

## PURCHASE ORDER TERMS AND CONDITIONS

### 1 DEFINITIONS

#### 1.1 In this Contract:

**"Applicable Law"** means all laws and regulations which relate to the parties of either one of them in connection with the performance of their obligations under the Contract and include, without limitation, all health and safety laws and regulations (and any codes of practice, circulars or guidance notes issued by the Health and Safety Executive or any equivalent body), all environmental laws and regulations which relate to the treatment of man or any other living organisms, the Modern Slavery Act 2015 and the Bribery Act 2010.

**"Business Days"** means a day other than a Saturday, Sunday or a public holiday in England and Wales;

**"Commercially Sensitive Information"** means the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights and/or its business and which the Supplier has indicated to Forestry England that, if disclosed by Forestry England, would cause the Supplier significant commercial disadvantage or material financial loss.

**"Forestry England"** means Forestry England, the operative component of the Forestry Commission, which acts in exercise of the powers contained in the Forestry Act 1967, of 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ;

**"Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 24.9;

**"Contract"** means the contract between Forestry England and the Supplier for the purchase of Goods and/or Services, made up of these Conditions, the Purchase Order and any other documents specified by Forestry England as being part of the Contract in the Purchase Order;

**"Data Protection Legislation"** means the Data Protection Act 2018, UK GDPR, Privacy and Electronic Communication (EC Directive) Regulations 2003 and all applicable laws and regulations that relate to the protection and Processing of Personal Data and privacy including together with any mandatory guidance and code of practice issued by the United Kingdom's Information Commissioner, all as amended, replaced or superseded from time to time;

**"Deemed Employment"** means an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies;

**"Deliverables"** means all documents, products and materials developed by the Supplier or its agents, contractors and employees (whether individually, collectively or jointly, developed with Forestry England), as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**"Documentation"** means all accompanying documentation relating to the quality, standard, origin, shipment, transit and/or delivery of Goods as detailed in the Purchase Order or otherwise requested in writing by Forestry England, including but not limited to any export licence, customs documentation, certificates of conformity, origin and quality;

**"Goods"** means any and all goods (or part of them) to be provided by the Supplier under this Contract, including those set out in the Purchase Order;

**"Individual"** means the named individual providing the Services as set out in the Purchase Order;

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and similar or equivalent rights or forms of protection in any part of the world;

**"Premises"** means, unless otherwise set out in the Purchase Order, the final delivery location for the Goods and/or the location at which the Services are to be performed, as specified in the Purchase Order;

**"Purchase Order"** means the purchase order form completed and submitted to the Supplier by Forestry England detailing the Goods and/or Services to be purchased by Forestry England;

**"Services"** means any and all services (or part of them) to be provided by the Supplier under this Contract, including those set out in the Purchase Order;

**"Substitute"** a substitute for the Individual appointed under the terms of clause 7;

**"Supplier"** means the person, firm or company set out on the Purchase Order.

**"Supplier Personnel"** means all employees, officers, staff, other workers, agents and consultants employed

or otherwise engaged or utilised by the Supplier and of any subcontractors in the provision of the Services from time to time; and

“**Transparency Information**” means:

- (a) any information permitted or required to be published by the Procurement Act 2023, any regulations published under it, and any Procurement Policy Notes, subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023 which shall be determined by Forestry England taking into account the Commercially Sensitive Information;
- (b) any information about this Contract, including the content of this Contract requested and required to be disclosed under FOIA or the EIRs, and any changes to this Contract agreed from time to time, subject to any relevant exemptions, which shall be determined by Forestry England taking into account the Commercially Sensitive Information;
- (c) any information which is published in accordance with guidance issued by His Majesty's Government, from time to time; and
- (d) any of the information that Forestry England is permitted or required to publish by the Procurement Act 2023, any regulations published under it and any Procurement Policy Notes, relating to the performance of the Supplier against any targets and any information contained in any management reports, subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023, or under the provisions of FOIA, which shall be determined by Forestry England taking into account the Commercially Sensitive Information (if any).

## 2 ORDER OF PRIORITY

- 2.1 These Conditions only apply in the absence of an alternative signed contract between the Supplier and Forestry England. Where the Supplier and Forestry England have agreed and signed alternative written terms that relate to the same subject matter as the Contract, those terms shall apply to the exclusion of any other terms that either party seeks to impose on the other, including these Conditions.
- 2.2 In the absence of an alternative, signed contract

between the Supplier and Forestry England, the Conditions set out at clauses 3 to 24 below shall apply to the exclusion of all other terms and conditions.

## 3 BASIS OF CONTRACT

- 3.1 The Purchase Order constitutes an offer by Forestry England to purchase the Goods and/or Services from the Supplier in accordance with these Conditions. Forestry England may revoke an offer at any time prior to the Contract coming into force.
- 3.2 The Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:
  - 3.2.1 the Supplier issuing a written acceptance of the Purchase Order; or
  - 3.2.2 the Supplier carrying out any act consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence ("**Commencement Date**"). In the event that there has been no deemed acceptance in accordance with this clause 3.2 within 15 Business Days of Forestry England making an offer, the offer shall automatically be deemed to be revoked.

- 3.3 Where, upon receipt of a Purchase Order, the Supplier makes a counter-offer to supply the Goods and/or Services on new conditions to the exclusion of these Conditions, such counter-offer shall only be validly accepted by Forestry England if such acceptance is in writing and signed by a duly authorised representative of Forestry England. Only upon Forestry England's express acceptance of the counter-offer shall the Contract come into existence.
- 3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these Conditions (or any part of them) shall be binding on Forestry England unless in writing and signed by a duly authorised representative of Forestry England.
- 3.5 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 3.6 If there is a conflict or inconsistency between

any term set out in (1) the Purchase Order, (2) these Conditions, and (3) any other document(s) specified by Forestry England as being part of the Contract in the Purchase Order, a term contained in a document higher in the list shall have priority over one contained in a lower document in the list.

#### 4 SUPPLY OF GOODS

4.1 The Supplier represents and warrants that the Goods shall:

4.1.1 correspond with their description and any applicable specification or standard;

4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), be fit for any purpose for which they are ordinarily used, and be fit for any purpose held out by the Supplier or made known to the Supplier by Forestry England (expressly or by implication) and in this respect Forestry England relies on the Supplier's skill and judgement;

4.1.3 be free from defects in design, materials and workmanship and remain so for 12 months after delivery, subject to any other guarantee arrangements agreed in writing between Forestry England and the Supplier or any manufacturer guarantee; and

4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including but not limited to all applicable environmental, health and safety laws and regulations.

4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

#### 5 DELIVERY OF GOODS

5.1 The Supplier shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their final

destination in good condition without damage or deterioration and in compliance with any special requirements set out in the Purchase Order;

5.1.2 each delivery of the Goods is accompanied by the Documentation and a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (where applicable) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

5.1.3 it states clearly on the delivery note any requirement for Forestry England to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost and risk of the Supplier. In the absence of any such note, packaging material shall be considered non-returnable and may be destroyed, reused or recycled by Forestry England; and

5.1.4 if the Goods are damaged in transit, the Supplier shall, free of charge either replace or repair (as Forestry England shall elect) the damaged Goods within 30 days of Forestry England notifying the Supplier of the damage.

5.2 The Supplier shall deliver the Goods:

5.2.1 on the date specified in the Purchase Order, or, if no such date is specified, on such date as may be agreed between the parties;

5.2.2 to the Premises or such other location specified in the Purchase Order or as instructed by Forestry England prior to delivery ("**Delivery Location**"); and

5.2.3 during Forestry England's normal business hours on a Business Day, or as otherwise instructed by Forestry England.

5.3 Delivery of the Goods shall be completed on the

completion of unloading the Goods from the transporting vehicle at the Delivery Location (including off-loading and stacking) and Forestry England signing for the delivery.

5.4 The Supplier shall not deliver the Goods in instalments without Forestry England's prior written consent. Where it is agreed that the Goods may be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Forestry England to the remedies set out in clause 9.1.

5.5 Title and risk in the Goods shall pass to Forestry England on completion of the delivery.

5.6 The Supplier shall provide Forestry England with periodic updates regarding the progress of the Purchase Order and delivery of Goods. If the Supplier considers or becomes aware that it will be unable to deliver Goods by on the date specified in the Purchase Order, notwithstanding the remedies available to Forestry England in clause 9.1, the Supplier shall notify Forestry England immediately in writing and, at the Supplier's cost, use expedited means of delivery to deliver the Goods.

## 6 SUPPLY OF SERVICES

6.1 The Supplier shall, and, if applicable, shall procure that the Individual shall from the date set out in the Purchase Order and for the duration of the Contract supply the Services to Forestry England in accordance with the terms of the Contract.

6.2 The Supplier shall and, if applicable, shall procure that the Individual shall meet any performance dates for the Services specified in the Purchase Order or as Forestry England otherwise notifies the Supplier and time is of the essence in relation to any of those performance dates.

6.3 In providing the Services, the Supplier represents and warrants that:

6.3.1 the Supplier and, if applicable, the Individual, will co-operate with Forestry England and comply with all of Forestry England's instructions in all matters relating to the Services;

6.3.2 the Services shall be performed with the best care, skill and diligence in

accordance with best practice in the Supplier's industry, profession or trade;

6.3.3 the Supplier shall use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

6.3.4 the Services will conform with all descriptions, standards and specifications, and that the Deliverables shall be fit for any purpose that Forestry England expressly or impliedly makes known to the Supplier;

6.3.5 the Supplier will ensure that it has all equipment, tools and vehicles and such other items as are required to provide the Services;

6.3.6 the Supplier will use the best quality goods, materials, standards and techniques, and ensure the Deliverables, and all goods and materials supplied and used in the Services or transferred to Forestry England, will be free from defects in workmanship, installation and design;

6.3.7 the Supplier will obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

6.3.8 the Services will comply with all regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;

6.3.9 the Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at any of Forestry England's premises;

6.3.10 the Supplier will hold all materials, equipment and tools, drawings, specifications and data supplied by Forestry England ("**Commission Materials**") in safe custody at its own risk, maintain Forestry England Materials in good condition until returned to Forestry England, and

- not dispose or use Forestry England Materials other than in accordance with Forestry England's written instructions or authorisation;
- 6.3.11 the Supplier will not do or omit to do anything which may cause Forestry England to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Forestry England may rely or act on the Services; and
- 6.3.12 the Supplier will comply with any additional obligations set out in the Purchase Order.
- 6.4 The Supplier shall indemnify Forestry England against all liabilities, costs, expenses, damages and losses suffered or incurred by Forestry England and arising out of or in connection with damage to Forestry England's premises and property sustained as a result of the Supplier's or the Supplier Personnel's attendance at Forestry England's premises.
- 6.5 The indemnity outlined in clause 6.4 shall apply whether or not the Supplier has been negligent or at fault.
- 7 INDIVIDUAL**
- 7.1 Without prejudice to clauses 3, 4, 5 and 6 where an Individual is named in the definitions, then this clause 7 shall apply.
- 7.2 Forestry England shall engage the Supplier and the Supplier shall make available to Forestry England the Individual to provide the Goods and/or the Services with effect from the Commencement Date and for the duration of this Agreement in accordance with the provisions of this Agreement.
- 7.3 The Supplier may, with the prior written approval of Forestry England and subject to the following proviso, appoint a suitably qualified and skilled Substitute to provide the Goods and/or to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with Forestry England, including with regard to confidentiality. If Forestry England accepts the Substitute, the Supplier shall continue to invoice Forestry England in accordance with clause 12 and the Supplier shall be responsible for the remuneration of the Substitute.
- 7.4 If a Substitute is appointed, the provisions relating to sub-processor obligations in clause 17 and subcontractors in clause 24.1.3 and 24.1.4 will apply and references in this Agreement to the Individual shall include references to the Substitute.
- 7.5 The Supplier shall use all reasonable endeavours to ensure that the Individual is available on reasonable notice to provide such assistance or information as Forestry England may require.
- 7.6 Unless it or they have been specifically authorised to do so by Forestry England in writing:
- 7.6.1 neither the Supplier nor the Individual shall have any authority to incur any expenditure in the name of or for the account of Forestry England; and
- 7.6.2 the Supplier shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind Forestry England.
- 8 TIMBER**
- 8.1 Where the Services involve the supply of timber, the Supplier will ensure that all such timber supplied or used by the Supplier in the performance of the Services (if any) shall be sourced from an independently verifiable legal and sustainable source including, for the avoidance of doubt, timber from a licensed Forest Law Enforcement, Governance and Trade (FLEGT) partner and shall adhere to the buying standards set out in the Specification (if any).
- 8.2 The Supplier will provide evidence within 5 Business Days from request by Forestry England that any Timber used in the performance of the Services complies with clause 8.1.
- 8.3 Any breach of clause 8.1 by the Supplier shall be deemed a material breach of this Agreement and shall entitle Forestry England to terminate this Agreement in accordance with clause 20.3.1.
- 9 REMEDIES**
- 9.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, Forestry England shall, without limiting or affecting other rights or

remedies available to it, have one or more of the following rights:

- 9.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 9.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 9.1.3 to recover from the Supplier any costs incurred by Forestry England in obtaining substitute goods and/or services from a third party;
- 9.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- 9.1.5 to claim damages for any additional costs, loss or expenses incurred by Forestry England which are in any way attributable to the Supplier's failure to meet such dates.

9.2 If the Supplier has delivered Goods that do not comply with the warranties set out in clause 4.1, then, without limiting or affecting other rights or remedies available to it, Forestry England shall have one or more of the following rights, whether or not it has accepted the Goods:

- 9.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 9.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 9.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 9.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 9.2.5 to recover from the Supplier any expenditure incurred by Forestry England in obtaining substitute goods from a third party; and

9.2.6 to claim damages for any additional costs, loss or expenses incurred by Forestry England arising from the Supplier's breach of any of the warranties set out in clause 4.1.

9.3 If the Supplier has supplied Services that do not comply with the requirements of clause 6.3 then, without limiting or affecting other rights or remedies available to it, Forestry England shall have one or more of the following rights:

- 9.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 9.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- 9.3.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- 9.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 9.3.5 to recover from the Supplier any expenditure incurred by Forestry England in obtaining substitute services or deliverables from a third party; and
- 9.3.6 to claim damages for any additional costs, loss or expenses incurred by Forestry England arising from the Supplier's failure to comply with clause 6.3.

9.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

9.5 Forestry England's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## 10 FORESTRY ENGLAND'S OBLIGATIONS

10.1 Forestry England shall:

- 10.1.1 provide the Supplier or the Supplier Personnel with reasonable access at reasonable times to the Premises for the purpose of providing the Services and/or the Delivery Location for the purpose of

	delivering the Goods; and		packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Forestry England; and
10.1.2	provide such necessary information for the provision of the Services as the Supplier may reasonably request.		
11	<b>COMMISSION'S PREMISES</b>		
11.1	Forestry England shall provide the Supplier with non-exclusive access to such parts of Forestry England's Premises as the Supplier requires for the purposes only of providing the Services and/or delivering the Goods. The Supplier's right of access will terminate immediately once the Goods have been delivered and/or, where the Supplier is performing Services, upon the termination of this Agreement however arising.	12.1.3	shall be payable in pound sterling unless otherwise agreed in writing between the parties.
11.2	Where the provision of the Services and/or the delivery of the Goods requires the Supplier to enter onto any forest areas, the Supplier shall use pre-authorized access routes, which shall be authorised in writing by Forestry England from time to time and shall take every reasonable precaution to minimise damage to such authorised access routes and restore any actual damage caused.	12.2	The charges for the Services shall be set out in the Purchase Order, shall be payable in pound sterling (unless otherwise agreed between the parties) and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Forestry England, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
11.3	The Supplier shall adhere to all lawful instructions issued by Forestry England from time to time in connection with the pre-authorized access routes and the Supplier shall not use any access routes other than the pre-authorized access routes at any time.	12.3	In respect of the Goods, the Supplier shall invoice Forestry England on or at any time after completion of delivery. In respect of the Services, the Supplier shall invoice Forestry England on completion of the Services. Each invoice shall include the minimum required information set out in Section 88(7) of the Procurement Act 2023 and such supporting information required by Forestry England to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
11.4	The use of authorised access routes shall be at the Supplier's own risk and Forestry England shall not be liable for any damage or injury arising out of the Supplier's use of authorised access routes other than to the extent required by Applicable Law.	12.4	Where an invoice does not conform to Forestry England's requirements set out in clause 12.3, it shall not be considered a valid invoice and Forestry England shall notify the Supplier without undue delay and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
11.5	Any access of the Supplier or Supplier personnel to Forestry England's premises will be solely for the purpose of providing the Services and/or delivering the Goods and performing the Supplier's obligations under this Contract and the Supplier shall obey all written or verbal instructions of Forestry England issued from time to time.	12.5	In consideration of the supply of Goods and/or Services by the Supplier, Forestry England shall pay all undisputed sums due and payable under each valid invoice within 30 days of the date on which Forestry England received the or, if later, the date by which the payment falls due in accordance with the invoice.
12	<b>CHARGES AND PAYMENT</b>	12.6	If the invoice is not paid in accordance with the timescales in clause 12.5, Forestry England can publish details of the late payment or non-payment.
12.1	The price for the Goods:	12.7	The Supplier shall separately state on each invoice any import duties or sales, use, value added, excise or similar tax. The Supplier shall not charge tax if Forestry England is exempt
12.1.1	shall be the price set out in the Purchase Order;		
12.1.2	shall be inclusive of the costs of		

	from such taxes and furnishes the Supplier with a certificate of such exemption. Forestry England will be responsible for any sales, use, VAT, or similar taxes, import duties or any other such assessment however designated.		invoices within the specified payment period.
12.8	Payment by Forestry England of any invoice received by it pursuant to this clause 12 are made only in accordance with the terms of the Contracts and shall not be deemed to be an acceptance of any terms and conditions proposed by the Supplier's documents.	12.10	If Forestry England fails to make a payment due to the Supplier under the Contract by the due date, then Forestry England shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 12.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
12.9	Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:	12.11	The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Forestry England to inspect such records at all reasonable times on request.
12.9.1	a provision requiring that all subcontractors are paid:		
	12.9.1.1 before the end of the period of 30 days beginning with the day on which an invoice is received by the Supplier or other party in respect of the sum; or	12.12	Forestry England may at any time, without notice to the Supplier, set off any liability of the Supplier to Forestry England against any liability of Forestry England to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Forestry England may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Forestry England of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
	12.9.1.2 if later, the date by which the payment falls due in accordance with the invoice,		
	subject to the invoice being verified by the party making the payment as valid and undisputed;		
12.9.2	provisions having the same effect as clause 12.3 to clause 12.7 of this Contract;	13	<b>STATUS</b>
12.9.3	a provision requiring the sub-contractor to that sub-contract to include in any sub-contract which it awards provisions having the same effect as clause 12.3 to clause 12.7 of this Contract;	13.1	For the purpose of this clause 13, " <b>Tax Authority</b> " means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect tax in the United Kingdom or elsewhere.
12.9.4	a provision requiring the party receiving goods or services under the contract to consider and verify invoices under that sub-contract in a timely fashion and notify the subcontractor without undue delay if it considers the invoice invalid or it disputes the invoice; and	13.2	Where the relationship of the Supplier to Forestry England will be that of independent contractor and nothing in this Contract shall render it nor any Individual and/or Supplier Personnel an employee, worker, agent or partner of Forestry England and the Supplier shall not, and shall procure that none of the Supplier Personnel or the Individual (if applicable) shall, hold itself out as such.
12.9.5	provisions conferring a right for Forestry England to publish the Supplier's compliance with its obligation to pay undisputed	13.3	This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly, the Supplier shall and shall procure that any Supplier Personnel

and/or the Individual (if applicable) shall:

- 13.3.1 co-operate fully and promptly with any request by Forestry England relating to any matter arising in connection with the Supplier's or Forestry England's tax compliance procedures to the extent that it relates or may relate to the arrangements contemplated by this Contract including this clause 13;
- 13.3.2 promptly provide such information as Forestry England shall require from time to time: (a) to enable Forestry England to determine whether the provision of Services under or in connection with this Contract is or will be Deemed Employment and to make any necessary status determinations as may be required by law; and (b) in order to comply with any obligation on Forestry England to deduct tax or national insurance contributions from the Charges due under clause 12;
- 13.3.3 promptly inform Forestry England of any material change to any information or documentation previously provided in compliance with this clause;
- 13.3.4 promptly provide any other information or documentation that it considers (or ought reasonably consider) to be materially relevant to enable Forestry England to make any determinations and to comply with any of its legal obligations referred to in clause 13.3.2
- 13.3.5 authorise, request or procure the disclosure of information from the relevant Tax Authority to Forestry England as Forestry England may request in the event of an enquiry by such a Tax Authority relating to or in connection with the arrangements contemplated by this Contract including this 13.3.5;

and the Supplier shall indemnify Forestry England for and in respect of any and all liability, assessment or claim (including interest, fines, penalties, costs and expenses) incurred, paid or payable by Forestry England as a result of any failure by the Supplier to provide information, or failure to provide complete,

accurate and up-to-date information, as may be requested by Forestry England for the purposes set out in this clause 13.3.5, where such recovery is not prohibited by law.

13.4 The Supplier shall be fully responsible for and shall indemnify Forestry England for and in respect of the following:

13.4.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Supplier or its Substitute in respect of the Services, where such recovery is not prohibited by law. The Supplier shall further indemnify Forestry England against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Forestry England in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

13.4.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier or its Substitute against Forestry England arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of Forestry England;

13.4.3 provided always that the indemnity in clause 13.4.1 does not apply to any income tax or National Insurance contributions deducted by Forestry England if: (a) the provision of Services under or in connection with this Contract is determined by Forestry England to be Deemed Employment; and (b) Forestry England makes the deductions from the Charges under clause 10 of this Contract prior to payment to the Supplier.

13.5 The Supplier warrants that it is not nor will it prior to the cessation of this Contract, become a Managed Service Company (within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003). The

	Supplier shall indemnify Forestry England from and against any costs, liabilities or expenses arising (whether directly or indirectly) out of, or in connection with, any breach of the warranty in this clause 13.5 or any determination or finding that the Supplier is a Managed Service Company, where such recovery is not prohibited by law.		in force, with a reputable insurance company, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Forestry England's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
13.6	Forestry England may at its option satisfy the indemnities in this clause 13 (in whole or in part) by way of deduction from payments due to the Supplier.	17	<b>DATA PROTECTION</b>
14	<b>CHANGES</b>	17.1	In this clause 17, <b>Controller, Data Subject, Personal Data, Processing</b> and <b>Processor</b> shall each have the meanings given in the applicable Data Protection Legislation.
14.1	The Supplier shall not make changes to Goods or Services or to the manufacturing, testing, quality or other processes, the bill of materials, materials, design, tools, sources of materials, or locations used to manufacture, assemble, or package the Goods or perform Services (in each case following the date of the Purchase Order) without Forestry England's prior written approval. Any unauthorised change of any type will render the changed Goods and Services non-conforming and will constitute a material breach of the Supplier's obligations under this Contract, and the Supplier shall be responsible for all resulting damage, loss and/or expense incurred by Forestry England.	17.2	Where the Supplier is Processing Personal Data in order to provide Goods and/or Services to Forestry England under the terms of the Contract, the Parties acknowledge and agree that in respect of the Personal Data that is being processed by the Supplier, Forestry England is the Controller and the Supplier is a Processor respectively.
14.2	Forestry England may request changes to the Goods and/or Services (including packaging and delivery requirements) at any time (prior to the despatch of Goods, where Goods are to be supplied) upon written notice to the Supplier. The Supplier shall implement the requested changes, and the Purchase Order will be deemed amended to incorporate the changes. However, if the requested changes will affect the cost of performance or the time required to perform, the Supplier shall advise Forestry England in writing within 14 days of Forestry England's change request, and shall not implement the change without Forestry England's written approval.	17.3	Both the Supplier and Forestry England warrant and undertake that they shall comply with all applicable requirements under the Data Protection Legislation in relation to this Contract. This clause 17.3 is in addition to, and does not relieve, remove or replace, a party's obligation or rights under the Data Protection Legislation.
15	<b>INTELLECTUAL PROPERTY RIGHTS</b>	17.4	Both the Supplier and Forestry England have described the Processing of Personal Data being undertaken by the Supplier in Schedule 1 to this Contract.
	Save as otherwise expressly provided in this Contract, neither the Supplier nor Forestry England shall receive any right, title or interest in or to the Intellectual Property Rights of the other party.	17.5	The Supplier acknowledges and agrees that to the extent that the performance of its obligations, and any supporting and/or ancillary activities, under the Contract involves processing Personal Data on behalf Forestry England, it will be a Processor and it shall:
16	<b>INSURANCE</b>	17.5.1	process the Personal Data only to the extent necessary for the purposes of performing the Supplier's obligations under the Contract and otherwise in accordance with Forestry England's reasonable and lawful documented instructions and applicable laws; the Processing shall continue subject to clause 17.5.7 for the duration of the Contract;
	During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain	17.5.2	not process the Personal Data in any country outside the combined

		17.5.5 assist Forestry England, where reasonably requested by Forestry England and to the extent possible, with Forestry England's compliance obligations in respect of security of Personal Data, notifications of breaches of Data Protection Legislation to supervisory authorities, communications of breaches of Data Protection Legislation to Data Subjects, the carrying out of data protection impact assessments and any consultations with supervisory authorities;
17.5.2.1 the Supplier has ensured that there are appropriate safeguards in relation to the transfer and Processing of Forestry England's Personal Data in accordance with the applicable Data Protection Legislation;		
17.5.2.2 the Data Subject has enforceable rights and effective legal remedies;		17.5.6 assist Forestry England, where reasonably requested by Forestry England and to the extent possible, with fulfilling Forestry England's obligations to respond to requests from a Data Subject for access to, rectification, erasure or portability of, or for restriction of, or objections to, the Processing of, that Data Subject's Personal Data;
17.5.2.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.		17.5.7 cease Processing the Personal Data in connection with this Contract on the termination or expiry of the Contract, or if earlier, on termination or cessation of the service to which they relate and at Forestry England's request, delete or return all Personal Data to Forestry England, and delete all existing copies unless applicable laws require their retention;
If the Supplier is required by applicable laws to transfer the Personal Data outside of the combined area of the United Kingdom and the EEA, the Supplier shall inform Forestry England of such requirement before making the transfer (unless the Supplier is barred from making such notification under the relevant applicable law);		17.5.8 make available to Forestry England information reasonably necessary to demonstrate compliance with the obligations set out in this clause 17.5 and where requested by Forestry England allow for and contribute to audits, including inspections, conducted by Forestry England or its representative;
17.5.3 ensure that, in addition to the confidentiality provisions in the Contract, all persons authorised by the Supplier to process the Personal Data are subject to appropriate duties of confidentiality;		
17.5.4 have at all times during the term of the Contract, taking in to account the nature of the Processing, appropriate technical and organisational measures in place to provide a necessary level of security to protect any Personal Data against unauthorised or unlawful Processing and against accidental loss, alteration, destruction or damage;		17.5.9 ensure that the Supplier Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 1) and ensure it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:

- 17.5.9.1 are aware of and comply with the Supplier's duties under this clause;
- 17.5.9.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
- 17.5.9.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Forestry England or as otherwise permitted by this Contract; and
- 17.5.9.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
- 17.5.10 on reasonable written notice provide Forestry England with all reasonable assistance and information required by Forestry England to satisfy Forestry England's record keeping obligations under the Data Protection Legislation and adhere to any applicable code of conduct or certification method approved under the applicable Data Protection Legislation; and
- 17.5.11 without undue delay (and in any event within 48 hours) after having become aware, notify Forestry England of any unauthorised or unlawful Processing of any of the Personal Data to which this clause 17.5 applies and of any loss or destruction or other damage and shall take such steps consistent with good industry practice to mitigate the detrimental effects of any such incident on the Data Subjects and fully co-operate with Forestry England in dealing with such incident and its consequences.
- 17.6 Forestry England acknowledges and agrees that the Supplier may engage third party sub Processors in connection with the Processing of such Personal Data and in order to meet its obligations under the Contract from time to time. In such circumstances Forestry England hereby authorises the Supplier to engage with such third party sub Processors and in respect of the Supplier's use of sub Processors:
- 17.6.1 within 30 (thirty) days of the Supplier's notification Forestry England can object to the intended changes; and such objection by Forestry England shall be in writing and include Forestry England's specific reasons for its objection;
- 17.6.2 where Forestry England objects to an intended change of sub Processor within the period in clause 17.6.1 and the Supplier cannot reasonably accommodate Forestry England's objection, the Supplier will notify Forestry England and Forestry England may terminate the Contract by providing the Supplier with written notice within one (1) month of the Supplier's notice;
- 17.6.3 the Supplier shall remain fully liable to Forestry England for the acts and omissions of a sub Processor; and
- 17.6.4 the Supplier shall procure that such sub Processor is subject to a written agreement containing data processing obligations no less onerous than those set out in the Contract and that such agreement will meet the requirements of the applicable Data Protection Legislation.
- 18 **LIABILITY**
- 18.1 Neither party limits its liability for: death or personal injury caused by its negligence, or that of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; breach of any obligation as to title implied by statute (including by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982); any indemnity given under this Contract; any breach of clauses 6.3.8, 4.1.4, 23 or any liability to the extent it cannot be limited or excluded by law.

18.2	Subject to clause 18.1, the aggregate liability of Forestry England in respect of any loss or damage suffered by the Supplier and arising out of or in connection with this Contract, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the greater of: (1) the price payable by Forestry England to the Supplier pursuant to this Contract during the 12 months preceding the event giving rise to the claim, and (2) the sum of £1000.		England by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables or caused by acts or omissions of the Supplier; and
18.3	Subject to clause 18.1, the aggregate liability of the Supplier in respect of any loss or damage suffered by Forestry England and arising out of or in connection with this Contract, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the greater of: (1) an amount equal to 125% of the price payable by Forestry England to the Supplier pursuant to this Contract during the 12 months preceding the event giving rise to the claim, and (2) the sum of £5,000.	19.1.3	any claim made against Forestry England by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
18.4	Subject to clause 18.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect, special or consequential loss arising under or in connection with this Agreement.	19.2	This clause 19 shall survive termination of the Contract.
18.5	The parties acknowledge and agree that the limitations contained in this clause 18 are reasonable in all the circumstances.	20	<b>TERMINATION</b>
19	<b>INDEMNITY</b>	20.1	Subject to its earlier termination, this Contract will terminate at the cessation of the Services (if applicable) unless extended by written agreement between the parties.
19.1	The Supplier shall keep Forestry England indemnified in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, fines, legal and other professional costs and expenses (calculated on a full indemnity basis) awarded against or incurred or paid by Forestry England as a result or in connection with:	20.2	Without affecting any other right or remedy available to it, Forestry England may terminate the Contract:
19.1.1	any claim made against Forestry England for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding Forestry England Materials);	20.2.1	with immediate effect by giving written notice to the Supplier if:
19.1.2	any claim made against Forestry	20.2.1.1	there is a change of control of the Supplier; or
		20.2.1.2	the Supplier's financial position deteriorates to such an extent that in Forestry England's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
		20.2.1.3	the Supplier commits a breach of clause 4.1.4 or clause 6.3.8,
		20.2.1.4	the Individual (or Substitute) is convicted of a criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

20.2.1.5	the Individual (or Substitute) is in the reasonable opinion of Forestry England negligent and/or incompetent in the performance of the Services;	(whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
20.2.1.6	the Individual (or Substitute) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;	20.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
21 <b>CONSEQUENCES OF TERMINATION</b>		
20.2.1.7	the Individual (or Substitute) is the subject of a bankruptcy petition or order; or	21.1 On termination of the Contract, the Supplier shall immediately deliver to Forestry England all Deliverables whether or not then complete and return all Forestry England Materials. If the Supplier fails to do so, then Forestry England may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
20.2.1.8	the engagement of the Supplier by Forestry England on the terms of this Agreement is determined by Forestry England or HM Revenue & Customs to be Deemed Employment or employment for tax purposes,	21.2 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
20.2.2	for convenience by giving the Supplier 90 days written notice.	21.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
22 <b>DISPUTE RESOLUTION</b>		
20.3	Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:	Where any dispute, difference, or question ( <b>Dispute</b> ) between Forestry England and the Supplier arising out of or in connection with this Contract cannot be resolved by the party's initial Authorised Representatives, either party may refer the Dispute to a senior representative of Forestry England (a member of the senior civil service) and of the Supplier (a director or other senior office holder) who shall use all reasonable endeavours to resolve the dispute within twenty-eight (28) Business Days of notice of the dispute being served by either party. For the avoidance of doubt, all negotiations will be undertaken without prejudice to the rights of the parties in future proceedings.
20.3.1	the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;	
20.3.2	the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up	
23 <b>FREEDOM OF INFORMATION</b>		
		23.1 The Supplier acknowledges that Forestry

England is subject to the requirements of the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation (**FOIA**) and the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations (**EIRs**). The Supplier shall, at no additional cost to Forestry England:

23.1.1 provide all necessary assistance and cooperation as reasonably requested by Forestry England to enable Forestry England to comply with its obligations:

23.1.1.1 under the FOIA and EIRs; and/or

23.1.1.2 In relation to publishing Transparency Information;

23.1.2 transfer to Forestry England all requests for information or an apparent request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs (**Requests for Information**) relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;

23.1.3 provide Forestry England with a copy of all information within the meaning of section 84 of the FOIA (**Information**) belonging to Forestry England requested in the Request For Information which is in its possession or control in the form that Forestry England requires within 5 Business Days (or such other period as Forestry England may reasonably specify) of Forestry England's request for such Information; and

23.1.4 not respond directly to a Request For Information unless authorised in writing to do so by Forestry England.

23.2 The Supplier acknowledges that Forestry England may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without

consulting or obtaining consent from the Supplier. Forestry England shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so and may talk to the Supplier but (notwithstanding any other provision in the Contract) Forestry England shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the EIRs. Forestry England shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but the extent, content and format of publication shall be decided by Forestry England in its sole discretion.

24 **GENERAL**

24.1 **Assignment and other dealings.**

24.1.1 Forestry England may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

24.1.2 The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Forestry England.

24.1.3 Notwithstanding anything to the contrary in the Contract, where the Supplier appoints a subcontractor, the Supplier shall not be relieved of any obligation or duty attributable to him under the Contract (including these Conditions) and the Supplier shall remain responsible for all acts and omissions of its personnel and its sub-contractors (and those employed by its sub-contractors) as if they were its own.

24.1.4 The Supplier must ensure that it does not any time during the Term enter into a subcontract with:

24.1.4.1 any supplier that is on the debarment list on the basis of a

mandatory exclusion ground within the meaning of the Procurement Act 2023 and associated regulations; or

24.1.4.2 any supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and associated regulations, unless the Supplier has obtained Forestry England's prior written consent to the appointment of the relevant proposed subcontractor.

24.2 **Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control, including without limitation to the extent that these are beyond such control industrial disputes, nuclear accident, war or terrorist activity, riot, civil commotion, malicious damage, accident, failure of technical facilities, fire, flood or storm but excluding default of suppliers or sub-contractors (unless such defaults are due to force majeure). If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

24.3 **Notices.**

24.3.1 Any notice given to a party under or in connection with the Contract shall be in writing and be served by e-mail unless it is not practicable to do so. An e-mail shall be deemed to have been received at the time of transmission, or if this time falls outside working hours, when working hours resume. In this clause 24.3.1 working hours means 9.00am to 5.00pm London time on a Business Day.

24.3.2 If it is not practicable for a notice to be served by e-mail in accordance with clause 24.3.1, notices can be

served by means of personal delivery or Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery. If either of these options are used to serve a notice, such notices are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day.

24.3.3 Notices to Forestry England or Supplier must be sent to their e-mail address (or address, where e-mail is not practicable) as set out in the Purchase Order.

24.3.4 This clause 24.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

24.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 24.4 shall not affect the validity and enforceability of the rest of the Contract.

24.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

24.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

24.7 **Entire agreement.** The Contract constitutes

the entire agreement between the parties and, except to the extent inconsistent with a separate agreement signed by the parties that expressly applies to the subject matter of this Contract, this Contract supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.8 **Third party rights.**

24.8.1 Subject to clause 24.8.2, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24.8.2 Clause 12.9 confers benefits on the persons named or identified in that provision other than the parties to this Contract (each such person a **“Third Party Beneficiary”**) and is intended to be enforceable by Third

Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999.

24.9 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

24.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

24.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.