of clauses C2 and 3 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of HSE.

F1.8 Subject to clause F1.10, HSE may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

1.8.1 any Contracting Authority; or

1.8.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by HSE; or

1.8.3 any private sector body which substantially performs the functions of HSE,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

F1.9 Any change in the legal status of HSE such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to HSE.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of HSE such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

1.10.1 the rights of termination of HSE in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

1.10.1 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 HSE may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances HSE shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

F2 Waiver

F2.1 The failure of either party to enforce any provision of the Contract at any time shall not affect any future right to require complete performance by the other party, nor shall the waiver of any individual breach of any provision be taken or held to be a waiver of any subsequent breach of that or any other provision.

F3 Variation by HSE

F3.1 HSE reserves the right to alter the requirements of the Contract, as detailed in the specification, should this at any time become necessary. In any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between HSE and the Contractor in writing. Failing agreement the matter shall be determined by dispute resolution in accordance with Condition I.1 or by arbitration in accordance with the provisions of Condition I.2.

F4 Variation by the Contractor

F4.1 The Contractor may request to alter the requirements of the contract, as detailed in the specification, provided that reasonable prior written notice is given and, should an adjustment be required, it is accompanied by detailed proposals.

F5 Severability

F5.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

G LIABILITIES

G1 Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

G1.1.1 death or personal injury caused by its negligence; or

G1.1.2 Fraud; or

G1.1.3 fraudulent misrepresentation; or

G1.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clause G1.3, the Contractor shall indemnify HSE and keep HSE indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of HSE or by breach by HSE of its obligations under the Contract.

G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.7 The Contractor shall give HSE, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract HSE may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

G2.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such Insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Services with a limit of indemnity of not less than £1,000,000 for any occurrences

arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

G3 Warranties and Representations

G3.1 The Contractor warrants and represents that:

G3.1.1 the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;

G3.1.2 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;

G3.1.3 all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

G3.1.4 the Contractor 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 this Contract.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Change of Control or Insolvency

H.1.1 HSE may terminate the Contract by written notice having immediate effect if:

H1.1.1 the Contractor undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or

H1.1.2 where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or

H1.1.3 where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H1.2 HSE may only exercise its right under H1.1.1 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to a particular change of control that occurs. The Contractor shall notify HSE immediately when any change of control occurs.

H2 Termination on Default

H2.1 Where the Services, or any portion of the Services, are not carried out within the time or times specified within the Contract, HSE shall have the option, without prejudice to any of its other rights or remedies, to terminate the Contract by written notice having immediate effect.

H2.2 Where the Services, or any portion of the Services, are not carried out satisfactorily HSE shall have the option, without prejudice to any of its other rights or remedies, to;

H2.2.1 require the Contractor, at his own expense, to re-perform the services to HSE's reasonable satisfaction;

H2.2.2 arrange for the Services to be performed by alternative means;

H2.2.3 terminate the Contract by written notice having immediate effect;

H2.2.4 require the Contractor, notwithstanding such termination, to co-operate in the transfer of the Services to which the termination relates to any alternative organisation under Condition H2.2.2 of these Conditions in accordance with arrangements notified to the Contractor by HSE.

H2.3 Where HSE obtains all or any of the Services by alternative means they shall be able to recover from the Contractor the amount by which the aggregate of the cost of obtaining Services in this way exceeds the amount which would have been payable to the Contractor in respect of all the Services replaced if they had been carried out in accordance with the Contract.

H2.4 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse HSE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.5 If HSE fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify HSE in writing of such failure to pay. If HSE fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to HSE exercising its rights under clauses C5 (Recovery of Sums Due).

H3 Break

H3.1 In addition to its rights of termination under Condition H1, HSE shall be entitled to terminate the Contract by giving to the Contractor not less than thirty days notice in writing to that effect. Upon expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

H3.2 Upon such termination the Contractor shall have the right to claim from HSE reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services, including any commitments,

liabilities or expenditure which are reasonably incurred, and would represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Such costs shall be agreed in writing between HSE and the Contractor prior to any commitment by HSE to reimburse the Contractor. For the avoidance of doubt HSE shall not indemnify the Contractor against loss of profit or any indirect or consequential loss. HSE shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total contract price.

H3.3 Where the Contract is terminated under Condition H3.1 HSE may, during the notice period:

H3.3.1 require the Contractor, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately;

H3.3.2 require the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid at the agreed contract price or, where no agreement exists, at a fair and reasonable price.

H4 Force Majeure

H4.1 Neither HSE nor the Contractor shall be liable to the other by reason of any failure or delay in performing its obligation under the Contract which is due to Force Majeure, where there is no practical means available to the party concerned to avoid such failure or delay.

H4.2 If either HSE or the Contractor becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay shall continue.

H4.3 For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventative action by the party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

H4.4 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with its obligations to the Contractor by Force Majeure.

H4.5 Where Force Majeure occurs, the party concerned shall take all reasonable steps to minimise the failure or delay.

H5 Transfer of Responsibility

H5.1 In the event that a different organisation is required to take over the Services at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer under arrangements to be notified to him by HSE.

H5.2 The transfer shall be arranged between HSE and the Contractor so as to reduce to a minimum any interruption in the Services.

I DISPUTES AND RESOLUTION

I1 Dispute Resolution

II.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with the Contract.

II.2 If the dispute cannot be resolved by the Parties pursuant to Condition I1.1 the dispute may, by agreement between the Parties, be referred to mediation.

II.3 The performance of the services shall not be suspended, cease or be delayed by the reference of a dispute to mediation or adjudication and the Contractor shall fully comply with the requirements of the Contract at all times.

I1.4 The Parties shall endeavour to choose by agreement a neutral advisor or mediator ("the Mediator") or if they are unable to agree upon a Mediator within 14 days after a request by one party to the other, or if the Mediator is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that the Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

I1.5 The Parties shall meet the Mediator within 14 days of their appointment to agree procedures concerning the mediation negotiations and exchange of relevant information.

I1.6 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

I1.7 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced in writing and be binding on the parties once it is signed by their duly authorised representatives.

I1.8 If the parties fail to reach agreement on the resolution of the dispute, either party may request the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.

I1.9 If the parties fail to reach agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference may be referred to the courts.

I2 Arbitration

I2.1 Any dispute as to the interpretation or application of the Contract other than a matter as to which the decision of HSE shall be final and conclusive and except as may be otherwise provided in the Contract shall be referred to the arbitration of two persons, one to be appointed by HSE and one by the Contractor, or their Umpire, in accordance with the provisions of the Arbitration Act 1950, 1975, 1979 and 1996 or any statutory modification or re-enactment thereof.

I2.2 Any costs incurred as a result of enforcing Condition I2.1 above shall be decided at the sole discretion of the agreed arbitrator. Such costs shall be in full and

final settlement of all disputes, howsoever arising, whether current or in the future, between HSE and the Contractor.

12.3 Where it is considered appropriate, subject to the agreement of both parties, alternative methods of dispute resolution shall be considered including adjudication and mediation.

13 Governing Law

13.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.