

**East of England Energy Group**  
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# Invitation to Tender for; Support services to the Catalyst for the Energy Sector Programme

November 2011



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## 1. INTRODUCTION

The energy landscape is rapidly changing and the East of England (EoE) energy industry has to meet new challenges and position itself to seize fresh opportunities if it is to capitalise on a sustainable, prosperous future based on secure and less carbon intense energy supplies. The future prosperity of the EoE as a contributor to UK energy provision depends on this.

The East of England Energy Group (EEEGR) is a business led, not-for-profit, all-energy industries association. Its membership largely comprises private sector energy companies, public sector authorities and agencies, not-for-profit bodies and academic institutions.

Responding to these challenges on behalf of its members, the East of England Energy Group (EEEGR) have recently sought and gained European Regional Development Fund (ERDF) support for their project;

### **“Catalyst for the Energy Sector”**

**An integrated supply chain development programme specifically directed to small and medium size enterprises (SMEs) across the energy sectors in the EoE,  
“to ensure sustainable and low carbon economic growth”**

The programme is comprised of four main activities;

- i. Inward Promotion
- ii. Outward Promotion
- iii. Conferences & Events
- iv. Supply Chain Development

EEEGR is seeking tenders from suitably qualified and experienced companies, individual professionals or consortia to assist in undertaking the workscope areas of;

Workscope 1: **Project Management, Coordination & Reporting functions.**

Workscope 2: **Delivery of the Supply Chain Development actions.**

The following sections provide;

- Description of the Catalyst for the Energy Sector programme,
- Description of the Workscopes 1: and 2,;
- Instructions to Tenderers and Invitation To Tender documents,
- EEEGR Conditions of Contract for Services.

## **1.1 THE CATALYST FOR THE ENERGY SECTOR PROGRAMME**

The programme key strands of inward & outward promotion, flagship events to stimulate business to business (B2B) networking, and dissemination of market information, together with a comprehensive supply chain development and business improvement programme is designed to ensure sustainable, and low carbon economic growth in a rapidly expanding industrial sector.

For the purposes of this document and avoidance of any doubt the inward and outward promotion, conferences and events elements of the programme do not form any part of this Invitation To Tender.

The Supply Chain Development and Business Improvement Programme will be broadly based on EEEGR's successful Wider Energy Horizons programme which ran in various capacities from September 2003 to March 2011.

The programme will take a non-prescriptive approach and participation will be determined by those willing to engage positively rather than any sense of obligation to receive support.

The ethos behind the programme is to provide a bespoke and immediate level of business improvement and take a balanced view of support available from multi-agencies.

All support provided to the members of the supply-chain will be delivered in a way that encourages ongoing value, engagement and ownership of solutions by the business. This may draw upon specialist support if required. It will engage with local enterprise hubs and business support agencies to attract and assist participants and will rely on the usual partners for support in promotion.

The programme has Objectives and Targets to achieve and these are provided in Section 2.3.

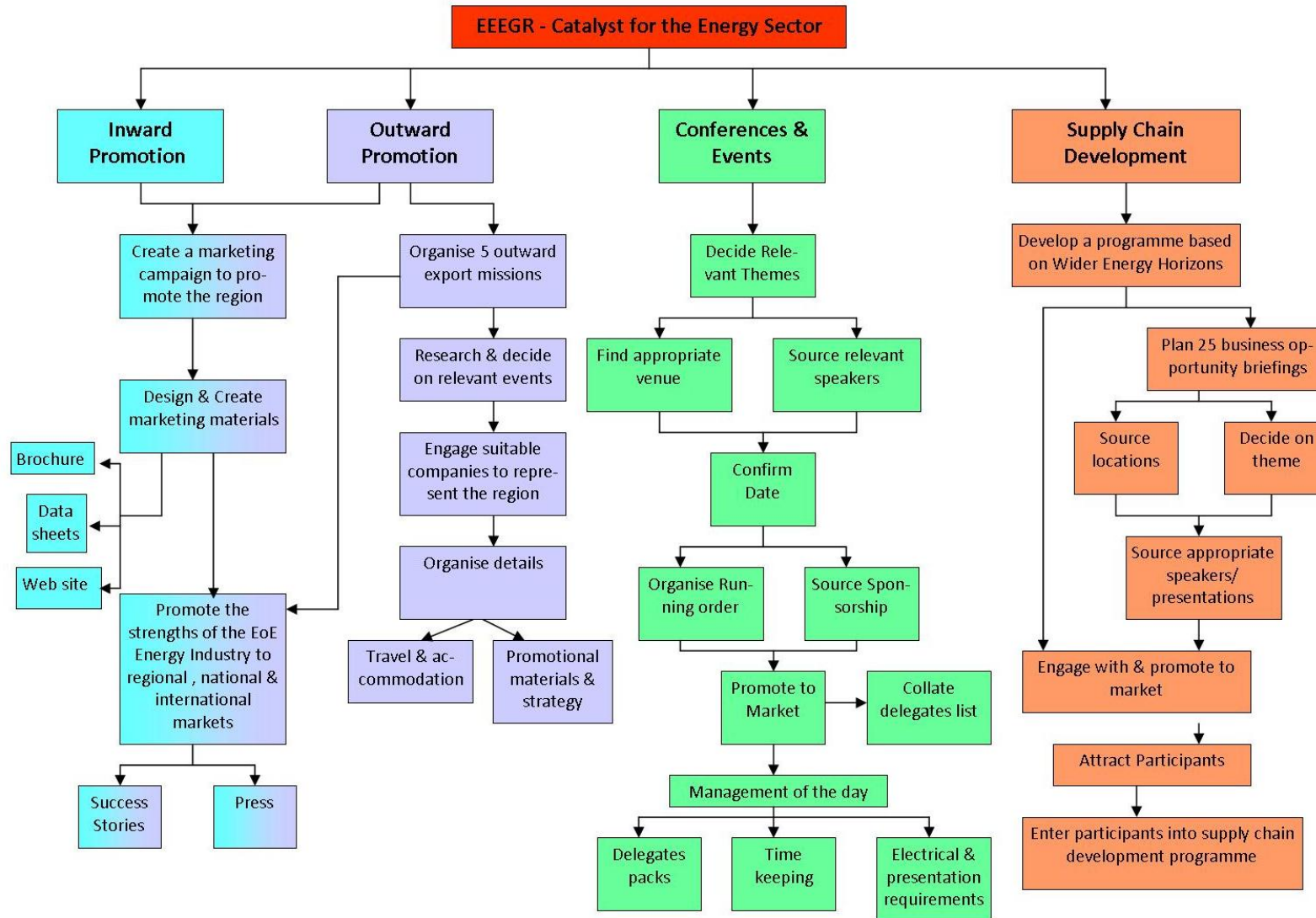


Figure 1: Catalyst for Energy Programme overview

## 2. WORKSCOPES AND TARGET OUTPUTS

The two workscope areas are;

Workscope 1: **Programme Management, Coordination & Reporting functions.**

Workscope 2: **Delivery of the Supply Chain Development actions.**

### 2.1 WORKSCOPE 1: PROGRAMME MANAGEMENT, COORDINATION & REPORTING FUNCTIONS

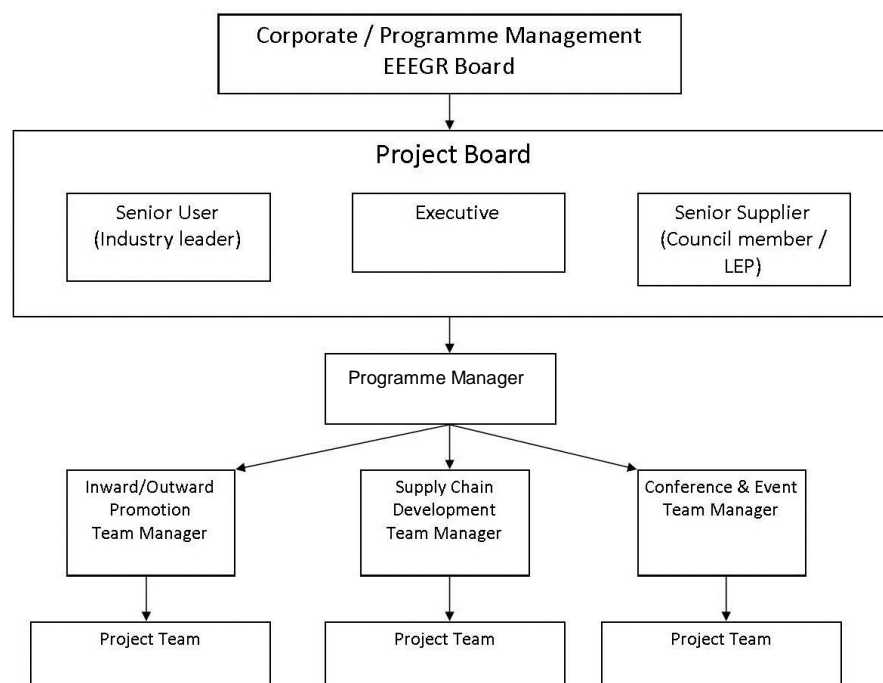
The “Workscope 1” includes overall responsibility for managing and reporting on the complete Catalyst for the Energy Sector Programme.

As stated previously, the programme is comprised of four discrete activities, as shown in the graphic in Figure 1.

Programme Management, Coordination & Reporting of the programme will entail the following;

- Involvement in planning of the activities with each delivery team (See 2.1.2),
- Managing all activity resources (See 2.1.3),
- Continual monitoring of all activities (See 2.1.4),
- Reporting outputs (See 2.1.6).

The organogram below shows the programme management hierarchy.



### **2.1.1 Programme Management Processes**

Prince 2 project management methods (or similar) will be utilised throughout the life of the Programme incorporating the advised reporting and monitoring processes. The Programme Manager will oversee this work and report on all matters to EEEGR selected Executive Officer.

### **2.1.2 Involvement in Planning each activity**

Liaising with each activity team leader to ensure all planning is done consistent with maximising efficiency & minimising cost, to deliver on time & to budget. Capturing process information and all relevant data for file.

### **2.1.3 Managing Schedules, Deliverables & Costs**

Liaising closely with each activity team leader during the lifetime of the programme to ensure all activities are undertaken according to plan and delivered on time & to budget. Preparing regular progress reports as required by the Programme manager. Ensuring comprehensive records are maintained.

### **2.1.4 Monitoring Activities & Capture of Data & Knowledge**

Monitoring will be a crucial continual process and will be the responsibility of the Programme Manager (PM). The PM must constantly monitor all Programme objectives and targets etc throughout the life of the Programme.

The PM will be required to prepare monthly updates so that all team managers and Executive are aware of how the various aspects are developing and can be notified of any issues or risks before they arise.

The following is an overview of the envisaged monitoring activities.

- Promotion & Events –a complete record to be kept of all contacts made, promotional materials sent out, communications and performance analysis undertaken.
- Supply Chain Development – there will be three aspects to monitoring these activities;
  - i. Capturing knowledge of every business interfaced with.
  - ii. Record of the;
    - process, discussions and decision rationale for every business accepted into the programme,

- depth detail of the interventions, and/or signposting and/or assistance delivered.
- iii. Produce and keep current an overview document with all details in one place as a clear and concise document for immediate reference.

### 2.1.5 Target Outputs

The Workslope 1 Target Outputs are as shown below;

Outputs	2012	2013	2014	Total
Number of start-up businesses receiving Priority 1 assistance	20	15	10	45
Number/type of SMEs receiving Priority 1 assistance - innovation	85	65	25	175
Number/type of SMEs receiving Priority 1 assistance - non innovation	125	85	40	250
No. of businesses within the region engaged in new collaboration with the new knowledge base	25	25	10	60

### 2.1.6 Reporting

#### 2.1.6.1 Regular Reporting

As a minimum, the PM will be required to;

- Prepare updates and evaluations in respect of each aspect of the Programme plan at the end of each stage boundary and at regular intervals throughout the life of the Programme.
- Report, no less than bi-monthly, on the precise outputs achieved and current status of each work activity.

- Prepare key case studies throughout the Programme (particularly focussing on the Supply Chain Development Programme).
- Prepare ERDF quarterly financial monitoring and claim forms.

#### **2.1.6.2 Programme Evaluation Plan**

The PM will be required to prepare a full Programme Evaluation Plan and detailed Programme Risk Register within 3 months of Programme kick-off.

#### **2.1.6.3 Programme Evaluation & Audit**

The PM will be responsible for collating the information required to complete an interim internal or external project evaluation or audit.

The PM will collate all final numbers in relation to the expected outputs. The final evaluation should consider the impact and benefit of the Programme for both the region and businesses supported in terms of membership, local business and the low carbon economy, as well as evaluating any lessons learned and risk management.

#### **2.1.7 Resources**

It is envisaged that Workscope 1 will require the services of suitably experienced personnel to assume the responsibilities of;

- Programme Manager
- Programme Coordinator

#### **2.1.8 Timeframe**

The Programme Management, Coordination & Reporting Workscope time frame will cover the whole of the programme period.

The Programme will kick-off on the first workday of January 2012 and run until 31<sup>st</sup> March 2014. There will then be a further three months (until 30<sup>th</sup> June 2014) to complete all reporting and close out the programme.

It should be noted that the period 31<sup>st</sup> March 2014 to 30<sup>th</sup> June 2014 is ineligible for ERDF funding as it is “after programme finish”, so Tenderer must factor all costs incurred during this period into the monthly fixed price.

## 2.2 WORKSCOPE 2: METHODOLOGY FOR DELIVERY OF THE SUPPLY CHAIN DEVELOPMENT ACTIONS

Tenderers are requested to describe in detail the methodology they propose for delivery of the Supply Chain Development Programme to meet the target outputs and objectives. Graphics such as work flow diagrams etc should be included as appropriate.

For information; It is envisaged that some participants will be drawn in through the 25 proposed business opportunity briefings detailed in the target outputs.

A key element of the delivery methodology will be a formal review with each candidate Company. For guidance, each review must include at least;

- ✓ Overview of the business and/or corporate entity, including parent companies, subsidiaries, formal interfaces/relationships etc.
- ✓ SWOT analysis.
- ✓ Scenario planning analysis.
- ✓ Value proposition analysis.
- ✓ Corporate strategy review.

### 2.2.1 Supply Chain Development Target Results

The Supply Chain Development & Business Improvement Programme Target Results are shown below;

RESULTS	2012	2013	2014	Total
No. jobs created (FTE and by gender)	80	50	10	120
No of jobs created (Female 55% of R1)	44	27.5	5.5	77.5
No of jobs safeguarded (FTE and gender)	40	30	10	80
(F) No of jobs safeguarded (Female 55% of R2)	22	16.5	5.5	44
Number/type of successful innovation related initiatives in SMEs	85	65	25	175

Number/type of successful non innovation related initiatives in SMEs	125	85	40	250
Number/type of successful environmental related initiatives	30	20	10	60
Number/type of successful start up businesses	15	15	5	35
Number of new or existing businesses locating to eco-efficient high quality work spaces	2	3	4	9
Number of businesses integrating new products, processes or services	10	4		14

### 2.2.2 Supply Chain Development Timeframe & Key Milestones

The programme will be kicked off January 1<sup>st</sup> 2012 and run until programme close date 31<sup>st</sup> March 2014 or until all targets are achieved if earlier.

The key milestones for the Programme are detailed in the following table;

### 2.2.3 Reporting

All outputs and results to be collated and filed with evidence and documentation to confirm completion to specification.

### 2.2.4 Resources

EEEGR does not wish to be prescriptive in the resources to be applied, size of Programme team etc proposed by Tenderers.

It is envisaged that for Workscope 2, the Tenderer will establish a Programme Team with sufficient resources and support to complete the work and will justify this in their submission.

### 3. INVITATION TO TENDER

#### 3.1 INSTRUCTIONS TO TENDERERS

- Tenders are invited for either or both of the workscopes.

**Workscope 1: Programme Management, Coordination & Reporting functions.**

As described in Section: 1.2

**Workscope 2: Delivery of the Supply Chain Development actions.**

As described in Section: 1.3

##### 3.1.1 Submission requirements

- Tenderers are required to submit one signed original completed and unbound hardcopy tender, three hard copies, and an electronic version on CD.
- The tender must include a correctly completed Form of Tender (Appendix 1).
- Tenderers must explain how they have addressed the following;
  - Understanding of the remit
  - Methodological approach
  - Work programme and reporting requirements.
- Please also enclose copies of certificates of:
  - Professional Indemnity insurance – with minimum cover of £5M.
  - Employers Liability Insurance – with minimum cover of £10M.
  - Third Party Liability Insurance – with minimum cover of £10M.
- Tenders must be delivered in a sealed, un-attributable envelope **by no later than 10.00 on Monday 12<sup>th</sup> December 2011.**
- A label must be attached at the top to read:

<b>ITT Ref: 2011-EEEGR-CATALYST FOR THE ENERGY SECTOR</b> Not to be opened before <b>12.00 on 12<sup>th</sup> December 2011</b>
--

- Tenders must be addressed to;

<b>Mr J. Best</b> <b>Chief Executive, EEEGR</b> <b>Beacon Innovation Centre, Beacon Park, Gorleston</b> <b>Norfolk, NR31 7RA,</b>
--

- It is the responsibility of all tenderers to ensure that their tender is delivered no later than the appointed time and that the tendering instructions are complied with.  
**EEEGR will not consider tenders received after that time or that have not complied with the tendering instructions.**
- All tenders will remain sealed until after the deadline. They will then be opened at the same time, logged and witnessed by two independent people who are not involved in the assessment process.
- EEEGR may shortlist candidates on the basis of the initial submissions. Shortlisted candidates will be asked to present their proposals to the selection panel on a date to be organised.

### 3.1.2 Additional Information

- Please enclose a copy of your;
  - **Equal Opportunities Policy.**
  - **Environmental Policy** (or equivalent e.g.; ISO 140010 – and explain how you will deliver the subject support services in an environmentally sustainable way and in compliance with your and EEEGR’s stated Policies.
  - **Health and Safety Policy** and details of the arrangements for implementing and maintaining this.
- Please also provide Statements of Confirmation that;
  - In the last three years no finding of unlawful discrimination been made against your organisation (for example, on the grounds of race, gender, disability, age, faith) by any court or industrial tribunal?  
If unable to confirm this, what steps did you take in consequence of any finding?
  - In the last three years your organisation has not been the subject of formal investigation by the former Race Equality Council, the Disability Rights Commission, the Equal Opportunities Commission or any other body on grounds of alleged unlawful discrimination?  
If unable to confirm this, what steps did you take in consequence of any finding?
  - Your organisation has not ever been prosecuted or served with an improvement of prohibition notice by the Health and Safety Executive or have any other enforcing agency as described by Health and Safety (enforcing agency) regulations 1989?

**Please note that unless you provide the requested copies of your Policies and Statements of Confirmation (or explanations), your tender will not be considered.**

- Financial standing and capacity: The tendering organisation must be in a sound financial position. Please provide a copy of your;
  - Previous years accounts.

**Please note - inability to provide financial statements for reasons such as short trading life or being a newly formed consortium will not necessarily rule an organisation out of the process.**

### **3.1.3 Contract award**

Successful tenderers will be advised no later than **16.00 on 16th December 2011.**

- EEEGR is not bound to accept the lowest priced submission or any tender and shall not be bound to accept the Contractor as a sole supplier.

### **3.1.4 Timeline**

The work programme will begin on **3rd January 2012** and must be completed no later than **31<sup>st</sup> March 2014.**

### **3.1.5 Price**

Fixed cost prices (exclusive of VAT) are invited, see **Form of Tender** in Appendix 1.

### **3.1.6 Contract**

The contract will be subject to the standard EEEGR terms & conditions of contract for services (Appendix 3) with the following two clauses added.

#### **Minimum contract term and termination notice**

Contract term will be for an initial minimum twelve month period with (automatic) rolling quarterly (three calendar months) periods thereafter until contract completion date on 31<sup>st</sup> March 2014.

Under “Termination on non-performance”, [clause xx] the notice period given will be three calendar months from date of notified default.

#### **Termination on non-performance.**

EEEGR may terminate the contract by giving “notified default” if contractor fails to meet the Target Outputs of Workslope 1 (as in 2.1.5 above) and/or the Supply Chain Development Target Results of Workslope 2 (as in 2.2.1 above).

**Please note EEEGR is not prepared to enter into substantive negotiations in relation to these conditions and processes.**

### **3.2 THE TENDER ASSESSMENT PROCESS**

- EEEGR will ensure the selection process will be fair, open and transparent.
- All submissions must comply with the tender requirements outlined in this ITT.
- Eligible projects will be judged based on the weighted criteria outlined in Appendix 1.
- EEEGR reserves the right to shortlist tenderers on the basis of the written submissions.
- EEEGR may invite tenderers to present their proposal to their chosen selection panel.
- All applicants will be notified of the outcome of the tender process. As soon as a decision is made for the successful tender, the results will be published through EEEGR's website [www.EEEGR.com](http://www.EEEGR.com)

### **3.3 INFORMATION & GUIDANCE ON ERDF PROGRAMMES**

Information about, and guidance on the ERDF Programme, can be found at <http://www.communities.gov.uk/documents/regeneration/pdf/19543051.pdf>

### **3.4 ENQUIRIES**

Applicants are entitled to ask for further clarification about the tendering process. Any query should be sent in writing to [office@EEEGR.com](mailto:office@EEEGR.com) so that answers to all questions can be openly publicised on the EEEGR Website.

**APPENDIX 1: Form of Tender** (Page 1 of 2)

**EAST OF ENGLAND ENERGY GROUP (EEEGR) INVITATION TO TENDER FOR PROVISION OF SUPPORT SERVICES TO THE CATALYST FOR THE ENERGY SECTOR PROGRAMME**

Tenders are invited for either or both of the workscopes.

**WE;** .....*insert Co name*

of; .....*insert address*

.....*insert address*

.....*insert address*

Telephone: .....

(being the tenderer’s principal place of business in the East of England)

Hereby tender for provision of the Support Services workscope(s) of the Catalyst for the Energy Sector Programme as defined below and offer to perform the Services as per the attached Tender Documentation.

We confirm that this is a Bona Fide Tender.

We acknowledge that EEEGR is not bound to accept the lowest of any tender.

We understand that the successful tenderer will be required to enter into a formal agreement and until that is executed all correspondence between us and EEEGR remains subject to contract.

We indicate our intention below;

We wish to tender for Workscope 1	We do not wish to tender for Workscope 1
We wish to tender for Workscope 2	We do not wish to tender for Workscope 2

*Please score-through as appropriate*

**APPENDIX 1: Form of Tender *continued*** (Page 2 of 2)

**Workscope 1: Programme Management, Coordination & Reporting functions.**

As described in Section: 1.2

For the fixed price cost per month of 1 x Programme Manager: .....£

For the fixed price cost per month of 1 x Programme Administrator:£

**Workscope 2: Delivery of the Supply Chain Development actions.**

As described in Section: 1.3

For the fixed price cost per month of 1 x Programme Team:.....£

As a minimum, the Programme Team will consist of;

.....*.pls insert each job role on a separate line*

**TENDER FOR PROVISION OF SUPPORT SERVICES TO THE CATALYST FOR THE ENERGY SECTOR PROGRAMME**

**SIGNED:** .....*insert Signature of authorised signatory*

**NAME:** .....*insert Name of authorised signatory*

**JOB ROLE:** .....*insert Job Role of authorised signatory*

**DATED:** .....*insert Date of signing*

**APPENDIX 2: Weighted Criteria for Tender Evaluation**

The criteria for selecting company/consortia/consultants are weighted as shown below.

If any tender proposal receives zero against any of the criteria then the bid will not be considered for short listing.

Tenders need to show compliance with the requisites set out in this tender specification.

<b>WEIGHTED CRITERIA FOR TENDER EVALUATION</b>	
<b>CRITERIA</b>	<b>%</b>
Price	20
Capacity	20
Experience	30
Methodology	20
Responsible Procurement	10

## APPENDIX 3: EEEGR Standard Terms Conditions of Contract for Services

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## 1. GENERAL PROVISIONS

### 1.1 Definitions

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

<b>“EEEGR”</b>	means the East of England Energy Group (EEEGR Limited)
<b>"Approval" and "Approved"</b>	means the written consent of EEEGR provided by the EEEGR Contract Manager or other authorised representative of EEEGR (such approval may be provided by e-mail)
<b>“Call – Off”</b>	means a pre-arranged part delivery of goods or services on an ad-hoc basis, under a Framework Arrangement.
<b>“Change of Control”</b>	means a change in ownership or control of the Contractor where, for this purpose, control has the same meaning ascribed to it by either section 416 or section 840 of the Income and Corporation Taxes Act 1988
<b>"Commencement Date"</b>	means the date set out in the Contract Award Form
<b>"Commercially Sensitive Information"</b>	means the Information listed in the Contract Award Form comprised of information which is provided by the Contractor and designated as commercially sensitive information by EEEGR for the period set out in the Contract Award Form
<b>"Confidential Information"</b>	means:-  (a) any information which has been designated as confidential in the Contract Award Form or otherwise 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any

person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and

(b) the Commercially Sensitive Information,

and does not include any information:-

- (i) which was public knowledge at the time of disclosure, otherwise than by breach of Clause 5.3 (Confidential Information);
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information

**"Contract"**

means the Contract Award Form signed by an authorised signatory of each of EEEGR and the Contractor and these terms and conditions (Schedule 1), the Contractor Proposal (Schedule 2), any other Schedules attached or referred to in the Contract Award Form and the ITT

**"Contract Award Form"**

means EEEGR's Contract Award Form issued by EEEGR to the Contractor to which these terms and conditions of Contract are annexed

**"Contract Number"**

means EEEGR's contract number / tender reference number as contained in the Contract Award Form

**"Contract Period"**

means the period from the Commencement Date to:-

- (a) the date of expiry set out in the Contract Award Form (Initial Contract Period); or
  - (b) following an extension pursuant to Clause 6.9 (Extension of Initial Contract Period), the date of expiry of the extended period; or
  - (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract
- "Contract Price"** means the price (exclusive of any applicable VAT), payable to the Contractor by EEEGR under the Contract, as set out in the Contract Award Form, for the full and proper performance by the Contractor of its obligations under the Contract (including without limitation, travel costs and other expenses of the Contractor and its Staff)
- "Contractor"** means the person with whom EEEGR enters into the Contract as identified in the Contract Award Form
- "Contractor Proposal"** means the proposal submitted by the Contractor to EEEGR in response to the ITT
- "Contractor Representative"** means the person appointed by the Contractor to manage the performance of this Contract in accordance with Clause 2.19 and the initial Contractor Representative shall be the person named in the Contract Award Form
- "Data Security Obligations"** means the obligations set out in any additional Schedule relating to data security
- "Default"** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its employees, staff or agents in connection with or in relation to the subject-matter of the Contract and in respect

	of which such Party is liable to the other
<b>"Deliverables"</b>	means those deliverables outputs, results as detailed Contractor Proposal
<b>"DPA"</b>	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
<b>"Environmental Information Regulations"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
<b>"Equipment"</b>	means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract
<b>"FOIA"</b>	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 or relevant government department in relation to such legislation
<b>"Force Majeure"</b>	<p>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 that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <p>(a) any industrial action occurring within the Contractor's or any sub-Contractor's organisation; or</p>

- (b) the failure by any sub-Contractor to perform its obligations under any sub-contract

<b>“Framework Arrangement”</b>	means an arrangement where a long-term relationship is established with either a single contractor or a number of contractors under which specific call-offs to form individual contracts can be made throughout the life of the agreement
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud EEEGR
<b>“Good Industry Practice”</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
<b>“Goods”</b>	means the goods to be supplied as specified in the Contractor Proposal
<b>"Goods and Services"</b>	means the Goods and the Services
<b>"Information"</b>	has the meaning given under section 84 of the FOIA
<b>"Initial Contract Period"</b>	means the period from the Commencement Date to the date of expiry set out in Contract Award Form (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
<b>"Intellectual Property Rights" "IPRs"</b>	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>“ITT”</b>	means EEEGR’s invitation to tender or other request for the relevant Goods and/or the Services (as appropriate)
<b>"Key Personnel"</b>	means any individual identified in the Contract Award Form as being key personnel
<b>"Law"</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply
<b>"Month"</b>	means calendar month
<b>“Party”</b>	means the Contractor or EEEGR
<b>“Payment Details”</b>	means the schedule of payments by EEEGR to the Contractor for the completion of the relevant part of the Services and/or delivery of the relevant part of the Goods (as appropriate) specified in the Contractor Proposal and either summarised in the Contract Award Form or set out in an additional Schedule
<b>"Pre-Existing IPR"</b>	shall mean any Intellectual Property Rights vested in or licensed to EEEGR or the Contractor prior to or independently of the performance by EEEGR or the Contractor of their obligations under the Contract and in respect of EEEGR includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs

<b>"Premises"</b>	means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Contract Award Form and/or in the Contractor Proposal
<b>"Project Specific IPRs"</b>	means:- <ul style="list-style-type: none"><li>(a) IPRs in Services and/or Deliverables provided by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract including, any Deliverables, and all updates and amendments of these items and/or</li><li>(b) IPRs arising as a result of the provision of the Services and/or Deliverables by the Contractor under the Contract</li></ul>
<b>"Property"</b>	means the property, other than real property, issued or made available to the Contractor by EEEGR in connection with the Contract, including but not limited to Confidential Information, data, materials, documents, information and access keys
<b>"Quality Standards"</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with
<b>"Regulatory Bodies"</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of EEEGR and/or the Contractor
<b>"Replacement Contractor"</b>	means any service and/or goods provider

	appointed by EEEGR, to supply any services and/or goods which are substantially similar to any of the Services or Goods, and which EEEGR receives in substitution for any of the Goods or Services following the expiry, termination or partial termination of the Contract
<b>"Request for Information"</b>	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)
<b>"Services"</b>	means the services to be supplied as specified in the Contractor Proposal
<b>"Staff"</b>	means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, Contractors and sub-Contractors used in the performance of its obligations under the Contract
<b>"Variation"</b>	has the meaning given to it in Clause 6.3 (Variation)
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales

## 1.2 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

- 1.2.4 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 and their successors and permitted assigns or transferees;
- 1.2.5 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;
- 1.2.6 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.2.7 reference to a clause is a reference to the whole of that clause unless stated otherwise.

### 1.3 **Initial Contract Period**

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Contract Award Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or is otherwise lawfully terminated, or extended under Clause 6.9 (Extension of Initial Contract Period).

### 1.4 **Contractor's Status**

At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

### 1.5 **EEEGR's Obligations**

Save as otherwise expressly provided, the obligations of EEEGR under the Contract are obligations of EEEGR in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain EEEGR in any other capacity, nor shall the exercise by EEEGR of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of EEEGR to the Contractor.

### 1.6 **Entire Agreement**

- 1.6.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels

or nullifies any previous agreement between the Parties in relation to such matters.

1.6.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

1.6.3 Nothing in Clauses 1.6.1 and 1.6.2 shall operate to exclude Fraud.

1.6.4 In the event of and only to the extent of any conflict between the Contract Award Form, the terms and conditions of the Contract (Schedule 1), the Contractor Proposal (Schedule 2), any other document referred to in Schedule 1 and the ITT, then the conflict shall, unless EEEGR specifies otherwise in writing, be resolved in accordance with the following order of precedence:-

- (a) the Contract Award Form;
- (b) these terms and conditions of the Contract (Schedule 1);
- (c) the Contractor Proposal;
- (d) any other Schedule (if any) referred to in, or annexed to, the Contract Award Form; and
- (e) the ITT.

1.6.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## 1.7 Notices

1.7.1 Except as otherwise expressly provided within the Contract, no notice from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

1.7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service). Such letters shall be addressed to the other Party in the manner referred to in Clause 1.7.3. Provided the relevant communication is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was posted or sooner where the other Party acknowledges receipt of such letter.

- 1.7.3 For the purposes of Clause 1.7.2, the address of each Party shall be:
- (a) in the case of the Contractor the address set out in the Contract Award Form; and
  - (b) in the case of EEEGR, the notice shall be sent FAO of the Chief Executive Officer to Beacon Innovation Centre, Beacon Park, Gorleston, Great Yarmouth, Norfolk, NR31 7RA (quoting the Contract Number).
- 1.7.4 Either Party may change its address for service by serving a notice in accordance with this clause.
- 1.7.5 For the avoidance of doubt, notices to be served in writing under this Contract may not be validly served by email.

## 1.8 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to EEEGR by the Contractor in connection with the supply of the Goods and Services and shall pay EEEGR any extra costs occasioned by any discrepancies, errors or omissions therein.

## 1.9 Conflicts of Interest

- 1.9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of EEEGR), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to EEEGR under the provisions of the Contract.
- 1.9.2 The Contractor shall promptly notify EEEGR (and provide full particulars to EEEGR) if any conflict referred to in Clause 1.9.1 above arises or is reasonably foreseeable.
- 1.9.3 EEEGR reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of EEEGR, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to EEEGR under the provisions of the Contract. The actions of EEEGR pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to EEEGR.
- 1.9.4 This clause shall apply during the Contract Period and for a period of six (6) Months after expiry of the Contract Period.

## 1.10 Prevention of Fraud

- 1.10.1 The Contractor shall take all reasonable steps to prevent any Fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from EEEGR.
- 1.10.2 The Contractor shall notify EEEGR immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 1.10.3 If the Contractor or its Staff commits any Fraud in relation to this or any other contract with EEEGR, EEEGR may:
  - (a) terminate the Contract with immediate effect by giving the Contractor notice in writing and recover from the Contractor the amount of any loss suffered by EEEGR resulting from the termination including the cost reasonably incurred by EEEGR of making other arrangements for the supply of the Goods and Services and any additional expenditure incurred by EEEGR throughout the remainder of the Contract Period; and/or
  - (b) recover in full from the Contractor any other loss sustained by EEEGR in consequence of any breach of this clause.

## 2. SUPPLY OF GOODS AND SERVICES

### 2.1 The Services

- 2.1.1 The Contractor shall supply the Services during the Contract Period in accordance with EEEGR's requirements as set out in the Contract in consideration for the payment of the Contact Price. EEEGR may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- 2.1.2 If EEEGR informs the Contractor in writing that EEEGR reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of EEEGR, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by EEEGR.
- 2.1.3 Subject to EEEGR providing Approval in accordance with Clause 2.2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

### 2.2 Provision and Removal of Equipment

- 2.2.1 Unless otherwise stated in the Contract Award Form, the Contractor shall provide all the Equipment necessary for the supply of the Services.
- 2.2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining EEEGR's prior Approval.
- 2.2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and EEEGR shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by EEEGR's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 2.2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 2.2.5 The Contractor shall, at EEEGR's written request, at its own expense and as soon as reasonably practicable:-
  - (a) remove from the Premises any Equipment which in the reasonable opinion of EEEGR is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- 2.2.6 On completion of the Services, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

### 2.3 Manner of Carrying Out the Services

- 2.3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard of Services has not been specified in the Contract the Contractor shall agree the relevant standard of the Services with EEEGR prior to the supply of the Services and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 2.3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

## 2.4 Key Personnel

- 2.4.1 The Parties have agreed to the appointment of the Key Personnel. The Contractor shall and shall procure that any sub-Contractor shall obtain the prior Approval of EEEGR before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one month's written notice must be provided by the Contractor of its intention to replace Key Personnel.
- 2.4.2 EEEGR shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Contractor or sub-Contractor. EEEGR may interview the candidates for Key Personnel positions before they are appointed.
- 2.4.3 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to EEEGR. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 2.4.4 EEEGR may also require the Contractor to remove any Key Personnel that EEEGR considers in any respect unsatisfactory. EEEGR shall not be liable for the cost of replacing any Key Personnel.

## 2.5 Contractor's Staff

- 2.5.1 EEEGR may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:-
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff;
- whose admission or continued presence would, in the reasonable opinion of EEEGR, be undesirable.
- 2.5.2 At EEEGR's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as EEEGR may reasonably request.
- 2.5.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for

the conduct of personnel when at or within the boundaries of those Premises.

- 2.5.4 If the Contractor fails to comply with Clause 2.5.2 within one (1) Month of the date of the request, EEEGR may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to EEEGR.
- 2.5.5 The decision of EEEGR as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Clause 2.5.2 shall be final and conclusive.

## 2.6 Inspection of Premises

Save as EEEGR may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting the Contractor Proposal and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

## 2.7 Licence to occupy Premises

- 2.7.1 Any land or Premises made available from time to time to the Contractor by EEEGR in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 2.7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as EEEGR may reasonably request.
- 2.7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by EEEGR at the Contractor's expense. EEEGR shall undertake modification work approved by EEEGR in writing without undue delay. Ownership of such modifications shall rest with EEEGR.
- 2.7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises and conduct of personnel at the Premises as determined by EEEGR, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the

avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 2.7.5 The Parties agree that there is no intention on the part of EEEGR to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, EEEGR retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

## 2.8 Offers of Employment

For the duration of the Contract and for a period of six (6) Months thereafter, the Contractor shall neither employ nor offer employment to any of EEEGR's officers or employees without EEEGR's prior written consent.

## 2.9 Supply of the Goods

- 2.9.1 The Contractor shall supply and, where relevant, install the Goods in accordance with the Contractor Proposal, the ITT and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 2.9.2 If requested by EEEGR the Contractor shall provide EEEGR with samples of Goods for evaluation and approval, at the Contractor's cost and expense.
- 2.9.3 The Contractor shall ensure that the Goods are fully compatible with any of EEEGR's relevant equipment.
- 2.9.4 The Contractor acknowledges that EEEGR relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

## 2.10 Delivery

- 2.10.1 The Contractor shall deliver the Goods at the time(s) and date(s) specified by EEEGR.
- 2.10.2 Unless otherwise stated in writing by EEEGR, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by EEEGR, the point of delivery shall be when the Goods are loaded on EEEGR's vehicle.
- 2.10.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's Contractors or carriers at such place as EEEGR or duly authorised person shall reasonably direct.

- 2.10.4 Time of delivery shall be of the essence where specified in the relevant ITT and if the Contractor fails to deliver the Goods within the time specified in the Contract Award Form and/or the Contractor Proposal (as appropriate), EEEGR may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of EEEGR.
- 2.10.5 EEEGR shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If EEEGR elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to EEEGR any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which EEEGR may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by EEEGR.
- 2.10.6 EEEGR shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Contract Award Form and/or the Contractor Proposal (as appropriate).
- 2.10.7 Unless expressly agreed to the contrary, EEEGR shall not be obliged to accept delivery by instalments. If, however, EEEGR does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of EEEGR, entitle EEEGR to terminate the whole of any unfulfilled part of the Contract without further liability to EEEGR.

## 2.11 **Ownership and Risk**

Ownership and risk in the Goods shall, without prejudice to any other rights or remedies of EEEGR, pass to EEEGR at the time of acceptance of delivery.

## 2.12 **Non-Delivery**

Where specified by EEEGR on dispatch of any consignment of the Goods, the Contractor shall send EEEGR an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to EEEGR on the due date for delivery, EEEGR shall, (provided that EEEGR has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute Goods within the timescales specified by EEEGR or terminate the Contract.

## 2.13 Inspection, Rejection and Guarantee

- 2.13.1 EEEGR or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by EEEGR of any rights or remedies in respect of the Goods and EEEGR reserves the right to reject the Goods in accordance with Clause 2.14.2.
- 2.13.2 EEEGR may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to EEEGR of such Goods. If EEEGR rejects any of the Goods pursuant to this clause EEEGR may (without prejudice to other rights and remedies) either:-
- (a) have such Goods promptly, and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Contract Award Form and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - (b) treat the Contract as discharged by the Contractor's breach and obtain a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by EEEGR in obtaining other goods in replacement provided that EEEGR uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- 2.13.3 The issue by EEEGR of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.
- 2.13.4 The Contractor hereby guarantees the Goods for the period which is the longer of (i) from the date of delivery to the date twelve (12) Months thereafter and (ii) the Contractor's standard guarantee period for the relevant Goods against faulty materials or workmanship. If EEEGR shall within such guarantee period or within twenty five (25) Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which EEEGR may have) promptly remedy such defects (whether by repair or replacement as EEEGR shall elect) free of charge.

2.13.5 Any Goods rejected or returned by EEEGR as described in Clause 2.13.2 shall be returned to the Contractor at the Contractor's risk and expense.

#### 2.14 **Labelling and Packaging**

The Goods shall be packed and marked in a proper manner and in accordance with EEEGR's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

#### 2.15 **Training**

Where indicated by EEEGR or the ITT, the Contract Price shall include the cost of instruction of EEEGR's personnel in the use and maintenance of the Goods.

#### 2.16 **Contract Performance**

2.16.1 In supplying the Goods the Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained Staff with all due care and attention;
- (b) in a timely manner; and
- (c) in compliance with applicable Laws, including but not limited to, any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.

2.16.2 The Contractor shall ensure that:

- (a) the Goods conform in all respects with the specifications set out, in the Contract or any sample approved by EEEGR;
- (b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements specified by EEEGR;
- (c) the Goods conform in all respects with all applicable Laws; and
- (d) the Goods are free from defects in design and workmanship and are fit for purpose for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by EEEGR.

#### 2.17 **Appointment of Contractor Representative**

The Contractor will appoint a suitably qualified senior authorised individual within its organisation to act as the Contractor Representative. The Contractor Representative will have primary responsibility for ensuring that EEEGR's obligations under the Contract are complied with and will be EEEGR's principal point of contact with the Contractor in relation to the Contract.

## 2.18 Meetings

The Contractor shall ensure that the Contractor Representative and such other members of management and/or of staff of the Contractor as reasonably required by EEEGR attend all meetings reasonably arranged by EEEGR for the discussion of matters connected with the performance of the Contract. The Contractor shall, within ten (10) Working Days from the date of the meeting, provide a note of the meeting. EEEGR shall not be deemed to agree with the contents of the note due to it as a result of it failing to report an error or omission contained in the note to the Contractors.

## 3. PAYMENT AND CONTRACT PRICE

### 3.1 Contract Price

3.1.1 In consideration of the Contractor's performance of its obligations under the Contract, EEEGR shall pay the Contract Price in accordance with Clause 3.2 (Payment and VAT).

3.1.2 EEEGR shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

### 3.2 Payment and VAT

3.2.1 The Contractor shall submit invoices to EEEGR within either twenty eight (28) days of the completion of the relevant Services/supply of the relevant Goods (as appropriate) or within such earlier period to enable payment to be made by EEEGR in accordance with the Payment Details.

3.2.2 EEEGR shall pay all sums due to the Contractor in cleared funds within thirty (30) days of receipt of a valid invoice (which must quote the Contract Number), submitted in accordance with the provisions of the Contract.

3.2.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or as applicable the Services provided and that it is supported by any other documentation reasonably required by EEEGR to substantiate the invoice.

3.2.4 Where the Contractor enters into a sub-contract with a Contractor or Contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires

payment to be made of all sums due by the Contractor to the sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

- 3.2.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 3.2.6 The Contractor shall indemnify EEEGR on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on EEEGR at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 3.2.6 shall be paid by the Contractor to EEEGR not less than five (5) Working Days before the date upon which the tax or other liability is payable by EEEGR.
- 3.2.7 The Contractor shall not suspend the supply of the Services and/or Goods (as applicable) unless the Contractor is entitled to terminate the Contract under Clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.

### 3.3 Recovery of Sums Due

- 3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to EEEGR in respect of any breach of the Contract), EEEGR may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with EEEGR.
- 3.3.2 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.
- 3.3.3 The Contractor shall make any payments due to EEEGR 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 EEEGR to the Contractor.
- 3.3.4 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.

### 3.4 Euro

- 3.4.1 Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to EEEGR.

3.4.2 EEEGR shall provide all reasonable assistance to facilitate compliance with Clause 3.4.1 by the Contractor.

#### **4. STATUTORY OBLIGATIONS AND REGULATIONS**

##### **4.1 Prevention of Corruption**

4.1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of EEEGR or person employed by or on behalf of EEEGR any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Contract or any other contract with EEEGR or person employed by or on behalf of EEEGR (including its award to the Contractor, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

4.1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to EEEGR or any person employed by or on behalf of EEEGR in connection with the Contract.

4.1.3 If the Contractor, its Staff or any person acting on the Contractor's behalf, engages in conduct prohibited by Clauses 4.1.1 or 4.1.2 above or any other contract with EEEGR or person employed by or on behalf of EEEGR, EEEGR may:-

- (a) terminate the Contract with immediate effect by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by EEEGR resulting from the termination; and/or
- (b) recover in full from the Contractor any other loss sustained by EEEGR in consequence of any breach of those clauses.

##### **4.2 Discrimination**

4.2.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

4.2.2 The Contractor shall take all reasonable steps to secure the observance of Clause 4.2.1 by all Staff, employees or agents of the Contractor and all Contractors and sub-Contractors employed in the execution of the Contract.

##### **4.3 The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### 4.4 Environmental Requirements

- 4.4.1 In providing the Goods or Services the Contractor shall comply with EEEGR's environmental policy from time to time and which is currently to conserve energy, water 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.
- 4.4.2 All written outputs, including reports, produced in connection with the Contract by the Contractor shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.
- 4.4.3 The Contractor shall make maximum use of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging. Packaging must be capable of recovery for reuse or recycling.

#### 4.5 Health and Safety

- 4.5.1 The Contractor shall promptly notify EEEGR of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. EEEGR shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 4.5.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by EEEGR in respect of Staff and other persons working there.
- 4.5.3 The Contractor shall notify EEEGR immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 4.5.4 The Contractor shall 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 and other persons working on the Premises in the supply of the Services under the Contract.

4.5.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974 and as otherwise employed by Good Industry Practice) is made available to EEEGR prior to the Commencement Date and any changes to the policy are promptly notified to EEEGR in writing.

## 5. PROTECTION OF INFORMATION

### 5.1 Data Protection Act

5.1.1 In this clause “personal data” has the same meaning as in Part I (1 & 3) of the DPA.

5.1.2 If EEEGR provides the Contractor with any personal data, the Contractor shall:

- (a) process the personal data solely for the purpose of providing the Services and/or Goods in accordance with the Contract and to fulfil the Contractor’s obligations and exercise its rights under the Contract;
- (b) take reasonable steps to ensure the reliability of its employees who have access to the personal data;
- (c) comply with EEEGR’s instructions and policies relating to the processing of the personal data (including but not limited to any policies relating to data security and direct marketing);
- (d) keep the personal data confidential and not disclose the personal data to any third party without the prior written consent of EEEGR;
- (e) take appropriate technical and organisational measures against the unauthorised or unlawful processing of the personal data or accidental loss or destruction of, or damage to the personal data. When considering what measures are appropriate, the Parties shall have regard to the state of technological development and the cost of implementing any measures to ensure a level of security appropriate to the harm that may result from such unauthorised or unlawful processing or accidental loss or destruction, and to the nature of the data;
- (f) notify EEEGR promptly of:
  - (i) any accidental or unauthorised access to the personal data;
  - (ii) any request received directly from a data subject;
  - (iii) any legally binding request of disclosure of the personal data by a law enforcement authority;

- (g) provide such assistance as is necessary to enable EEEGR to comply with requests by data subjects for access to their personal data within the period required by the Data Protection Act 1998;
- (h) comply with all applicable laws including but not limited to the DPA in relation to all processing of the personal data and not perform its obligations under this Contract in such a way as to cause EEEGR to breach any such laws;
- (i) not cause or permit the personal data to be transferred outside the European Economic Area without EEEGR's prior written consent; and
- (j) permit EEEGR to inspect and audit the Contractor's data processing activities and comply with all reasonable requests or directions by EEEGR to enable EEEGR to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract.

5.1.3 The Contractor shall indemnify and keep indemnified EEEGR against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against EEEGR by any person in respect of loss, damage or distress caused to that person by the disclosure, loss or destruction by the Contractor, the Contractor's servants, agents or sub-contractors of any personal data.

## 5.2 Records and Audit Access

- 5.2.1 The Contractor shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided and/or Goods supplied under it and the amounts paid by EEEGR in relation to the Contract.
- 5.2.2 The Contractor shall keep the records and accounts referred to in Clause 5.2.1 above in accordance with good accountancy practice.
- 5.2.3 The Contractor shall on request afford EEEGR, EEEGR's representatives and/or approved Auditor such access to such records and accounts as may be required by EEEGR from time to time.
- 5.2.4 EEEGR shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services or supply of Goods save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of EEEGR.

- 5.2.5 Subject to EEEGR's rights of Confidential Information, the Contractor shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:-
- (a) all information requested by EEEGR within the scope of the audit;
  - (b) reasonable access to sites controlled by the Contractor and to Equipment used in the provision of the Services; and
  - (c) access to the Staff.
- 5.2.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5.2, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse EEEGR for EEEGR's reasonable costs incurred in relation to the audit.

### 5.3 Confidential Information

- 5.3.1 Each Party shall:
- (a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and
  - (b) 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 either Party's obligations under the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- 5.3.2 The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's Confidential Information obligations under the Contract and shall use its best endeavours to ensure that its Staff, professional advisors and consultants comply with the Contractor's Confidential Information under the Contract.
- 5.3.3 The Contractor shall not use any Confidential Information it receives from EEEGR otherwise than for the purposes of the Contract.
- 5.3.4 Nothing in Clauses 5.3.1 to 5.3.3 shall prevent EEEGR disclosing any Confidential Information obtained from the Contractor:-
- (a) for the purpose of the examination and certification of EEEGR's accounts; or

- (b) for the purpose of any examination by the Auditor of the economy, efficiency and effectiveness with which EEEGR has used its resources; or
- (c) to any consultant, Contractor or other person engaged by EEEGR;

provided that in disclosing information under sub-paragraph (d) EEEGR discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

5.3.5 Nothing in Clauses 5.3.1 to 5.3.3 shall prevent either Party from:-

- (a) using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights; or
- (b) disclosing Confidential Information 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.

5.3.6 In the event that the Contractor fails to comply with Clauses 5.3.1 to 5.3.3, EEEGR reserves the right to terminate the Contract with immediate effect by notice in writing.

5.3.7 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services and/or Goods under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best industry practice.

5.3.8 The Contractor will immediately notify EEEGR of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under 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 Clauses 5.3.1 to 5.3.3. The Contractor will co-operate with EEEGR in any investigation that EEEGR considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

- 5.3.9 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at EEEGR's request if EEEGR reasonably believes the Contractor has failed to comply with Clause 5.3.7.

#### 5.4 **Publicity, Media and Official Enquiries**

- 5.4.1 The Contractor shall not make any press announcements or publicise the Contract in any way without EEEGR's prior Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-Contractors, Contractors, professional advisors and consultants comply with this Clause 5.4.
- 5.4.2 EEEGR shall be entitled to publicise the Contract for any purpose.
- 5.4.3 The Contractor shall not do anything or cause anything to be done, which may damage the reputation of EEEGR or bring EEEGR into disrepute.

#### 5.5 **Security**

- 5.5.1 EEEGR shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of EEEGR while on the Premises and shall comply with the Data Security Obligations. The Contractor shall ensure that all Staff comply with such requirements.
- 5.5.2 EEEGR shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request an opportunity to inspect its physical security arrangements.

#### 5.6 **Intellectual Property Rights**

- 5.6.1 Save as granted elsewhere under the Contract, neither EEEGR nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 5.6.2 The Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Agency Pre-Existing IPR or the Project Specific IPRs to any third party.
- 5.6.3 All title to and all rights and interest in the Project Specific IPRs shall vest in EEEGR. The Contractor hereby assigns to EEEGR, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
- 5.6.4 The assignment under Clause 5.6.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect

- immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 5.6.5 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to EEEGR under the Contract.
- 5.6.6 If requested to do so by EEEGR, the Contractor shall without charge to EEEGR execute all documents and do all such further acts as EEEGR may require to perfect the assignment under Clause 5.6.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 5.6.7 EEEGR hereby grants to the Contractor a non-exclusive, revocable, non-assignable licence to use EEEGR Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Contractor to provide the Services and/or supply the Deliverables.
- 5.6.8 Prior to using any third party Intellectual Property Rights, the Contractor shall obtain the Approval of EEEGR. The Contractor shall provide EEEGR with details of any third party licence required by the Contractor and/or EEEGR for the Contractor to carry out its obligations under the Contract using the third party Intellectual Property Rights. EEEGR reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 5.6.9 Where the Contractor is granted Approval by EEEGR to use the third party rights, the Contractor shall procure that the owner of third party rights grants to EEEGR a licence upon the terms informed to EEEGR when seeking the Approval.
- 5.6.10 The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold EEEGR harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which EEEGR may suffer or incur as a result of any claim that the performance by the Contractor of the Services and/or supply of the Deliverables and/or the possession or use by EEEGR of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- (a) items or materials based upon designs supplied by EEEGR; or
  - (b) the use of data supplied by EEEGR which is not required to be verified by the Contractor under any provision of the Contract.
- 5.6.11 EEEGR shall notify the Contractor in writing of the Claim and EEEGR shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Contractor shall at its own expense conduct all negotiations

and any litigation arising in connection with the Claim provided always that the Contractor:

- (a) shall consult EEEGR on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of EEEGR; and
- (c) shall not settle or compromise the Claim without EEEGR's prior Approval (not to be unreasonably withheld or delayed).

5.6.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall immediately notify EEEGR and, at its own expense and subject to the consent of EEEGR (not to be unreasonably withheld or delayed), use its best endeavours to:-

- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to EEEGR,

and in the event that the Contractor is unable to comply with Clauses 5.6.11(a) or 5.6.12(b) within twenty (20) Working Days of receipt of the Contractor's notification EEEGR may terminate the Contract with immediate effect by notice in writing and the Contractor shall, upon demand, refund EEEGR with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

5.6.13 In the event that a modification or substitution in accordance with Clause 5.6.11(a) is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Clause 5.6.11(b) EEEGR shall be entitled to delete the relevant Service from the Contract.

5.6.14 This Clause 5.6 sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables hereunder. This shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise hereunder.

## 6. CONTROL OF THE CONTRACT

### 6.1 Transfer and Sub-Contracting

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

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

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

6.1.4 Subject to Clause 6.1.6, EEEGR may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-

- (a) any body established by Law in order substantially to perform any of the functions that had previously been performed by EEEGR; or
- (b) any private sector body which substantially performs the functions of EEEGR,

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

6.1.5 Any change in the legal status of EEEGR shall not, subject to Clause 6.1.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to EEEGR.

6.1.6 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.

### 6.2 Waiver

6.2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

6.2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.7 (Notices).

6.2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

### 6.3 Variation

6.3.1 Subject to the provisions of this Clause 6.3, EEEGR may request a variation to Goods or Services ordered. Such a change is hereinafter called a "Variation".

6.3.2 EEEGR may request a Variation by giving sufficient information for the Contractor to assess the extent of the Variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within fifteen (15) Working Days or such shorter period as shall be reasonable having regard to the nature of the Contract and the Variation.

6.3.3 In the event that the Contractor is unable to provide the Variation to the Goods or Services or where the Parties are unable to agree a change to the Contract Price, EEEGR may:

- (a) agree to continue to perform their obligations under the Contract without the Variation; or
- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered part or all of the Services and/or Goods (as appropriate) in accordance with the Contract Award Form or where the Contractor can show evidence of substantial work being carried out to fulfil the Services and/or Goods (as appropriate), and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 9.2.

6.3.4 If the Parties agree to the Variation and any variation in the Contract Price, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract and such Variation shall be documented and must be Approved.

6.3.5 No other variation to the Contract will be effective unless it is Approved.

### 6.4 Severability

- 6.4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 6.4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, EEEGR and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

## 6.5 Remedies in the event of defective Goods

- 6.5.1 Without prejudice to any other right or remedy which EEEGR may have, if any Goods are not supplied in accordance with, or the Contractor fails to comply with any of the terms of the Contract, EEEGR shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by EEEGR:-
- (a) to rescind the Contract;
  - (b) to reject the Goods (in whole or in part) and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Goods so returned shall be paid forthwith by the Contractor;
  - (c) at EEEGR's option, to give the Contractor the opportunity at the Contractor's expense to either remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
  - (d) to refuse to accept any further deliveries of the Goods but without any liability to EEEGR;
  - (e) to carry out at the Contractor's expense any work necessary to make the Goods comply with the Contract; and
  - (f) to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract.

## 6.6 Remedies in the event of inadequate performance of the Services

- 6.6.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then EEEGR shall take all reasonable steps to investigate the complaint. EEEGR may, in its sole discretion, uphold the complaint, or take

further action in accordance with Clause 8.2 (Termination on Default) of the Contract.

- 6.6.2 In the event that EEEGR is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then EEEGR may, without prejudice to its rights under Clause 8.2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of EEEGR that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - (c) terminate, in accordance with Clause 8.2 (Termination on Default), the whole of the Contract; and/or
  - (d) charge the Contractor for and the Contractor shall pay any costs reasonably incurred by EEEGR (including any reasonable administration costs) in respect of the supply of any part of the Services by EEEGR or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that EEEGR uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 6.6.3 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then EEEGR shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of EEEGR's instructions or such other period of time as EEEGR may direct.
- 6.6.4 In the event that the Contractor
- (a) fails to comply with Clause 6.6.3 above and the failure is materially adverse to the interests of EEEGR or prevents EEEGR from discharging a statutory duty; or
  - (b) persistently fails to comply with Clause 6.6.3 above;

EEEGR may terminate the Contract with immediate effect by giving the Contractor notice in writing.

## 6.7 Cumulative Remedies

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

## 6.8 Monitoring of Contract Performance

The Contractor shall comply with the monitoring arrangements set out in the Contract or as otherwise specified by EEEGR including, but not limited to, from time to time providing such data and information as the Contractor may be required to produce under the Contract.

## 6.9 Extension of Initial Contract Period

Subject to satisfactory performance of its obligations under the Contract by the Contractor during the Contract Period, EEEGR may, by giving written notice to the Supplier not less than one (1) Month prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Contract Award Form (if any such date is specified). The provisions of the Contract will apply throughout any such extended period.

## 7. LIABILITIES

### 7.1 Liability, Indemnity and Insurance

7.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-

- (a) death or personal injury caused by its negligence or that of its employees, staff or agents;
- (b) Fraud or fraudulent misrepresentation by it or that of its employees, staff or agents;
- (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under Clause 7.3 (Taxation, National Insurance and Employment Liability); or
- (e) any claim under the indemnity in Clause 5.7.10.

- 7.1.2 Subject to Clause 7.1.3 and Clause 7.1.4 the Contractor shall indemnify and keep indemnified EEEGR in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods or 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. 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 EEEGR or by breach by EEEGR of its obligations under the Contract.
- 7.1.3 Subject always to Clause 7.1.1 and Clause 7.1.4, the liability of either Party for Defaults shall be subject to the following financial limits. The aggregate liability under the Contract or either Party for all Defaults shall in no event exceed the greater of £150,000 and 150 per cent of the Contract Price payable by EEEGR to the Contractor.
- 7.1.4 Subject to Clause 7.1.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of revenue;
  - (d) loss of or damage to goodwill;
  - (e) loss of savings (whether anticipated or otherwise); and/or
  - (f) any indirect or consequential loss or damage.
- 7.1.5 EEEGR may, amongst other things, recover as a direct loss:-
- (a) any additional operational and/or administrative expenses arising from the Contractor's Default;
  - (b) any wasted expenditure or charges rendered unnecessary and/or incurred by EEEGR arising from the Contractor's Default; and
  - (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Contractor.

- 7.1.6 Nothing in the Contract shall impose any liability on EEEGR in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of EEEGR to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of EEEGR, or EEEGR's employees, servants or agents.
- 7.1.7 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 six (6) years following the expiration or earlier termination of the Contract.
- 7.1.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force and, in any event, such employer's liability insurance shall have a limit of not less than £5m for each individual claim or such higher limit as EEEGR may reasonably require from time to time.
- 7.1.9 The Contractor shall give EEEGR, 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.
- 7.1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract EEEGR may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 7.1.11 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 7.1.2.

## 7.2 Professional Indemnity

The Contractor shall effect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-

Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £1,000,000 for each individual claim or such higher limit as EEEGR may reasonably require (and as required by law) from time to time.

### 7.3 **Taxation, National Insurance and Employment Liability**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and/or Goods and not a contract of employment. The Contractor shall at all times indemnify EEEGR and keep EEEGR indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby EEEGR is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

### 7.4 **Warranties and Representations**

7.4.1 The Contractor warrants and represents that:-

- (a) it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Contractor;
- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all information, statements and representations contained in the Contractor Proposal are true, accurate and not misleading save as may have been specifically disclosed in writing to EEEGR prior to execution of the Contract and it will advise EEEGR of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;

- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (h) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the Goods and Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (j) in the three (3) years prior to the Commencement Date of the Contract:-
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (k) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## 8. DEFAULT, DISRUPTION AND TERMINATION

### 8.1 Termination on insolvency and change of control

- 8.1.1 EEEGR may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor:-
  - (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) any event similar to those listed in Clause 8.1.1(a) - (f) occurs under the law of any other jurisdiction.

8.1.2 EEEGR may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

- (g) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3 The Contractor shall notify EEEGR immediately if the Contractor undergoes a Change of Control. EEEGR may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that EEEGR becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

## 8.2 Termination on Default

8.2.1 EEEGR may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a Default and if:-

- (a) the Contractor has not remedied the Default to the satisfaction of EEEGR within ten (10) Working Days, or such other period as may be specified by EEEGR, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of EEEGR, capable of remedy; or
- (c) the Default is a material breach of the Contract.

8.2.2 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 EEEGR in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Contractor.

8.2.3 If EEEGR fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify EEEGR in writing of such failure to pay. If EEEGR fails to pay such undisputed sums within ninety (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 EEEGR exercising its rights under Clause 3.3 (Recovery of Sums Due).

## 8.3 Break

8.3.1 EEEGR shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services and/or Goods, by giving to the

Contractor not less than 28 days' notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of Contract. EEEGR shall remain liable to the Contractor for payment of all costs in relation to all Services and/or Goods properly provided in accordance with the Contract up to and including the date of termination provided that EEEGR shall have no liability in respect of any costs incurred after the expiry of the notice period. Once it has given such notice, EEEGR may extend the period of notice at any time before it expires, subject to agreement on the level of Services and/or Goods to be provided by the Contractor during the period of extension.

- 8.3.2 Without prejudice to Clause 8.3.1 and for the avoidance of doubt, EEEGR shall not be obliged to pay any cancellation charge or other compensation to the Contractor (including, without limitation, in respect of redundancy payments for the Contractor's employees or loss of profits) by reason solely of the termination of Contract by EEEGR.

#### 8.4 Consequences of Expiry or Termination

- 8.4.1 Where EEEGR terminates the Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Goods and/or the Services, EEEGR may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by EEEGR throughout the remainder of the Contract Period. EEEGR shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 8.2 (Termination on Default), no further payments shall be payable by EEEGR to the Contractor until EEEGR has established the final cost of making those other arrangements.

- 8.4.2 Save as otherwise expressly provided in the Contract:-

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of EEEGR or the Contractor under Clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Data Protection Act), 5.2 (Records and Audit Access), 5.3 (Confidential Information), 5.6 (Intellectual Property Rights), 6.7 (Cumulative Remedies), 7.1 (Liability, Indemnity and Insurance), 7.2 (Professional Indemnity), this Clause 8.4 (Consequences of Expiry or Termination), 8.6 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction).

## 8.5 Disruption

- 8.5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of EEEGR, its employees or any other Contractor engaged by EEEGR.
- 8.5.2 The Contractor shall immediately inform EEEGR of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 8.5.3 In the event of industrial action by the Staff, the Contractor shall seek EEEGR's Approval to its proposals for the continuance of the supply of the Goods and Services in accordance with its obligations under the Contract.
- 8.5.4 If the Contractor's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by EEEGR acting reasonably then the Contract may be terminated with immediate effect by EEEGR by notice in writing.
- 8.5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of EEEGR, an appropriate allowance by way of extension of time will be approved by EEEGR. In addition, EEEGR will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## 8.6 Recovery upon Termination

- 8.6.1 At the end of the Contract Period (howsoever arising) the Contractor shall immediately deliver to EEEGR upon request all Property used in the performance of its obligations under the Contract or in its possession or under its control or in the possession or under the control of any permitted Contractors or sub-Contractors and in the event that the Contractor fails to do so, EEEGR may recover possession thereof and the Contractor grants a licence to EEEGR or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted Contractors or sub-Contractors where any such items may be held.
- 8.6.2 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Contractor shall provide assistance to EEEGR and the Replacement Contractor appointed by EEEGR to continue or take over the performance of the Contractor's obligations under the Contract in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance free of charge. Otherwise EEEGR shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

- 8.6.3 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 5.7.7 shall automatically terminate without the need to serve notice.

## 8.7 Force Majeure

- 8.7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 8.7.2 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 Contractor shall be regarded as due to Force Majeure only if that agent, sub-Contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 8.7.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 8.7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

## 9. DISPUTES AND LAW

### 9.1 Governing Law and Jurisdiction

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

### 9.2 Dispute Resolution

- 9.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Chief Executive (or equivalent) of each Party.
- 9.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 9.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 9.2.5 unless:-
- (a) EEEGR considers that the dispute is not suitable for resolution by mediation; or
  - (b) the Contractor does not agree to mediation.
- 9.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 9.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- (a) A neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to Centre for Effective Dispute Resolution to appoint a Mediator;
  - (b) The Parties shall within (ten) 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;
  - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an 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; and

- (f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts in accordance with Clause 9.1.